



W.P.(MD) No.4521 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 18.07.2023

ORDERS PRONOUNCED ON : 26.07.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.4521 of 2019

B.Manoharan

... Petitioner

Vs.

1.The Principal Accountant General,
Office of the Principal Accountant General
(Accounts & Entitlements) Tamilnadu,
361, Anna Salai, Chennai-18.

2.The Director of School Education,
College Road, Chennai-6.

3.The District Educational Officer,
Sankarankovil, Tirunelveli District.

4.The Manager,
C.M.M.L. High School,
Vadamalapuram P.O-627 755,
Mullikulam Viz, Kadayanallur Taluk,
Tirunelveli District.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records relating to No.AG (A&G) PEN P25/12519316/5/R2519316 dated 26.12.2018 in so far as counted 15 years 7 months alone as total length service instead of 20 years 3 month 4 days and quash the same and consequently direct the respondents herein to include and count the petitioner's service from 26.02.1998 to 01.06.2003 as service period along with attended benefits.

For Petitioner	:	Mr.T.Pon Ram Kumar
For R1	:	Mr.P.Gunasekaran
For RR2 & 3	:	Mr.V.Nirmal Kumar Government Advocate

ORDER

Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned Government Advocate for Respondents No.2 and 3 and perused the materials available on record carefully.

2. The learned counsel for the petitioner submits that the petitioner was a Graduate Teacher with qualification of B.Com., and B.Ed.,



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Degrees. The qualification for the post of Secondary Grade Teacher is the passing of Diploma in Teacher Education. Since no eligible candidates were available to be appointed as Secondary Grade Teacher, the petitioner was appointed as Secondary Grade Teacher in the Respondent No.4-School on 26.02.1998. The petitioner was appointed as Secondary Grade Teacher on condition that he should not claim Graduate Teacher salary and increment for B.Com., and B.Ed. The appointment of the petitioner was not approved by Respondents No.2 and 3, as it is contrary to G.O.Ms.No.559, dated 11.07.1994. The Government issued G.O.Ms.No.559, dated 11.07.1994 cancelling the appointments of Graduate Teachers in the post of Secondary Grade Teachers in various schools during a certain period. The same was challenged in a batch of writ petitions before the Principal Seat of this Court. During the pendency of the writ petitions, this Court granted stay of the operation of G.O.Ms.No.559 and several schools appointed B.Ed., teachers in Secondary Grade vacancies and such appointments were also approved and they were also paid salaries by the respondents. The said batch of writ petitions were dismissed by a learned Single Judge, as against which a batch of writ appeals were filed and a Division Bench of the



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Principal Seat of this Court, by order dated 29.06.2001, while upholding the Government Order, held that the Teachers appointed up to the date of dismissal of the writ petitions are to be given approval.

3. The learned counsel would submit that pursuant to the order of the Division Bench, the Government issued G.O.Ms.No.155, Education Department, dated 03.10.2002 to send those Graduate Teachers appointed in a Secondary Grade post to the one month Child Psychology course and after such training only, appointment would be approved and the salary could be paid only with effect from the date of approval of the appointment and issued order for recovery and refixation. Aggrieved against G.O.Ms.No. 155, dated 03.10.2002, a batch of writ petitions were filed and this Court granted interim injunction in respect of the refixation and recovery of salary. A Division Bench of this Court by order dated 02.04.2004, disposed batch of writ petitions directing the respondents therein not to recover the salary from the persons who had already received salary and in respect of the persons who had not received salary, the Division Bench observed that the salary will be paid only from the date of completion of the Child



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Psychology Training and it was also observed that the past service period can be counted for pension. Aggrieved against the refixation of salary, Special Leave Petitions were filed before the Hon'ble Apex Court and the same were dismissed.

4. The learned counsel further submits that pursuant to the Government Order in G.O.Ms.No.155, dated 03.10.2002, the petitioner underwent Child Psychology Training from 02.05.2003 to 31.05.2003. Pursuant to the same, the first respondent herein by proceedings dated 12.08.2003 approved the appointment of the petitioner with effect from 02.06.2003.

