



W.P(MD)No.13829 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13829 of 2022

and

W.M.P.(MD)No.9825 of 2022

D.Prabakaran

... Petitioner

Vs.

- 1.The Director of Elementary Education,
Office of the Director of Elementary Education,
College Road, Nungambakkam,
Chennai-600 006.
- 2.The District Educational Officer,
Office of the District Education Officer,
Cheranmahadevi Education District,
Cheranmahadevi,
Tirunelveli District.
- 3.The Accountant General,
Tenampet,
Chennai-600 018.
- 4.TDTA Tirunelveli Thirumandala Arakattalai,
Near St.John College,
Palayamkottai-627 002,
Tirunelveli.
- 5.TDTA Primary School,
Rep. by its Headmaster,
Karuvantha Village,



W.P(MD)No.13829 of 2022

Alangulam,
Tirunelveli District.

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in proceedings Na.Ka.No.2195/A4/2019, dated 02.03.2020 and quash the same and consequently, direct the respondents to sanction and to pay the retirement benefits and the pensionary benefits to the petitioner within a stipulated time.

For Petitioner : Mr.K.Navaneetharaja
For R1 & R2 : Mr.S.Shaji Bino
Special Government Pleader
For R3 : Mr.P.Gunasekaran
For R4 & R5 : Mr.P.P.Alwin Balan

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Secondary Grade Teacher in a leave vacancy in School coming under the control of the fourth respondent. He was made a permanent teacher with effect from 02.06.1987. He was working as Secondary Grade Teacher in TDTA Primary School, Chockalingapuram. He was transferred to the fifth respondent school vide order dated 31.07.2007. He was also relieved thereafter.



W.P(MD)No.13829 of 2022

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3. It appears that the petitioner did not join the fifth respondent School thereafter. I need not go into the reasons at this point of time. The petitioner would claim that the Headmaster of the fifth respondent school refused to admit him, when he reported for duty. The petitioner reached the age of superannuation on 20.12.2012. But the school management did not submit his pension proposals. As a result, the petitioner has not received any pension. His retirement benefit has also not been disbursed. He therefore filed W.P. (MD)No.8673 of 2015. This Court vide order dated 26.03.2019 directed the department to consider the petitioner's representation. Since the said direction was not complied with, the petitioner filed Contempt Petition (MD)No.314 of 2020. Pursuant thereto, the impugned order came to be passed. Since the petitioner's case could not be brought within the scope of the Tamil Nadu Non - Government Teacher's Pension Rules, 1958, his request cannot be considered. Challenging the same, the present writ petition came to be filed.

4. After hearing the learned counsel appearing on either side, I am more than satisfied that the writ petitioner cannot be sent back empty handed. The fact remains that he served as permanent teacher for more than twenty years. There is no dispute that he became permanent with effect from 02.06.1987. He



W.P(MD)No.13829 of 2022

was working till 31.07.2007. However, there is a considerable merit in the contention of the learned counsel appearing for the third respondent that unless the teacher's case is specifically brought within one of the categories set out in the aforesaid pension Rules, he cannot be granted relief. Rule 12(a) of Tamil Nadu Non -Government Teacher's Pension Rules, 1958 is as follows:-

12.(a) A teacher shall be eligible for payment of pension or gratuity as the case may be-

(i) on retirement by reason of his attaining the age of superannuation under rule 9 or on voluntary retirement after completing a qualifying service of 30 years, or

(ii) on discharge due to the abolition of the post,

(iii) on discharge due to closure of schools or consequent on the withdrawal of recognition of schools.

(iv) on discharge due to invalidation on medical ground or

(v) on retirement on the date of commencement of the school-year just preceding his completing of 55 years or 60 years as the case may be, in order to avoid dislocation in the middle of the school-year or

(vi) on discharge due to compulsory retirement as a measure of punishment.

5. In this case, the petitioner has not been so far retired from service. He has not been discharged also on the ground set out in the aforesaid Rule. He was also not served with any order of compulsory retirement. He had not even formally been relieved. Therefore, I will not fault the department for having passed the impugned order.



W.P(MD)No.13829 of 2022

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6. The petitioner appeared in person before this Court. He had also filed an affidavit. On instructions from the petitioner, the learned counsel categorically states that the period from 01.08.2007 to 20.12.2012 can be treated as period of loss of pay and that it need not be taken into account as pensionable service.

7. Considering the special facts and circumstances of the case, I direct the school management to pass orders on the retirement of the petitioner as well as necessary pension proposals within a period of two weeks from the date of receipt of copy of this order. It is made clear that the petitioner's pensionary service will be twenty years and two months. It has also been clarified that the petitioner will not be entitled to any benefit for the period commencing from 01.08.2007 till 31.12.2012. The petitioner's pensionary and other retirement benefits shall be disbursed within a period of twelve weeks from the date of receipt of copy of the order.

8. The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2022

Index : Yes / No
Internet : Yes/ No
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To



W.P(MD)No.13829 of 2022

G.R.SWAMINATHAN, J.

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