



W.P. No. 9558 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9558 of 2016

and

W.M.P. Nos. 8599 and 8642 of 2016

P.A.Annamalai

... Petitioner

-VS-

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Secretariat,
Chennai – 600 009.
2. The Director of School Education,
DPI Compound,
Nungambakkam,
Chennai – 600 006.
3. The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
4. The Head Master,
Government Boys Higher Secondary School,
Cheyyar – 604 407.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the Third Respondent dated 10.04.2014 in Na. Ka. No. 17313 Aa1/2013 and quash the same and



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consequently direct the Respondents to grant 3rd incentive to the Petitioner from August 1995 onwards till the date of retirement i.e., 31.05.2004, for obtaining M.Phil post graduation degree and also to pay full pension to the Petitioner calculating the Petitioner's entire service from 1967 onwards and by calculating the benefits of M.Phil., post graduation degree of the Petitioner, immediately from the date of Petitioner's retirement i.e., from 31.05.2004 to till date.

For Petitioner : Mr. E.Sampath Kumar

For Respondents : Mr. V.Jeevagiridharan,
Additional Government Pleader

ORDER

Heard Mr. E.Sampath Kumar, Learned Counsel for the Petitioner and Mr. V.Jeevagiridharan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the proceedings in Na. Ka. No. 17313 Aa1/2013 dated 10.04.2014 passed by the Third Respondent refusing to grant third incentive to the Petitioner for obtaining M.Phil post graduate degree from August 1995 onwards till his retirement on 31.10.2003 and to take into account his earlier service prior to regularization for payment of pension.



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3. Learned Counsel for the Petitioner accepts that in view of the binding decision of the Full Bench of this Court in ***Government of Tamil Nadu -vs- R.Subramani*** (Order dated 29.04.2022 in W.A. No. 3674 of 2019 etc., batch), the Petitioner is not entitled to the third incentive for obtaining post graduate degree and he has made an endorsement to that effect in the court record. However, the claim of the Petitioner to include his earlier service from 28.08.1967 to 14.08.1970 prior to regularization for payment of pension has been denied by stating that during the period from 15.08.1970 to 04.07.1971, there was break in service which disentitles him to such benefit. In that backdrop, the Petitioner claims to have made a representation dated 21.04.2014 after the impugned order seeking relaxation of the rules invoking Rule 82 of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Pension Rules' for short) to take into consideration the earlier period of service so that he would have increase in the amount of his pensionary benefits, and Learned Counsel for the Petitioner states that the Petitioner would be satisfied if the concerned authority passes orders on that representation within the time limit that may be fixed by the Court.

4. In this context, it would be necessary to extract Rule 82 of the Pension Rules below:-



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“82. Power to relax:-- Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department.”

While construing a similar provision contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in ***Union of India -vs- Gandiba Behera*** (Order dated 08.11.2019 in Civil Appeal No. 8497 of 2019) has observed as follows:-

“25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged,



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recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. ...”

This would obviously mean that though there may be a break in service of the Petitioner, there is nothing precluding him from seeking relaxation of the requirements of the Pension Rules for granting pension in the prescribed manner before the concerned authority, who would have to examine whether the conditions for the same have been fulfilled in this case.

5. In such circumstances, this Court without expressing any view on the correctness or entitlement of the claim made by the Petitioner, passes the following order:-

- (i) the concerned authority shall immediately consider the representation dated 21.04.2014 made by the Petitioner for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by them in terms of Rule 82 of the Pension Rules;
- (ii) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to



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him requiring the same to be furnished within a time frame of not less

than 15 working days;

- (iii) in the event of the concerned authority not being satisfied with the compliance of the requirements thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioners under written acknowledgment; and
- (iv) if the Petitioner is found entitled to the relaxation of the relevant rules for grant of pension as claimed, it shall be ensured that the eligible amount of arrears of pension is paid within three months from the date of passing of that order, apart from the revised amount of monthly pension for future months on the due dates.

In fine, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

07.07.2022

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Index: Yes/No

Note: Issue order copy by 21.07.2022.



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To

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P.D. AUDIKESAVALU, J.

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