BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.02.2022

DELIVERED ON: 22.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12177 of 2014
and
M.P.(MD).No.1 of 2014

1.Thirumalaisamy (Died)

2.Vijayalakshmi

3.Srinivasagan

4.Andal

5.Padmanaban

6.Ramalakshmi

7.Lakshmipriya ... Petitioners

(Petitioners 2 to 7 are substituted as Legal heirs of the deceased sole petitioner vide Court Order dated 03.02.2022 made in W.M.P.(MD).No.1891 of 2022 in W.P.(MD).No.12177 of 2014)

vs

1.The Principal Accountant General (A & E),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

2.The Principal Secretary,
Revenue Department,
Secretariat,
Chennai - 600 009.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Tahsildar,
Sattur,
Virudhunagar District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 22.07.2011, passed by the third respondent vide his proceedings No.Na.Ka.P1/17248/08 and quash the same and consequently directing the respondents to revise the petitioner's pensionary benefits by counting the service rendered by the petitioner as Teacher in aided School before entering Government Service in the Revenue Department and to pay 18% compound interest to the arrears of pension amount.

For Petitioner : Mr.J.Parekh Kumar

For R-1 : Mr.P.Gunasekaran

For R-2 to R-4 : Mr.R.Ragavendran, Government Advocate (Civil Side).

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O R D E R

The petitioner has challenged the impugned order dated 22.07.2011 passed by the third respondent with a consequential prayer directing the respondents to revise the petitioner's pensionary benefits by counting the service rendered by the petitioner as teacher in Aided School before entering Government service in Revenue Department and to pay 18% compound interest to the arrears of pension amount.

2. The brief facts of the case are that the petitioner worked as a Village Administrative Officer and attained superannuation on 30.04.1998. Prior to that, the petitioner had worked as Village Munsif which was abolished on 14.11.1980. The petitioner was sanctioned special pension for his qualifying service in Revenue Department. Prior to entering into service in Revenue Department, the petitioner worked as Higher Grade Teacher in various Government Aided Schools.

3. The contention of the petitioner is that he had working in Private Aided Schools namely Hindu Elementary School, Kakkivadanpatti, Hindu Middle School, P. Kumaralingapuramm and S.A.V Sala Middle School, Mudhalipatti and he had rendered a qualifying service of 13 years 1 months 14 days. At the time of sending pension proposals, the service rendered in Education Department was also included but the first respondent that is the Principal Accountant General has sanctioned the pension only for the service as Village Administrative Officer in Revenue Department.

4. The petitioner had filed W.P. (MD). No.1190 of 2007 with a prayer to revise the petitioner's pension by counting the service

rendered as Teacher in Education Department. Pending Writ Petition, the Deputy Accountant General (Pension) vide its letter dated 17.09.2007 informed the third respondent that the Government had issued orders in G.O.Ms.No.1574 Education Department dated 21.07.1976 in which it is stated that the person retiring from Government service in teaching or other posts in Education Department is permitted to count the period of service rendered by them in any recognized Non-Government Educational Institutions. But, in the present case, the services rendered by the petitioner cannot be taken in the absence of any specific orders from the Government. Such orders were issued to three officials namely, S. Kanniappan, Sankaralingam and R. Panchapakesan who had retired from Departments other than education to enable them to count the services rendered by them in aided institutions. The petitioner requested the third respondent to take necessary action to obtain specific orders from the Government by relaxing the provisions of G.O.Ms.No.1574 dated 21.07.1976. Therefore, W.P.(MD).No.1190 of 2007 was disposed of granting liberty to the petitioner to approach the Government and get appropriate orders for counting the said services. Thereafter, the petitioner submitted a representation dated 26.04.2008. The third respondent directed the petitioner to produce the entire records in respect of service in aided Schools vide letter dated 09.03.2010. Thereafter, the third respondent passed an impugned order dated 22.07.2011 stating that the petitioner has resigned the post of teacher in aided School and by operation of law under Rule 23 of Tamil Nadu Pension Rules, his services are forfeited. Therefore, the petitioner is not entitled to the same. Aggrieved over the order, the present Writ Petition has been filed.

5. Pending the Writ Petition, the petitioner died. The legal heirs of the deceased petitioner has filed the petition in W.M.P. (MD). No. 1891 of 2022 to substitute them and the said petition was allowed on 03.02.2022.

