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WP.No. 14946 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.06.2023

Pronounced on : 11.08.2023

Coram :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition No. 14946 of 2023
and
W.M.P.No. 14536 of 2023

1. The Deputy Commissioner
Kendriya Vidyalaya Sangatham
Regional Office - Chennai,
I.I.T. Campus, Chennai - 600 036.
2. The Assistant Commissioner (L&G)
Kendriya Vidyalaya Sangatham
New Delhi-110 010.
3. The Principal
Kendriya Vidyalaya Sangatham
Avadi, Madras - 600 056.

.. Petitioners

Versus

1. S. Alavandar
2. The Registrar
Central Administrative Tribunal
Chennai Branch, High Court Campus,
Chennai - 600 104.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent culminating in the impugned order dated 06.09.2022 in O.A.No. 332 of 2021 and quash the same.

For petitioners : Mr. M. Vaidhiyanathan

For R1 : Mr.S. Alavandar
Party-in-Person

For R2 : Tribunal

ORDER

P. Dhanabal, J

This writ petition has been filed by the petitioners for issuance of a Writ of Certiorarified Mandamus calling for the records challenging the order in O.A.No. 332 of 2021, dated 06.09.2022 passed by the second respondent/Central Administrative Tribunal and quash the same.

2.The case of the petitioners is that the first respondent is the Deputy Commissioner of Kendriya Vidyalaya Sangatham. The Kendriya Vidyalaya Sangatham is an autonomous organization registered under the Societies Registration Act, 1860, and fully financed by the Government of



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India. The Kendriya Vidyalaya Sangatham had called for the applications for recruitment of Teachers during, 1993. After completion of selection process, offer of appointments had been issued to the first respondent, namely, Mr.S. Alavandar, as TGT Social Studies on Direct Recruitment with the place of posting at Kendriya Vidyalaya Wellington vide Memorandum No.F.2.Estt/39.93-KVS(MR), 02.11.1993. Later, his place of posting had been changed to Kendriya Vidyalaya Sangatham, OCF, Avadi, vide Memorandum dated 17.11.1993. After serving 9 years, 6 months and 13 days, the first respondent retired from service on attaining the age of 60 years on 31.05.2003. As per the CCS (Pension) Rules, 1972, a Government servant appointed in a pensionable establishment on or before 31.12.2003 and retired from Government service with a qualifying service of 10 years or more is eligible for pension. The first respondent had completed 9 years 6 months 13 days of service which cannot be considered for sanction of pension. Further, ad-hoc service put in by the first respondent will not be counted for pensionary purpose and only the regular service on record will be taken into account for consideration of pension. As per Rule 49 (1) of CCS (Pension) Rules, 1972, the first respondent is ineligible since he is not having qualifying service for grant



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of pension. However, the first respondent had sent a representation dated 25.07.2017 after a lapse of several years and the same was rejected by order dated 15.05.2018. Challenging the same, the first respondent has filed in O.A.No. 332 of 2021 before the Central Administrative Tribunal, Chennai Bench, and the same was allowed on 06.09.2022. Aggrieved by the said order, the present writ petition has been filed on the grounds that the 2nd respondent has not considered the documents filed by the petitioner, the first respondent retired from service in the year 2003 and approached the Tribunal belatedly, and failed to follow the CCS (Pension) Rules.

3. No counter affidavit has been filed by the first respondent.

4. The learned counsel for the petitioners contended that the first respondent has applied for the post of teacher in the year 1993 and he was selected in the month of April, 1993 and received the order of appointment on 02.11.1993. He was superannuated on 31.05.2003 on attaining the age of 60 years. The department has calculated his service period as 9 years, 6 months and 13 days and he was short of service for pension and therefore, he was not granted pension. The first respondent made several



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representations to the authorities concerned requesting to grant minimum pension by rounding up the fraction, the petitioners have not considered the said representations of the first respondent. Therefore, the first respondent has filed in O.A.No. 315 of 2018 before the Central Administrative Tribunal and the same was disposed of by the Central Administrative Tribunal, directing the respondents to consider the representation dated 25.07.2017 of the first respondent. Thereafter, vide Memorandum dated 15.05.2018 the petitioners had rejected the claim of the first respondent on the ground that the services rendered by him is less than 10 years by citing Rule 49(1) of CCS (Pension) Rules. Thereafter, the first respondent has filed Original Application in O.A.No.332 of 2021 before the Central Administrative Tribunal challenging the said order dated 15.05.2018. The Tribunal, by order dated 06.09.2022, allowed the application and directed the petitioners to grant minimum pension by rounding off the services to 10 years, which is contrary to the Pension Rule. When the Pension Rules stipulate that a minimum qualification of service of 10 years has to be put in by an employee as a condition precedent for grant of pension, the Tribunal is not justified in directing the petitioners to pay pension to the first respondent by rounding off the



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services to 10 years. Hence, the order passed by the Tribunal dated 06.09.2022 is liable to be set aside.

