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W.P.No.8748 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8748 of 2014

and

M.P.No.1 of 2014

Selvi.Tamilarasi Jacob

...Petitioner

Vs.

1.The Director of Elementary Education,
College Road, Chennai – 6.

(R1-Substituted vide order dated 04.07.2022
made in W.M.P.No.8042/2022 in
W.P.No.8748/2022)

2.The Assistant Elementary Education Officer,
Kothagiri – 643 217.

3.The Accounts Officer,
O/o.The Principal Accountant General,
(Accounts & Entitlements),
Tamil Nadu,
261, Anna Salai, Chennai – 600 018.

4.Naallayan Middle School,
Krishnaputhur, Nihung Post,
Kotagiri – 643 217, Nilgiri District.

..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of



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India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to grant pension benefits to the petitioner for the service rendered by her as Secondary Grade Teacher in the 4th respondent School from 1.7.1980 to 31.10.1994 together with interest at 18% per annum for the belated payment.

For Petitioner	: Mr.Palaniselvaraj
For Respondents [For R1, R2 & R5]	: Mr.S.Silambanan Assisted by Mrs.S.Anitha Special Government Pleader
[For R3]	: M/s.Hema Muralikrishnan
[For R4]	: No appearance

ORDER

The relief sought for in the present writ petition is to direct the respondents 1 to 3 to grant pension benefits to the petitioner for the service rendered by her as Secondary Grade Teacher in the 4th respondent School from 1.7.1980 to 31.10.1994 together with interest at 18% per annum for the belated payment.

2. The petitioner states that she was working as Secondary Grade Teacher in the aided Schools under the Management of 4th respondent from 01.07.1980 to 31.10.1994. The petitioner worked subsequently in various



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other Schools. on 01.11.1994, the petitioner was transferred to another School namely RC School in Kosuvampatty running under the 4th respondent / Management. The petitioner could not able to join duty due to medical reasons and she was hospitalized. When the petitioner approached the 4th respondent / Management after two months, she was informed that somebody was appointed in her place. The petitioner states that she has served about 14 years in the 4th respondent School and the said services are to be taken into consideration as qualifying service for the purpose of pensionary benefits. The petitioner states that she has submitted a representation in this regard and the said representation was not considered. Thus, the petitioner is constrained to move the present writ petition.

3. The respondents states that the petitioner served as Secondary Grade Teacher in the Aided Schools under the Management of the 4th respondent from 01.07.1980 to 31.10.1994 i.e., for about nearly 14 years 2 months and 27 days. The petitioner submitted an application for grant of pension for the services rendered by her in the 4th respondent School.

4. The Accountant General of Tamil Nadu / third respondent has



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stated that the petitioner has admittedly stayed away from duty and she has not relieved from service by the competent authority in any one of the modes prescribed in Chapter V of Tamil Nadu Pension Rules, 1978, that would fetch pensionary benefits.

5. The learned counsel for the third respondent relied on the judgment of Hon'ble Supreme Court of India in the case of ***Sri.C.Jacob Vs. Director of Geology and Mining and Another***, reported in ***[2008 (10) SCC 115]*** and paragraph 12 of the judgment is relevant, which reads as follows:

“12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Not can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.”

6. In view of the above judgment, the petitioner is not entitled for the



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pensionary benefits.

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7. Having quit the services on 31.10.1994, the petitioner has preferred the writ petition in the year 2014, after a lapse of 20 years from the date of abandoning the job. Thus, the writ petition is liable to be rejected on the ground of laches also. The provisions of the Tamil Nadu Pension Rules 1978, governing the grant of pensionary benefits are as under:

“5) In this Connection the following provisions of the Tamil Nadu Pension Rules 1978 (TNPR) that govern the grant of pensionary benefits, are submitted:

a) The entitlement of pension is governed by Chapter V of the said Rules, which enumerated the classes of pension and conditions for entitlement. The enumerated classes of pension are:

- (i) Superannuation pension (Rule 32 of TNPR)*
- (ii) Retiring pension (Rule 33 of TNPR)*
- (iii) Pension on absorption in or under a corporation, company or body owned/controlled by State/Central Government (Rule 34 of TNPR)*
- (iv) Invalid pension (Rule 36 of TNPR)*
- (v) Compensation pension payable on discharge owing to abolition of the post (Rule 38 of TNPR)*
- (vi) Compulsory pension payable (Rule 39 of TNPR)*



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Compassionate allowance to Government servants who forfeit their pension on being dismissed or removed (Rule 40 of TNPR)”

8. This Court is of the considered opinion that the petitioner can neither completed 20 years of service nor reached 50 years of age as on 31.10.1994 (date of quitting) and thus, she could not have retired voluntarily to seek pension on voluntarily retirement under Rule 33 read with Rule 42 of the Tamil Nadu Pension Rules. That apart, the petitioner stayed away from duty on her own volition and thereafter, she had not continued in service. Beyond all this, the petitioner filed the present writ petition after a lapse of about 20 years from the date of abandoning the service. Thus, she is not entitled for the relief and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2022

Index : Yes
Speaking order: Yes
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To



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