6. The respondents have not filed any counter but relied on the communication of the Deputy Accountant General dated 17.09.2007

7. Heard Mr. J. Parekh Kumar, learned counsel for the petitioner and Mr. P. Gunasekaran, learned counsel for the first respondent and Mr.R.Ragavendran, learned Government Advocate for respondents 2 to 4.

8. The contention of the petitioner is that the Government has taken a policy decision wherein it has been stated that the persons retiring from Government service in teaching or other posts or Education Department, then their services shall be counted for taking the qualifying service to grant pension. The relevant portion of the said Government Order is under:

G.O.Ms.No.1574, Education, dated 21st July 1976.

[Subject- Persons retiring from Government service in teaching or other posts in Education Department - counting of service as teachers in Aided and Local Body Educational Institutions. - Orders issued.]

READ-

G.O.Ms.No.1497, Finance, dated 16th October 1971.

G.O.Ms.No.893, Education, dated 3rd June 1975.

In modification of the orders read above, the Government direct that persons retiring from Government service in teaching or other posts in any of the Departments concerned with Education under the Secretariat Education Department (viz. School Education, College Education, Technical Education, Legal Studies, etc.,) be permitted to count the periods of service rendered by them as teachers in any recognized non-Government (i.e., Aided or Local Body) Educational Institution, subject to the condition that they should surrender to the Government the Management's as well as the Government contribution, if any, paid to their Provident Fund, together with interest thereon.

According to the petitioner, the Government has passed the said Government Order to include the services rendered by the teachers in any recognized Non Government Educational Institutions. Since the petitioner has rendered service in Non Government Private Aided Schools, the said service is ought to be included. On perusing the said Government Order, it is seen for the first time that the Government has included the service rendered under non Government Educational Institutions and grant pension. The condition has also been imposed that they should surrender the Management as well as the Government contribution, if any, paid to their Provident Fund together with their interest. Thereafter the contention would be considered.

9. The contention of the respondents is that since the petitioner has resigned from the service put in before the non Government Educational Institutions, by operation of law under Rule 23 of the Tamil Nadu Pension Rules 1978, the petitioner's service cannot be considered, since the petitioner has resigned and all his

past service will be forfeited. On perusing the communication of the Deputy Attendant General on 17.09.2007, the petitioner has served in the following places which is stated in the table:

POST	PERIOD	
	From	**To**
Higher Grade Assistant in Hindu Middle School (Aided)	01.02.1960	02.02.1972
Higher Grade Assistant	01.11.1972	01.01.1974
Village Headman	07.02.1974	13.11.1980
Assistant Hindu Middle School	27.09.1984	18.10.1984
Assistant SAV Sala, Mudalipatti	01.01.1986	25.03.1986
Village Administrative Officer	20.11.1992	30.04.1998

The petitioner has resigned from Higher Grade Assistant on 02.02.1972. Thereafter, again joined in service as Higher Grade Assistant from 01.11.1972. There is a break in service from March 1972 to October 1972. Again there is a break in service for 36 days in between the Higher Grade Assistant and Village Headman. A third break in service from Village Headman to Hindu Middle School Assistant for a period of more than three years nine months. A fourth break in service from Assistant Hindu Middle School to Assistant SAV Sala, Mudalipatti for 1 ½ years and a five break in service for more than five years from Sala SAV School to Village Administrative Officer. It is also seen that the said break in service was not regularized. The petitioner has resigned from each and every post and by the operation of law the past service is forfeited. Moreover the exemption granted under Rule 23 is not covering the petitioner.

10. This Court is of the considered view that the petitioner has submitted resignation and forfeiture of past service will come into effect and the petitioner is not entitled to calculate the service rendered in any Schools. As stated supra, there are five break in service even in the said School service. Therefore, the petitioner is not entitled to the said relief. The Writ Petition fails and it is dismissed.

11. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal Accountant General (A & E),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

2.The Principal Secretary,
Revenue Department,
Secretariat,
Chennai - 600 009.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Tahsildar,
Sattur,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-8431[F] dated 24/02/2022)

W.P.(MD)No.12177 of 2014
22.02.2022

PA(13.04.2022) 7P 6C