5. The first respondent appeared in person and stated that he applied for Social Science trained graduate teacher and interview was conducted in April, 1993 but appointment order was issued in the month of November, the first respondent served with devotion, thereby his service was extended for two years on contract basis after his superannuation. The petitioners delayed in issuing appointment order with a view to evade pension to him. Further, he was served as Class Teacher for six months. Hence, his temporary service to be added as service for pension. The first respondent had sent the representation to the petitioners department but they rejected the same through order dated 15.05.2018. The said order was challenged before the Central Administrative Tribunal in O.A.No.332 of 2021 and the same was allowed. But in order to delay the proceedings and in order to evade from paying pension to the first respondent the petitioners have filed this writ petition.



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6. Heard the learned counsel for the petitioners and the first respondent in person and perused the materials available on record.

7. It is admitted fact that the first respondent was working as primary teacher in Kendriya Vidyalaya, OCF Avadi, Madras and he was superannuated on 31.05.2003. Admittedly, the regular service rendered by him was 9 years, 6 months and 13 days. According to the petitioners, as per the Rule 49 (1) of CCS (Pension) Rules the first respondent has to complete 10 years for getting pension. But his service was only 9 years, 6 months and 13 days. Therefore, he is not eligible for pension.

8. The contention of the first respondent is that his appointment was delayed by the petitioners and thereby his contract period of 2 years after retirement has to be added for his service for pension purpose. On careful perusal of Rule 49 (1) of CCS (Pension) Rules, 10 years of service has to be completed, for eligibility to get pension. As per Rule 49 (3) of CCS (Pension) Rules, 1972, "in calculating the length of qualifying service fraction of a year equal to three months and above shall be treated as a completed one half a year and reckoned as qualifying service. In this case, the first respondent had only completed 9 years, 6 months and 13 days." In



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order to get benefit of Rule 49 (3) of CCS (Pension) Rules, the first respondent ought to have completed 9 years and 9 months. But in this case, the first respondent only completed 9 years, 6 months and 13 days. Hence, he is not eligible for pension according to Rule 49 (1) of CCS (Pension) Rules. Since he retired from service on 31.05.2003, his service of contractual period can not be taken as service period.

9. At this juncture it is relevant to refer the judgement of Division Bench of this Court in State of Tamilnadu represented by Secretary, Animal Husbandry Department, Chennai and others Vs.K.Thiruvanam Pillai in W.A.No.906 of 2013 dated 20.10.2014, wherein para 7, 8, 9 and 10 held as under:-

“7.Insofar as the Central Government employees are concerned, similar issue arose with respect to the calculation of 10 years of service under Rule 49(3) of CCS Pension Rules, 1972 before a Division Bench of this Court in W.P.No.45465 of 2002, dated 4.10.2007. Even though a person was having a regular service of 9 years 3 months and 23 days, considering the E.D. Staff service of 29 years, this Court directed grant of pension treating that the person as completed 10 years of qualifying service. The said judgment was challenged before the Honourable Supreme Court in SLP.No.13829 of 2008, which was also dismissed on 17.10.2008 and the said judgment was implemented by order dated 9.10.2009.



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8. Again in W.P.No.22496 of 2009, dated 14.2.2013, a similar issue was considered and relief was granted, even though the said person was not having 10 years of pensionable service. The Division Bench of Karnataka High Court in W.P.No.72872 of 2012, dated 25.3.2013 also passed a similar order. The above said orders have been followed by the Division Bench of this Court (of which one of us NPVJ was a member) in W.P.No.29896 of 2013 by order dated 6.12.2013. The said order was also confirmed by the Honourable Supreme Court.

9. Similar issue was considered by the Honourable Supreme Court in respect of an employee of the State Bank of Patiala with reference to Chapter IV Regulations 14 and 18 of the State Bank of Patiala (Employees) Pension Regulations, 1995 in the decision reported in **(2014) 3 LLN 17 (SC) (State Bank of Patiala Vs. Pritam Singh Bedi & Others)**, wherein the Supreme Court held that if there is a regulation to count six months and more period as one completed year as pensionable service and the employee concerned having minimum pensionable service, he is entitled to get pension.

