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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 1757 of 2014

Tmt. P.Jayamary

... Petitioner

-vs-

1.State of Tamil Nadu. Rep. By its.
Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2.The Director of Elementary Education,
College Road, Chennai - 600 006.

3.The Accountant General,
(Accounts & Entitlement),
Tamil Nadu, Chennai - 600 018.

4.The District Elementary Educational Officer,
Cuddalore, Cuddalore District.

5.The Assistant Elementary Educational Officer,
Nallur, Cuddalore District.

6.The Correspondent,
Danish Mission Elementary School,
Sethuvarayankuppam,
Nallur Union, Vridhachalam Taluk,
Cuddalore District.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining tot he order passed by the 1st respondent in its Letter No.37404/B2/2012-1, School Education Department, dated 15.02.2013 and quash the same and direct the Respondents to sanction pension to the Petitioners Husband M.Pandiyarajan from 07.08.2008 to 30.12.2008 and family pension to the petitioner from 31.12.2008 and to continue with all consequential benefits.



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For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Govt. Pleader [RR1,2,4 and 5]

Mrs.Hema Muralikrishnan
Senior Standing Counsel [R3]

R6 : No appearance

O R D E R

The order dated 15.02.2012 passed by the first respondent declining the claim of the writ petitioner for grant of family pension is under challenge in the present writ petition.

2.The husband of the writ petitioner Mr.M.Pandiyarajan joined as Secondary Grade Teacher in the 6th respondent Aided school on 08.08.1967 and his appointment was approved by the competent Educational Authorities and that the husband of the petitioner was awarded with the Selection Grade in the cadre of Secondary Grade Teacher with effect from 09.08.1977. The petitioner's husband submitted a request application for voluntary retirement on health grounds on 19.06.1983. Accordingly, the 6th respondent school Management relieved the petitioner's husband on 19.06.1983 itself. The said order of relieving was approved by the Educational Authorities on 05.09.1984. Thus, the petitioner contends that her husband is eligible to get pension based on his voluntary retirement application, which was not considered. Thus, the petitioner moved the Authorities for grant of family pension. The said claim of the writ petitioner is also declined and subsequently the petitioner filed the present writ petition.

3. The learned counsel for the petitioner contend that the order impugned is not inconsonance with Pension Rules and further in violation of Rule 56(c) of Fundamental Rules. The petitioner states that she is eligible for family pension in view of the fact that the voluntary application submitted by her husband was accepted by the School Management and he was relieved from service on 19.06.1983. Therefore, the Authorities ought to have been granted pension to the husband of the writ petitioner and consequently the family pension. The husband of the writ petitioner has completed the minimum qualifying service of 10 years and therefore, he is entitled for pension.

4. The learned Additional Government Pleader appearing on behalf of the Educational Department objected the contention



raised on behalf of the petitioner by stating that the pension proposal of the husband of the writ petitioner and the family pension proposal were rejected by the 3rd respondent Accountant General of Tamil Nadu on the ground that the official is not eligible for pension as his service is 15 years 10 months and 12 days only (instead of 20 years) and further the husband of the writ petitioner, at the time of his voluntary retirement application had not completed the age of 50 years. The husband of the writ petitioner has been relieved based on the voluntary application. Therefore, for all purposes he was treated as voluntary retirement employee. Thus, the rule applicable for voluntary retirement pension is to be taken into consideration for the purpose of grant of pension and family pension.

5. The learned counsel appearing on behalf of the third respondent Accountant General of Tamil Nadu relying on the counter affidavit made a submission that the husband of the writ petitioner is not eligible for pension as the proposition of law has been clearly laid down by the Hon'ble Supreme Court of India in the case of C.Jacob Vs. Director of Geology and Mining and Anr. [2008 10 SCC 115] wherein, an identical claim of the petitioner was discussed at length in the context of Tamil Nadu Pension Rules and the petition was dismissed with the following observation:

"14.....A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in chapter V of the pension Rules, there is no question of having recourse to the Rules in the chapter dealing with regulation of amount of pension (chapter VI of TNP Rules or Chapter VII of CCSP Rules) for determining the quantum of pension.

16. Rule 33 of TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of TNP Rules provides that a government servant, who under fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension. (corresponding Rule 36 of CCSP Rules which provides that a retiring pension shall be granted to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or



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Rule 56 of the Fundamental Rules of Article 459 of the Civil Service Regulations and to a Government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years service. Therefore, the petitioner is not entitled to retiring pension.

17. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43 (2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived...

.....Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier comes into play only when the Government Servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rule) dealing with the quantum of pension refers to a government servant retiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension.

The aforesaid ruling of the Supreme Court is squarely applicable to the facts and circumstances of the issue in dispute and hence the claim of the petitioner militates against the said rulings of the Supreme Court."

6. In a similar case of one P.Pangajam, the Madras High Court dismissed the plea of the petitioner in W.P.No.29210 of 2010 has observed as under:

".....even if the petitioner's case is taken on merits, in view of the fact that her husband



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himself had not put in 20 years of qualifying service so as to claim pension, no good right flow to the petitioner to seek for family pension."

The aforesaid order has been upheld by the Division Bench of this Hon'ble Court on 27.06.2019 in W.A.No.882 of 2019"

7. In the present case, as per Rule 56(c) of the Fundamental Rules, a Government Servant opt for voluntary retirement from service, if he is satisfied two conditions viz., completion of 20 years of service or completion of 50 years of age. On the date of voluntary retirement, the husband of the writ petitioner is not satisfied either of the two conditions. Therefore, the husband of the writ petitioner was not eligible for pension and consequently the family pension as claimed by the petitioner cannot be granted in view of the fact that the husband of the writ petitioner was relieved from service based on his application for voluntary retirement and at the time of his application he was not satisfied the requisite as contemplated under the Fundamental Rules as well as the Tamil Nadu Pension Rules, the benefit of family pension cannot be granted to the petitioner. Thus the reasons stated in the order impugned are candid and convincing and inconsonance with the Tamil Nadu Pension Rules.

Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

- 1.The Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 3.The Accountant General,
(Accounts & Entitlement),
Tamil Nadu, Chennai - 600 018.



4.The District Elementary Educational Officer,
Cuddalore, Cuddalore District.

5.The Assistant Elementary Educational Officer,
Nallur, Cuddalore District.

+1cc to Government Pleader SR. No. 33100

+1cc to M/s.C.S.Associates, SR. No. 32712

+1cc to M/s.Hema Muralikrishnan, Advocate SR. No. 32332

W.P.No.1757 of 2014

SMI (CO)

PR (17/06/2022)