IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.08.2023**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

**Writ Petition No.26135 of 2021
and W.M.P.Nos.27585 27586 of 2021**

R.Gunasekaran ... Petitioner

Vs.

1.The Accountant General,
No.259, Anna Salai,
Block-3, 2nd Floor, DMS Complex,
Teynampet, Chennai – 600 006.

2.The Director of School Education,
DPI Compound, College Road,
Chennai – 6.

3.The Chief Education Officer,
Nagapattinam,

4.The District Education Officer,
Vetharanyam, Nagapattinam.

5.The Secretary,
Vinayakar Aided Primary School,
Pandaratham Kadu, Pushpavanam (PO),
Vetharanyam. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the fourth respondent in Na.Ka.No.4408/Aa1/2021, dated 11.10.2021 and quash the same and consequently direct the respondents to pay the provisional pension to the petitioner from 01.06.2019 till the conclusion of the CBI Case in C1RC31 (A) 2015 CBI/ACB.

For Petitioner : Mr.S.N.Ravichandran

For Respondent 1 : M/s.J.Sree Vidya

For Respondents 2 to 4 : M/s.P.Vijaya Devi,
Government Advocate

For Respondent 5 : No Appearance

ORDER

The petitioner has filed this writ petition to call for the entire records connected with the impugned order passed by the fourth respondent in Na.Ka.No.4408/Aa1/2021, dated 11.10.2021 and quash the same and consequently direct the respondents to pay the provisional pension to the petitioner from 01.06.2019 till the conclusion of the CBI Case in C1RC31 (A) 2015 CBI/ACB.

2. The case of the petitioner is that the petitioner has joined as a Secondary Grade Teacher in the 6th respondent School on 03.02.1982 and the same was duly approved by the then District Educational Officer. Since from appointment, he discharged his duties with utmost devotion and dedication. On completion of 10 years of service, he was granted selection Grade in the year 1992 and also acquired higher qualifications of B.A., B.Ed. The petitioner was placed under suspension by the sixth respondent/School Management vide order dated 29.04.2017, on the ground that he has allegedly issued False Transfer Certificate to one Mrs.K.Gunasundari, who on the basis of the alleged false Transfer Certificate got appointment as Part-Time Sweeper at Indian Oversees Bank, Iyankarnpulam. Thereafter, the suspension order was revoked on 27.08.2017 and the petitioner has reached the age of superannuation on 31.07.2019 and he was relieved from service subject to the result of the outcome in the CBI case.

2.2. After his retirement, he made a representation to the respondents herein, requesting for disbursement of pensionary and other terminal benefits. The fourth respondent by proceeding vide Na.Ka.No.1412/A4/2020 dated 22.09.2020 informed that as per Rule 55 (1) of the Tamil Nadu Pension

Rules, 1978 only the Head of the Office is the competent authority to sanction pension or death cum retirement gratuity. Hence, the petitioner made a representation dated 15.03.2021 seeking for either the provisional pension or the pension. Further he made a request to regularize the period of suspension from 29.04.2017 to 27.08.2017 and disbursement of salary for that period. However, no action was taken. Hence, he filed a writ petition before this Court in W.P.No.15400 of 2021 and the same was disposed of by this Court on 26.07.2021, by directing the fourth respondent to consider the representation of the petitioner within a period of twelve weeks from the date of receipt of a copy of that order. But, the fourth respondent/District Educational Officer vide Na.Ka.No.4408/Aa1/2021 dated 11.10.2021, rejected his claim for disbursement of terminal and pensionary benefits including gratuity benefits. Challenging the said order dated 11.10.2021, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner was placed under suspension by the sixth respondent/School Management on 29.04.2017 on the ground that he has allegedly issued false Transfer

Certificate to one Mrs.K.Gunasundari, who on the basis of the alleged false Transfer Certificate got appointment as Part-Time Sweeper at Indian Oversees Bank, Iyankarnpulam. Thereafter, a FIR was registered on 28.07.2015 under section 120(B) r/w, Section 420, 468, 471 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act and the petitioner was not arrayed as accused in the FIR, nevertheless, he was called for enquiry by the CBI on 02.11.2015 and as such, he was released on the same day.

