



W.P.No.17594 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.02.2023
Pronounced on	20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17594 of 2018

A.Navaraj

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by the Secretary to Government,
Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
Secondary Education,
D.P.I. College Road,
Chennai-600 006.

3.The District Education Officer,
Salem, Collector Office Compound,
Salem-636 001.

4.C.S.I. High School,
rep. by its Correspondent,
Kamarajar Road, Attur,
Salem District-636 102.

5.The Principal Accountant General (A & E),
Tamil Nadu, Anna Salai,
Chennai.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Mandamus, directing the respondents 1 to 5 herein to revise the pension by regularizing the petitioner service by counting the period of service as Physical Education Teacher from 16.10.1987 to 31.05.1991 as per G.O.Ms No.1827 Education (D1)/Department dated 18.11.1987, G.O.Ms No.950 Education D1 Department dated 31.07.1989, G.O.Ms No.440, Education Department dated 07.05.1992 and as directed by the Hon'ble Division bench by its judgment reported in 2008 (4) MLJ 289 and to pay revised pension on the said basis with all emoluments, arrears of salary and benefits, within a stipulated time as fixed by this Court.

For Petitioner	: Mr. S.Sarath Kumar for Mr.M.Joseph Thatheus Jerome
For Respondent Nos.1 to 3	: Mr. T.Chezhiyan, AGP
For Respondent-4	: Mr. V.Sivalingam for M/s. C.S. Associates
For Respondent-5	: Ms. J.Srividya

O R D E R

The petitioner herein claims for inclusion of his past services in an unaided post as pensionable service, for the calculation of his monthly pension.



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2. Heard the learned counsel for the parties.

3. The petitioner was appointed as Physical Education Teacher on 16.10.1987 in an unaided post in the fourth respondent institution. When the fourth respondent had sought for sanction of teaching post in accordance with G.O.(Ms) No.250, School Education Department, dated 29.02.1964, the Government had issued G.O. (Ms) No.481, School Education Department, dated 04.04.1990, sanctioning teaching and non teaching posts to the fourth respondent school. Accordingly, the petitioner's appointment was approved in one of the sanctioned post and was paid the salary as P.E.T. from the date of his appointment i.e., 17.06.1985 to 18.06.1987.

4. The Hon'ble Division Bench of this Court, had passed orders in a batch of Writ Petitions in W.P.No.12364/1984, dated 10.09.1990, directing the Authorities to consider the request of the Minority Schools for Grant-in-Aid. Accordingly, the Government had extended the staff salary grant for Private Schools through G.O. (Ms) No.340, Education (D1) Department, dated 01.04.1992 and through G.O. (Ms) No.525, School Education (D1) Department, dated 29.12.1997, the teacher and



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pupil ratio was fixed, by over riding G.O. (Ms) No.340, School Education (D1) Department, dated 01.04.1992 with effect from 01.06.1998.

5. In the year 1999, the Tamil Nadu recognised Private Schools Regulation Act was amended by insertion of Section 14(1)(a) granting power to the Government to continue payment of aid to the private schools, which were receiving grant before the Academic Year 1991-92. Likewise, Section 14(A) was also inserted, to the effect that, notwithstanding anything contained in the Act or any Law for the time being in force in any judgment, decree or order of any Court or any other authority, no grant shall be paid to new Private Schools and course of instruction opened after 1991-92 and to which no grant has been paid by the Government.

6. The petitioner had retired from the service on 31.10.2015 and also re-employed till 31.05.2016 and now seeks for counting of his service as Physical Education Teacher in the fourth respondent school for revision of his pensionary benefits.

7. The learned counsel for the petitioner submitted that the issue involved in the present Writ Petition has already come up for



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consideration before a learned Single Judge of this Court in the case of ***S.Radhakrishnan Vs. The Director of School Education, Nungambakkam, Chennai & 3 Others*** passed in ***W.P.15007 of 2010 dated 29.04.2022*** whereby, the past services in the unaided post was taken as pensionable service and the pensionary benefits were revised. The learned counsel submitted that though he has sought for a larger relief for all the service and monetary benefits, he would submit that he would be satisfied if a similar order is passed in the present Writ Petition.

8. Per contra, the learned Additional Government Pleader submitted that the initial appointment of the petitioner was not a sanctioned post and therefore, he is not entitled for the benefit of pension and other service benefits for that period.