10. Considering the said judgments and having regard to the fact that the total pensionable service as per the calculation of the department in this case itself comes to 9 years 6 months and 23 days, the said period should be taken as 10 years pensionable service for the purpose of grant of pension. The said 9 years 6 months and 23 days is calculated as per the particulars given by the Officer of the Animal Husbandry Department as stated supra.”

On careful reading of the judgement it is clear that if there is a regulation to count six months and more period as one completed year as pensionable



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service and the employee concerned having minimum pensionable service, he is entitled to get pension. In the case on hand also the first respondent herein completed 9 years 6 months and 13 days, thereby the said case law is squarely applicable to the present facts of the case. In this case, the said service period should be taken as 10 years pensionable service for the purpose of grant of pension.

10. The Central Administrative Tribunal has relied upon the judgment in ***Nirmal Chandra Bhattacharjee v. Union of India (UOI) and Ors, reported in 1991 (2) SCC 363*** which was relied on by the Co-ordinate Bench of that Tribunal at Ernakulam in O.A.No.666 of 2010 by order dated 09.08.2012 and elaborately appointment to the first respondent. On careful perusal of the judgment in ***Nirmal Chandra Bhattacharjee v. Union of India (UOI) and Ors***, the discussed about the delay in giving Hon'ble Supreme Court held that "the selection process in respect of Ticket Collectors has also started prior to 1" August, 1983. If the department would have proceeded with this selection well within time and would have completed in before 1" August, 1983 then the appellant would have become ticket collectors without any difficulty. The mistake



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are delay on the party of the department therefore, should not be permitted to recoil on the appellant. Based on the above dictum laid down by the Hon'ble Supreme Court the Tribunal has directed the department petitioners herein to consider the case of the first respondent for relaxation under Rule 88 of CCS (Pension) Rules.

11. As per Rule 88 of CCS (Pension) Rules, 1972, "if the Ministry or Department of Government is satisfied that the operation of any or all these rules causes undue hardship in any particular case, the Ministry or Department as the case may be, by order, for the reasons to be recorded in writing, dispense with or relax the requirement of that Rule to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in such a equitable manner provided that no such order shall be made except with the concurrence by the Department of Personnel and Administrative Reforms." Therefore, from a bare reading of the aforesaid provisions it is clear that the Department or Ministry can dispense with or relax the requirement of the Rules. In the case on hand, the first respondent has served 9 years 6 months and 13 days and he was running short of two months and odd, to entitle for relaxation



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and five months for full eligibility. There was no adverse remarks as against the first respondent and his service was availed around two years after his retirement on superannuation. This shows the devotion in duty of the first respondent. Further, there was a delay in giving appointment order to the first respondent by the petitioner department.

12. It is admitted fact that the petitioners had conducted an interview in the month of April, 1993 itself and given orders of appointment to the other teachers in June, 1993 itself, but they had given appointment order to the first respondent only in the month of November, 1993 with a delay of 6 months. Therefore, there is no fault on the side of the first respondent and due to the delay caused by the petitioners, he joined the post belatedly. Therefore as per Rule 88, the Department can relax the minimum required period in a given case, as a fit case. All these aspects have been discussed by the Central Administrative Tribunal and directed the petitioners to invoke Rule 88 of CCS (Pension) Rules, 1972 for relaxation. Therefore, the order passed by the Central Administrative Tribunal by directing the petitioners to invoke Rule 88 and consider the case of the first respondent for grant of minimum pension by rounding off



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his service to 10 years is in accordance with law and the reasons stated by the Central Administrative Tribunal are acceptable. Therefore, there is no warrant to this Court to interfere with the order of the Tribunal. Therefore, the writ petition is devoid of merits and deserves to be dismissed.

13. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K., J) (P.D.B., J)
11.08.2023

Speaking Order: Yes/no
Neutral Citation: Yes/no
MSM

To

1. The Deputy Commissioner
Kendriya Vidyalaya Sangatham
Regional Office - Chennai,
I.I.T. Campus, Chennai - 600 036.
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4. The Registrar
Central Administrative Tribunal
Chennai Branch
High Court Campus
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D. KRISHNAKUMAR, J.
and
P. DHANABAL, J.

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Pre-Delivery Order in
Writ Petition No. 14946 of 2023

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