4. Learned counsel for the petitioner further submitted that in the statement given by the Manager of the School before the CBI, he has made some statements implicating the petitioner in this case. On that sole basis, he was falsely implicated. The CBI Authorities have filed their final report as early as on 10.02.2017, however, the same is pending and progress have not been taken place, since then. As per Section 22(3) of the Tamil Nadu Recognized Private School Regulation Act, the school management can place a teacher under suspension initially for a period of two months and for a further period of two months, with the prior approval of the Educational Authorities. In any event, the suspension cannot be extended for a period not

more than four months. Hence, after a period of four months, on 27.08.2017, the sixth respondent revoked the order of suspension. However, the sixth respondent neither disbursed the subsistence allowance for the period of suspension from 29.04.2017 to 27.08.2017 nor regularized the period of suspension. After 37 years of service, he attained the age of superannuation on 31.07.2019 and he was relieved from service subject to the result of the outcome in the CBI case.

5. Learned counsel for the petitioner further submitted that there is no provision to impose a conditional superannuation under the Tamil Nadu Recognized Private School Regulation Act and he was duly relieved from service. After his retirement, he made a representation to the respondents herein, requesting for disbursement of pensionary and other terminal benefits. The respondents have disbursed the Provident Fund and Special Provident Fund alone, however, other benefits like Encashment of leave for 8 months, half salary and Gratuity were not paid to him, so far. Thereafter, the 6th respondent/School Management submitted a proposal to the fifth respondent/Block Educational Officer, Vedaranyam, seeking pension to the petitioner. In pursuance thereof, the fifth respondent vide proceedings in

Na.Ka.No.635/A1/2020 dated 26.08.2020 forwarded the proposal to the fourth respondent. The fourth respondent by proceeding vide Na.Ka.No.1412/A4/2020 dated 22.09.2020 informed that as per Rule 55 (1) of the Tamil Nadu Pension Rules, 1978 only the Head of the Office is the competent authority to sanction pension or death cum retirement gratuity.

6. Learned counsel for the petitioner contended that again the sixth respondent/School Management re-submitted a proposal on 03.10.2020 to the fourth respondent seeking for a sum of Rs.52,540/- per month as provisional pension to the petitioner. However, the fourth respondent did not pass any orders on the proposal submitted by the sixth respondent/School Management. Hence, in this regard, the petitioner made a representation dated 15.03.2021 seeking for either the provisional pension or the pension. Further, he made a request to regularize the period of suspension from 29.04.2017 to 27.08.2017 and disbursement of salary for that period. His representation were also forwarded by the sixth respondent/School Management to the fourth respondent through the fifth respondent. Neither the proposal nor his representation dated 15.03.2021 was considered by the

fourth respondent. Since, no action was taken, he was constrained to file W.P.No.15400 of 2021 and this Court by its order dated 26.07.2021 directed the fourth respondent to consider the representation of the petitioner within a period of twelve weeks from the date of receipt of a copy of that order. Thereafter, the fourth respondent/District Educational Officer vide order dated 11.10.2021 rejected his claim for disbursement of terminal and pensionary benefits, including gratuity benefits. The fourth respondent rejected to disburse the provisional pension on the pretext that he was relieved from service by the sixth respondent/School Management, subject to the outcome of the criminal case and he is not eligible for pension.

7. Learned counsel for the petitioner further contended that as per Rule 60(1)(b) read with Rule 9(4) of the Tamil Nadu Pension Rules, 1978 makes it clear that an employee who is facing either departmental enquiry or judicial proceedings are entitled for provisional pension till final orders are passed by the competent authority. Further Rule 69(1)(a) enumerates that the provisional pension not exceeding the maximum pension which could have been admissible on the basis of qualifying service up to the date of retirement

of the Government shall be paid and conveniently, the fourth respondent brushed aside all the relevant rules, which resulted in rejection order.

8. Learned counsel for the petitioner further submitted that the petitioner has borrowed a housing loan to a tune of Rs.4,50,000/- from State Bank of India, Vetharanyam. After retirement, without any provisional pension, he has not in a position to pay EMI of Rs.11,000/- per month. There was no charge memo or enquiry pending against the petitioner. While so, there is no impediment in sanctioning encashment of earned leave, encashment of 8 months leave and half salary for sustenance. This Court in the case of ***S.Dhanasekaran Vs. The Principal Secretary to Government, Revenue Department, reported in 2009 (6) MLJ 809*** has held that the statutory rule which provides for grant of provisional pension cannot be given a go by and as such, the Court ordered for payment of provisional pension to the petitioner till a final conclusion is arrived. The petitioner is the only earning member of the family and that after superannuation, the family is not in a position to make the ends meet. The petitioner was relieved from service on attaining the age of superannuation on 31.05.2019, without

any order of retention.

9. Learned counsel appearing for the first respondent has filed a counter affidavit and submitted that there is no proposal for the sanction of terminal benefits in respect of the petitioner and the same is yet to be forwarded to this respondent by the departmental authorities. Only on receipt of the pension proposals, this respondent could consider the claim of the petitioner depending upon the outcome of the CBI enquiry initiated against him and the subsequent decisions/orders, if any, issued by the departmental authorities. The grievance of the petitioner for the settlement of his pensionary benefits or for the sanction of provisional pension is the administrative prerogative of the departmental authorities and not the first respondent.

