



WEB COPY

W.P.No. 9885 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 9885 of 2019

M. Ambalavanan

... Petitioner

Vs.

1. The Government of Tamil Nadu
Represented by its Principal Secretary to Government
Higher Education Department,
Fort.St. George, Chennai – 600 009.
2. The Director of Collegiate Education
Chennai 600 006.
3. The Joint Director of Collegiate Education,
Madurai Region,
Madurai 625 020
4. The Secretary
Hajee Karutha Ravuthar Howdia College
Uthamapalayam
Theni District.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to dispose of the Appeal filed by Andal mother of deceased M. Shanmugam pending before the first respondent dated 25.05.2016 within a date fixed by this court.

For Petitioner

: Mr. A.R. Nixon



For Respondents

: Mr. D. Ravichander
Special Government Pleader
For R1 to R3
No appearance - R4

ORDER

The relief sought for in the present writ petition is to direct the respondents to dispose of the appeal filed by the mother of the deceased one M. Shanmugam on 25.05.2016.

2. The petitioner states that his elder brother one M. Shanmugam served as Selection grade lecturer in Government aided college namely Hajee Karutha Ravuthar Howdia College, Uthamapalayam. The brother of the writ petitioner died on 15.04.1985, while he was in service. He was a bachelor. Thus, family pension was accorded to the father of the writ petitioner late M. S. Manickam from 16.04.1985 to 28.01.2002. The father of the writ petitioner also died on 28.01.2002. The family pension was granted to the mother of the writ petitioner late M. Andal from 29.01.2002 upto 07.01.2018. The mother of the writ petitioner also died on 07.01.2008. Under these circumstances, the petitioner states that the deceased brother of the writ petitioner was designated as selection grade lecturer. However, he has



served about 18 years, 9 months and 26 days and therefore, the selection grade is to be granted for the purpose of revision of scale of pay and consequential pensionary benefit. The representation submitted in this regard before the Director of Collegiate Education was rejected in proceedings dated 12.04.2016. Challenging the said order, the mother of the writ petitioner filed an appeal before the first respondent on 25.05.2016, which is yet to be disposed of.

3. First of all, the mother of the writ petitioner, who filed before the appeal before the first respondent died. That apart, the learned counsel for the respondents states that the brother of the writ petitioner had not completed 19 years of service and therefore he is not entitled for selection grade for grant of revisional scale of pay and pensionary benefit including pension. As on date of death, the deceased brother of the writ petitioner served about 18 years, 9 months and 26 days and therefore there is a statutory bar on the authorities competent to award selection grade and consequential revision of pay and other benefits.



4. The learned counsel for the petitioner made a submission that the Government has got power to relax the Rules. Thus, the appeal is to be decided.

5. Power of relaxation cannot be exercised even by the Government in a routine manner. Relaxation of rule is an exceptional rule, must be followed at all circumstances and relaxation is to be granted only on exceptional circumstances where there is gross injustice occurred to a person or group of persons.

6. That apart, court cannot direct the authorities to relax the Rule. Even issuing a direction to consider the appeal for grant of relaxation cannot be granted since the relaxation itself is not a right of an employee. Unless a right which is enforceable is established, High Court would not issue any direction by exercising the power of Judicial Review under Article 226 of the Constitution of India. Only after the person approaches the Court, he would be able to establish infringement of right or right which is enforceable. The writ petition itself is not entertainable. In the event of issuing any such routine direction to consider the representation/appeal, the same would do no service to the cause of justice. Contrarily, the writ petitioner will be back



again before this Court by way of another round of litigation, which is not desirable. Thus, the courts are expected to decide the issues at all circumstances, instead of issuing a direction to consider the representation or appeal in a routine manner in the absence of establishing any right by the person who is approaching the Court. However, it is for the petitioner to pursue the remedy before the Government in the manner known to law. The writ petition stands disposed of. No costs.

20.10.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order



To

1. The Principal Secretary to Government
The Government of Tamil Nadu
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Chennai 600 006.
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S.M.SUBRAMANIAM, J.

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