9. The issue as to whether a non teaching staff could claim the pensionary benefits for Physical Education Teacher post, which was not sanctioned by the Government at the time of appointment, had come up for consideration before a learned Single Judge in *S.Radhakrishnan's case (supra)*, whereby the learned Single Judge had directed for calculation of such services as pensionable service. The relevant



portion of the order reads as follows:-

"10. I have considered the rival submissions made on both the sides and perused the material records of the case. The peculiar facts and circumstances of the case has been stated supra where under the petitioner was initially working in the third respondent aided School under a sanctioned post and subsequently, worked in the same post, however though unaided, for a period between 1987-1996 and thereafter, joined Government service in the same post of Tamil Pandit. However, it may be seen that the petitioner has left the employment of the aided School and joined the Government service during the pendency of the Writ Petition and therefore, as a matter of right, he cannot claim that the entire service should be treated as continuous with all monetary and service benefits. At the same time, when the respondent/education authorities stopped the aid or disbanded the post for whatsoever reasons that may be, the petitioner, being a person working under a sanctioned post duly approved by them, ought not to have been left in lurch, but ought to have been re-deployed to some other school where there is a vacancy in the sanctioned post. Therefore, there is an anomalous situation arising in the instant case. Had the petitioner continued



in the service with the management, the respondents would have considered his said case while passing the G.O in the year 2007 sanctioning the post.

11. Therefore, considering the totality of the circumstances, I hold that though the petitioner's services need not be taken into account for all purposes, atleast for purposes of qualifying years of service for the purposes of pension, the said services between the years 1987-1996 shall also be counted and therefore, I am inclined to partly allow this Writ Petition on the following terms:-

(a) The impugned order, dated 11.11.2009 is quashed inasmuch as it omits to take into the service of the petitioner for the period 02.11.1987 to 03.12.1996 for all purposes;

(b) The respondents are directed to consider the service of the petitioner for the period of 02.11.1987 to 03.12.1996 for the purposes of calculating qualifying years of service for grant of pension alone;

(c) By taking into account the said period of service, the petitioner's pension has to be re-worked and notionally re-fixed;

(d) The petitioner has now been superannuated from service, the petitioner will not be entitled to any arrears, but will be entitled



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to the arrears of pension prospectively from the date of this order;

(e) The above said exercise shall be carried out by the respondents in respect of the petitioner, Tamil Teacher, within a period of four months from the date of receipt of copy of the order;

(f) There shall be no order as to costs."

10. The aforesaid extracts are self explanatory. Though the petitioner herein had sought for a larger relief for all the service and monetary benefits, his service from the date of appointment in the unsanctioned post could be taken into account for calculating his pensionable service also, in the light of the aforesaid decision.

11. Insofar as the objections of the learned Additional Government Pleader that the petitioner's initial services in the unsanctioned post cannot be taken as pensionable service is concerned, the very fact is that the Government themselves have ratified such an appointment, by approving the petitioner's appointment to the post of Physical Education Teacher from the date of his original appointment (i.e.,) from 16.10.1987 and hence the objections of the learned Additional Government Pleader stands rejected.



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12. Accordingly, the Writ Petition stands allowed, with a direction to the respondents 1 to 3 herein to pass appropriate order in the following manner:-

(i) The respondents are directed to consider the service of the petitioner for the period from 16.10.1987 to 31.05.1991, as pensionable service for the purposes of calculating the qualifying years of service for grant of pension alone;

(ii) By taking into account the said period of service, the petitioner's pension has to be re-worked and notionally re-fixed;

(iii) The petitioner has now superannuated from service, the petitioner will not be entitled to any arrears, but will be entitled to the arrears of pension prospectively from the date of this order;

(iv) The above said exercise shall be carried out by the respondents in respect of the petitioner, Physical Education Teacher, within a period of four months from the date of receipt of copy of the order;

There shall be no order as to costs.

20.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes
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M.S.RAMESH,J.

DP

To

- 1.The Secretary to Government,
Government of Tamil Nadu
Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
Secondary Education,
D.P.I. College Road,
Chennai-600 006.
- 3.The District Education Officer,
Salem, Collector Office Compound,
Salem-636 001.

ORDER MADE IN

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