10. Per contra, learned Government Advocate appearing for the respondent 2 to 4 has filed a counter affidavit dated 21.06.2022 on behalf of the fourth respondent and submitted that the petitioner has indulged in

malpractice and he has prepared fraudulent Record Sheet and issued the same to Sri Gunasundari and N.Arumugam and the matter was investigated by the CBI and the CBI has sent a report vide Lr.No.C1/RC31(A) 2015/CBI/ACB./CHEN dated 10.02.2017 stating that they have decided to prosecute the petitioner and others under Section 7, 8, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and substantive offences thereof. Therefore, the petitioner was placed under suspension by the sixth respondent vide order dated 29.04.2017 and it is further submitted that the FIR was already registered against the petitioner on 28.02.2015 under section 120(B), Sec.420, 468, 471 and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

11. Learned Government Advocate appearing for the respondents 2 to 4 has further submitted that though there is no provision in the Tamil Nadu Recognition of Private School Regulation Act, 1973 for passing conditional order by the sixth respondent, the aided schools, the regulations ordered by the Government has to be followed. The Government have issued guidelines in Government D.O. letter No.44626/2004-I P&AR(N) Department dated

03.08.2004 and the same is extracted hereunder:

> *"If the gravity of lapse committed by the Government servant concerned is so serious as to warrant any one of the major penalties, then the question of suspension can be examined well in advance before the date of retirement and decision taken before 3 months instead of waiting till the date of his attaining the age of superannuation".*

12. Learned Government Advocate appearing for the respondents 2 to 4 further submitted that the petitioner was granted final payment of Provident Fund and Special Provident Fund, in which he made subscription. As per the above guidelines, the petitioner should have been placed under suspension well before the date of retirement and he should be retained in service subject to the payment of subsistence allowance not exceeding the pension. But, the sixth respondent passed orders allowing the petitioner to retire from service without prejudice to the disciplinary proceedings. As the order issued by the sixth respondent is violative of the Government orders and Fundamental Rules, the question of payment of pensionary benefits does not arise.

13. Learned Government Advocate appearing for the respondents 2 to

4 contended that the petitioner has filed writ petition in W.P.No.15400 of 2021, before this Court, seeking for payment of pension or provisional pension. This Court by its order dated 26.07.2021 directed the second respondent to consider the representation of the petitioner dated 15.03.2021 and disposed of the same on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of that order. In compliance of the said order, the sixth respondent has passed order on 25.11.2021, regularizing the period of suspension from 29.04.2017 to 27.08.2021 as Leave on Private affairs with half pay and allowances. As per the provisions contained in F.R.54B(1) and proviso thereunder, the period of suspension shall be regularized only after the disciplinary proceedings or criminal proceedings is finalized so as to conclude as to whether the suspension is just or unjust.

14. Learned Government Advocate appearing for the respondents 2 to 4 further contended that the sixth respondent ought to have passed orders, not allowing the petitioner to retire on 31.05.2019, in view of the pendency of criminal case and suspended from service so as to pay subsistence allowance

not exceeding the provisional pension. The question of retirement pension arise only, if the petitioner is allowed to retire on the due date normally. If the petitioner is either removed or dismissed from service on the outcome of the criminal case, the petitioner will not be entitled for retirement pension and the provisional pension paid to the petitioner will be recoverable. The payment of provisional pension is payable, only if there is delay in finalizing the pension papers or in the case of retirement without prejudice to the disciplinary proceedings, which can be continued under Rule 9 of Tamil Nadu Pension Rules when such disciplinary proceedings not requiring major penalty. The sixth respondent has passed irregular order, allowing the petitioner to retire from service on 31.05.2019, which is violation of the rules and regulations. Hence, until and unless such order is modified as one of retention of the petitioner in service 01.06.2019 by the competent higher authority, the petitioner cannot be sanctioned provisional pension.

15. Learned counsel appearing for the sixth respondent has also filed an affidavit dated 02.12.2022, wherein, it is stated that there is no provision under the Tamil Nadu Recognized Private School Regulations Act, 1973 to

retain the Teachers after their superannuation and the petitioner was not arrayed as accused in the FIR. Initially, the petitioner was enlisted as a Prosecution witness. However, by the Final Report dated 10.02.2017, the CBI has decided to prosecute the petitioner along with officials of I.O.B. under section 122B read with Section 420, 468, 471 and Section 13 to be read with 13(1) of the Prevention of Corruption Act and there is no progress in the criminal case. The school management could not initiate disciplinary proceedings on same set of allegations.

