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W.P.No.32633 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32633 of 2022
and
W.M.P.No.32039 of 2023

R. Thirunavukarasu

... Petitioner

Vs.

- 1.The Central Board of Secondary Education,
Rep. by its Secretary,
PS 1-2 – Institutional Area I.P. Extn.,
Patparangi, Delhi – 110 092
Having regional office at
Plot No.1630 A, "J" Block,
16th Main Road, Chennai – 600 040.
- 2.The Director,
Ordinance Factory Board,
Esplanade East, Calcutta – 700 069.
- 3.The General Manager,
Heavy Vehicle Factory,
Avadi, Chennai – 600 054.
- 4.The Chairman,
HVF English Medium Educational Society,
Vijayanta Senior Secondary School,
H.V.F. Estate, Avadi,
Chennai – 600 054.



W.P.No.32633 of 2022

WEB COPY

5.The Secretary,
HVF English Medium Educational Society,
Vijayanta Senior Secondary School,
H.V.F. Estate, Avadi,
Chennai – 600 054.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to treat the service of the petitioner as one in regular service till 31.01.2025 and pay the benefits he is entitled to.

For Petitioner : Ms.K. Abirame
for Mr.V. Raghavachari
For Respondent-1: Mr.G. Nagarajan
For Respondent : Mr.P. Mahadevan
Nos.2 & 3 Addl. Central Govt. Standing Counsel
For Respondent : Mr.T. Bajaj
Nos.4 & 5

ORDER

The petitioner had joined the services of the fourth and fifth respondents / School on 01.09.1989. At the time of joining, he was governed by Rule 30 of the CBSE bye-laws which provides the age of superannuation as 60 years. The fourth and fifth respondents had relieved the petitioner with effect from 31.01.2023 by quoting his age of superannuation as 58 years, by invoking the amended bye-laws reducing the age of superannuation to 58 years. This is put under challenge in the present Writ Petition.



W.P.No.32633 of 2022

WEB COPY

2. Heard the learned counsel for the parties.

3. By placing reliance on a decision of this Court ***dated 08.08.2019*** in the case of '***Aasha K.R. Vs. The Central Board of Secondary Education***' passed in ***WP.No.9165 of 2019***, in which the fourth and fifth respondents herein were also the respondents therein, as well as another decision of this Court ***dated 18.10.2019*** in the case of '***Dr. P.P.V. Marie Theresa Vs. Central Board of Secondary Education***' passed in ***WP.No.6187 of 2013***, which also relates to the same School, the learned counsel for the petitioner submitted that the age of superannuation of the petitioner would be 60 years and that the amended bye-law of the CBSE will not have retrospective effect.

4. The learned counsel appearing for the fourth and fifth respondents would submit that their School is a Registered Society and that they are governed by their own bye-laws. As per their bye-laws, the age of superannuation is 58 years and therefore, the petitioner cannot rely upon the old un-amended provision of the CBSE bye-laws and claim his age as 60 years. With such a submission, the learned counsel sought for time to file a counter.



W.P.No.32633 of 2022

WEB COPY

5. The cases relied upon by the learned counsel for the petitioner in *Aasha K.R (supra)* and *Dr. P.P.V. Marie Theresa (supra)*, relates to the services of a teacher, who was required to retire at the age of 58 years in the same fourth and fifth respondents / School. The objections raised by the fourth and fifth respondents was precisely the same objections in *Aasha K.R's case (supra)* also. A learned single Judge of this Court, had placed reliance on another decision of this Court in the case of '**F. Nirmalkumar David Vs. The Director, Gandhigram Institute of Rural Health and Family Welfare Trust** reported in '**2012 (4) CTC 577**' and held that the amended bye-law 30 will have only a prospective effect and that the service condition of the petitioner therein, who is similarly placed like that of the petitioner in the present Writ Petition, would be governed by the original CBSE bye-law 30, which prescribes the age of superannuation as 60 years. The learned Judge had also rejected the plea of the School that they would be governed by the Society bye-laws by holding that since the School is affiliated with CBSE, would mean that the bye-laws of the Board would automatically apply including the service condition of the employees and that the Society bye-laws cannot supersede



