



WEB COPY



WP.No.2316 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.2316 of 2021

A.Srinivasan

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Petitioner

/vs/

1. The Govt of Tamil Nadu
Rep by the Secretary,
School Education Department,
Fort St. George, Chennai - 9.
2. The Principal Accountant General
(Accounts & Entitlements) Tamilnadu,
361, Annasalai, Chennai 600018.
3. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai 600 006.
4. The District Educational Officer
Mathur, Poachampalli (Taluk),
Krishnagiri District.
5. The Block Educational officer,
Mathur, Pochampali Taluk,
Krishnagiri District.

...

Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of CERTIORARIFIED MANDAMUS, to call for the records relating to the impugned order passed by the 3rd Respondent vide Na.Ka.No. 00693/01/2016



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dated 11.09.2020 and quash the same and consequently direct the 1st respondent to pay all retirement benefits and sanction the pension to the petitioner with effect from the date of retirement on 30.09.2005 by counting the period of regular service rendered by the petitioner from 22.10.1969 to 03.08.1987 and 24.11.1995 to 30.09.2005 for a total period of 28 years with reasonable Interest.

For Petitioner : Mr.A.R.Suresh

For Respondent : Mr.T.Arunkumar,
Additional Government Pleader for RR1 to 5
: Mrs.T.Selvarani, Accountant General

ORDER

This Writ Petition has been filed seeking to quash the impugned order passed by the 3rd Respondent vide Na. Ka. No.00693/01/2016 dated 11.09.2020 and consequently direct the 1st respondents to pay all retirement benefits and sanction the pension to the petitioner with effect from the date of retirement on 30.09.2005 by counting the period of regular service rendered by the petitioner from 22.10.1969 to 03.08.1987 and 24.11.1995 to 30.09.2005 for a total period of 28 years with reasonable Interest.

2. Heard, Mr. A.R.Suresh, learned counsel for the petitioner and Mr.T.Arunkumar, learned Additional Government Pleader for RR1, 3 to 5 and Mrs.T.Selvarani, learned Accountant General for the 2nd respondent and perused the materials available on record.



3. The petitioner who was appointed as a Secondary Grade Teacher on 22.10.1969 in Panchayat Union Elementary School, Kodamandapatti, Uthangarai Taluk, Krishnagiri District, had suddenly remained absent from 03.08.1987 to 23.11.1995. It is submitted by the petitioner that he was suffering from some illness and after he recovered, he was permitted to join duty on 25.11.1995. Thereafter, he worked for 10 years and he retired on 30.09.2005. However, a disciplinary proceedings has been initiated against him and it ended with an imposition of punishment of stoppage of one increment without cumulative effect for the period of one year. The 3rd respondent has passed an order dated 12.03.2012 in which the period of absence of the petitioner has been treated as Leave on Loss of Pay. Subsequent to the retirement, the petitioner made representation to the respondents to sanction the retirement benefits. But the respondents did not sanction the pension. Hence the petitioner filed a Writ Petition in W.P.No.30195 of 2018 for seeking a direction and in which, an order has been passed on 20.11.2018 to consider and pass orders on the representation of the petitioner. Though his representation was considered, it was rejected. Since the petitioner has not been given with any pension, he has filed this Writ Petition seeking to set aside the impugned order dated 11.09.2020 and to direct the respondents to sanction and disburse the pension and other retirement benefits.



4. Mr.A.R.Suresh, learned counsel for the petitioner submitted that the District Educational Officer does not have the power to pass any order as to a period beyond one year by considering it as 'no duty period'. The grievance of the petitioner is that if this period of absence between 03.08.1987 to 23.11.1995 is treated as 'no duty period', the rest of the period of service will be counted and his pension or other retirement benefits will be released to him. However, the 4th respondent has simply rejected the representation of the petitioner and to treat the period from 03.08.1987 to 23.11.1995 as 'no duty period'.

5. However, in the said order, it is stated that as per G.O.Ms.No.477, Personnel and Administrative Reforms (FR.III) Department, dated 21.11.1990, if a government servant or approved probationer does not resume duty after remaining on leave for a continuous period of six months or one year, as the case may be, under sub-Rules (1) and (2) or remains absent from duty after the expiry of his leave otherwise than on foreign service or on account of suspension, for any period which, together with the period of leave granted to him, exceeds the limit, the Governor in view of the exceptional circumstances of the case otherwise determines, be removed from service, following the procedure laid down in the Tamil Nadu Civil Services (classification, Control and Appeal) Rules. In the government order it is further stated that unless the Governor otherwise



determines, the person who remains on leave for more than one year to be removed from service.

6. In the instant case, for the reasons best known to the respondents, the petitioner was not removed from service, though he remained absent for eight years. He was allowed to join by imposing a simple punishment of loss of increment for one year without cumulative effect. Whenever an order has been passed at the conclusion of the disciplinary proceedings and punishment is awarded, a specific order as to the period of absence should also be passed. In the instant case, it has been stated that the leave has been treated as Extraordinary Leave on Loss of Pay, however no employee will be entitled to get 8 years on as Extraordinary Leave on Loss of Pay. Even Extraordinary Leave on Loss of Pay has also got its own limitations.

7. For the reasons best known to the authorities, the file was not submitted to His Excellency the Governor to get appropriate order for determining the period of absence which fell between 03.08.1987 to 23.11.1995. Despite the said period is beyond one year and none of the authorities got the power to either regularise or to pass any orders in this regard, the file was not moved through proper channel to the office of the Government for getting any appropriate order. 8.

Though the petitioner was successful in getting reinstatement after eight years



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absence, now the entitlement of the petitioner to get his retirement benefits and pension remains as a riddle. So it is up to the authorities to send the file through proper channel to His Excellency Governor in order to enable the Governor put his hands and pass appropriate orders with regard to the period of absence between 03.08.1987 to 23.11.1995.

With the above observation, this Writ Petition is disposed. No costs.

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Index : Yes
Internet : Yes/No
jrs



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