16. Learned counsel appearing for the sixth respondent submitted that the sixth respondent/school management by its order dated 25.11.2021 regularized the period of suspension from 29.04.2017 to 27.08.2014 as leave on loss of pay, however, the said proposal seeking approval of regularization is still pending consideration with the fourth and fifth respondents. As on the date of superannuation of the petitioner on 31.05.2019, there was no charge memo, no disciplinary proceedings initiated or pending against the petitioner and that he has been duly relieved from service. This writ petition is squarely covered by the decision rendered by this Court in W.P.Nos.27474 & 27475

of 2009 dated 17.03.2010. The sixth respondent/school management is also duty bound to bring to the notice of this Court about Government Order in G.O.Ms.No.575 Finance (P) Department dated 07.07.1994 and that as per the said Government Order, the petitioner is entitled to his terminal, pensionary and all other benefits. On the basis of the aforesaid Government Order and the decision of this Court, the sixth respondent/School management has duly forwarded the proposal and positively recommended the claim of the petitioner for pension and terminal benefits and the same in accordance with rules, however, the same was rejected by the fourth respondent on 11.10.2021.

17. Heard the learned counsel on either side and perused the materials available on record.

18. In the present case on hand, the petitioner was suspended on 29.04.2017 for allegedly issuing false Transfer Certificate and subsequently, the suspension was revoked on 27.08.2017. As per Section 22(3) of the Tamil Nadu Recognized Private School Regulation Act, the school

management can place a petitioner under suspension initially for a period of two months and further period of two months, with the prior approval of the educational authorities. In any event, the suspension cannot be extended for a period not more than four months. The petitioner attained the age of superannuation on 31.07.2019 and relieved from service by the sixth respondent/school management subject to the outcome of the CBI case, registered against the petitioner and the CBI case is in trial stage. The petitioner was also paid Provident Fund and Special Provident Fund, but in regard to the payment of terminal benefits and provisional pension, the sixth respondent/school has sent a proposal to the fourth respondent dated 03.10.2020 and subsequently, a representation dated 15.03.2021 was also made by the petitioner seeking provisional pension and for regulation of suspension period. Subsequently, the sixth respondent has forwarded the said representation to the fourth respondent through fifth respondent. However, the fourth respondent by order dated 11.10.2021 (impugned order) rejected the petitioner's claim, seeking provisional pension and disbursement of terminal benefits since, the CBI case against the petitioner is still pending.

19. It is pertinent to note that there is no provision under Tamil Nadu Recognized Private School Regulation Act, 1973 to retain the teachers after their superannuation on the grounds of contemplation of charges. According to the sixth respondent/school management, as per the order passed by this Court and by Government Order in G.O.Ms.No.575 Finance (P) Department dated 07.07.1994, the petitioner is entitled to his terminal, pensionary all other benefits.

20. The sixth respondent/school management cannot be blamed for relieving the petitioner after reaching the age of superannuation on 31.05.2019, subject to the out come of the CBI case since, there is no provision under the Tamil Nadu Recognized Private School Regulation Act, 1973 to retain the teacher after superannuation. Hence, the sixth respondent cannot be found fault for relieving the petitioner from service with effect from 31.05.2019. Moreover, the criminal case registered by the CBI is in the trial stage and the petitioner is without any pension from 31.05.2019 i.e. for the last four years and struggling for his survival.

21. Hence, this Court is of the considered view that the order passed by the fourth respondent dated 11.10.2021 in Na.Ka.No.4408/Aa1/2021 is liable to be quashed and the same is hereby quashed and the respondents are directed to pay the provisional pension to the petitioner from 01.06.2019 till the conclusion of CBI case in CIRC31 (A) 2015 CBI/ACB, within a period of eight weeks from the date of receipt of a copy of this order.

22. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.08.2023

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Index : Yes/No
Speaking Order : Yes/No

To:

1.The Accountant General,

No.259, Anna Salai,
Block-3, 2nd Floor, DMS Complex,
Teynampet, Chennai – 600 006.

2.The Director of School Education,
DPI Compound, College Road,
Chennai – 6.

3.The Chief Education Officer,
Nagapattinam,

4.The District Education Officer,
Vetharanyam, Nagapattinam.

5.The Secretary,
Vinayakar Aided Primary School,
Pandaratham Kadu, Pushpavanam (PO),
Vetharanyam.

J.SATHYA NARAYANA PRASAD,J.

vm

W.P.No.26135 of 2021

24.08.2023