W.P.No.32633 of 2022

the CBSE Rules. The relevant portion of the order reads as follows:-

..... "14. Even otherwise, if the amendment to the Bye Laws which came into effect 19.10.2018 is to be considered, as rightly relied on by the learned counsel for the petitioner in a decision of this Court reported in 2012 (4) CTC 577 (cited supra), such amendment prescribing a different condition of service can be made applicable only prospectively and the petitioner, who joined much before the amendment was brought in, cannot be allowed to suffer a new condition of service to her detriment. Admittedly, the petitioner was appointed as Teacher in 1988, 20 years before the amendment and therefore, such amendment can at best be applied prospectively, when staff are appointed after the said date of appointment. Further, the fact of the 4th respondent school affiliated with the 1st respondent Board would mean that the Bye Laws of the Board would automatically apply including the service conditions of the employees and the Bye Laws of the 1st respondent Board shall prevail over any local arrangement of the 4th respondent school with its staff. In any case, the absence of any particular service conditions regarding age of retirement formulated by the 4th respondent society has not been disputed except stating that the power is with the Managing Committee. Such general power vested with the Managing Committee does not



WEB COPY



W.P.No.32633 of 2022

empower the 4th respondent school to retire its staff contrary to the specific Bye Laws of the 1st respondent Board.....”

6. A similar view was also taken in the case of *Dr. P.P.V. Marie Theresa (supra)*, in which the present fourth and fifth respondents / School had permitted the teacher to continue even after crossing the age of 58 years.

7. Thus, when the fifth respondent School had already permitted their earlier teachers *Aasha K.R. and Dr.P.P.V. Marie Theresa*, to serve till they reach the age of 60 years, even though, they were appointed prior to the amended bye-laws, cannot relieve the petitioner with effect from 31.01.2023 when he reached the age of 58 years. Such an action is not only arbitrary, but also discriminatory. Having extended the benefits to two other teachers, the fifth respondent School would be estopped from determining the petitioner's age of superannuation as 58 years. It is needless to point out that the petitioner would also have had a legitimate expectation that he would be reaching the age of superannuation at the age of 60 years only. In view of all these cumulated illegality, this Court is of the view that the petitioner, who was entitled to



W.P.No.32633 of 2022

continue till he reaches the age of 60 years, has been made to compulsorily wait without assignment of duties from 31.01.2023.

8. The learned counsel for the School also made an attempt to submit that the School is governed by their own bye-laws, since it is a registered Society. As already discussed, a similar view is taken in the case of *Aasha K.R. (supra)* and the same was rejected by this Court. Thus, granting of further time to them to file a counter affidavit would not only be a futile exercise, but also would further unnecessarily deprive the petitioner from resuming his service. Above all, where the school had permitted similarly placed teachers who continued their services till 60 years, I am unable to apprehend as to what objections could the school have to deprive the same benefit to the petitioner herein also.

9. At this juncture, the learned counsel for the petitioner produced the copy of the proceedings of the respondents in Proceeding No.VSSS/GENL/65/2022-23 dated 31.01.2023, which states that the petitioner's name has been struck off from the roles of their School, on attaining the age of 58 years from 31.01.2023. In the light of the discussions made in this order, this proceedings of the respondents, cannot be sustained.



W.P.No.32633 of 2022

WEB COPY

10. Accordingly, the order dated 31.01.2023 in proceedings No.VSSS/GENL/65/2022-23 of the respondents 4 & 5/School, is hereby quashed. Consequently, the respondents 4 & 5/School are called upon to pass appropriate orders, within a period of one (1) week from the date of receipt of a copy of this order, reinstating the petitioner into service together with continuity of service and other attendant benefits. Since the action initiated on the part of the respondents 4 & 5, in removing the name of the petitioner from their rolls with effect on 31.01.2023 is illegal, the period of his non-employment from 31.01.2023 till the date of his reinstatement, shall be treated as compulsory wait period and the petitioner would be entitled for all the service and the monetary benefits during this period.

11. With the above directions, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

19.06.2023

Speaking order
Index:Yes
Neutral Citation :Yes

Note:Issue order copy on 26.06.2023
DP/Sni



W.P.No.32633 of 2022

WEB COPY

To

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WEB COPY



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M.S.RAMESH,J.

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