5. The learned counsel further submits that from 01.04.2003, the New Pension Rules were issued by the Government and as per the New Pension Scheme, the persons who were appointed on or after 01.04.2003 shall not be eligible for pension or gratuity and they shall be allowed only for Contributory Pension Scheme as introduced in G.O.Ms.No.529, Finance Department, dated 06.08.2004 and G.O.Ms.No.430, Finance Department,



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dated 06.08.2004. Aggrieved against G.O.Ms.No.430, dated 06.08.2004, writ petitions were filed and by order dated 23.04.2008, in W.P.Nos.26933 and 26934 of 2007, the Principal Seat of this Court was pleased to allow the writ petitions holding that the appointment of the petitioners therein were made much before the issuance of the New Contributory Pension Scheme and hence, G.O.Ms.No.430 is not applicable to the petitioners therein. Pursuant to the order of the Court, the Government has issued G.O.Ms.No. 413, dated 04.11.2010, holding that the new Contributory Pension Scheme is not applicable to those Teachers. Immediately after the order in W.P.Nos. 26933 and 26934 of 2007, the petitioner approached the respondents to count his service with effect from 26.02.2003 under Old Pension Scheme like others. But it was not considered. Meanwhile, on 31st December, 2018, the petitioner retired from service.

6. The learned counsel for the petitioner contends that though the petitioner was appointed on 26.02.1998 as Secondary Grade Teacher and underwent Child Psychology Training and eligible to count his service from 26.02.1998 to 01.06.2003, the third respondent refused to count the service



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of the petitioner from 26.02.1998 to 01.06.2003 and compelled the petitioner to sign on the pension proposal. Accordingly, the petitioner signed the pension proposal and the respondents orally informed the petitioner that they are seeking clarification from the Government and after getting clarification, the request of the petitioner for counting service under Old Pension Scheme will be considered. The further grievance of the petitioner is that the first respondent *vide* proceedings in AG (A&G) PEN P25/12519316/5/R2519316, dated 26.12.2018 sanctioned only 15 years 7 months alone as total length of service instead of 20 years 3 months 4 days. Aggrieved by the proceedings of the first respondent, the present writ petition is filed.

7. A counter affidavit has been filed on behalf of Respondents No. 1 to 3.

8. The learned Government Advocate appearing for Respondents No.2 and 3 submits that the petitioner, holding B.Com., B.Ed., Degrees, was appointed in the post of Secondary Grade Teacher in the Respondent No.4-



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School from 26.02.1998 against the order of the Government banning appointment of Graduate Teachers in Secondary Grade Teacher posts and as per G.O.Ms.No.155, dated 03.10.2002, the petitioner underwent one month short term training in Child Psychology from 02.05.2003 to 31.05.2003 and was appointed as Secondary Grade Teacher, which was approved from 02.06.2003. He served from 02.06.2003 to 31.12.2018 on which date, he attained the age of superannuation. Based on G.O.Ms.No.413, Finance Department, dated 04.11.2010, the petitioner has submitted his pension proposal through the Respondent No.4. In Section II Memorandum of Service relating to his pension papers, which are available in the typed set produced by the petitioner, his service from 02.06.2003 to 31.12.2018 totalling 15 years 7 months has been reckoned by the petitioner himself and claimed retiral benefits. Based on this pension proposal, the first respondent has admitted the legitimate and due retiral benefits to the petitioner *vide* the impugned order.

9. The learned Government Advocate contends that now the petitioner filed this writ petition complaining his service from 26.02.1998 to



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01.06.2003 has not been counted for retiral benefits, contrary to the proposals made by him. As such, it is sought to dismiss the writ petition.

10. The learned counsel for the petitioner has placed reliance on the order in ***Keerapalayam Panchayat Union, Keerapalayam, represented by its Commissioner and another Vs. Akila (Minor), represented by her mother and natural guardian Anjali*** reported in ***2004-2-L.W.596***, an order in W.P.(MD) Nos.21803 and 21804 of 2019 and 8154 of 2016, dated 25.11.2019 and a judgment in W.A.(MD) No.1464 of 2021, dated 28.07.2021.

11. This Court gave anxious consideration to the submissions made by the learned counsels appearing for either side and gave careful consideration to the materials available on record and the reliances placed by the learned counsel for the petitioner.

12. The issue to be considered in the present writ petition is whether the past service rendered by the petitioner before his completion of



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Child Psychology Training shall be considered or not. In fact, this issue was already considered by a Division Bench of this Court in ***State of Tamil Nadu, represented by its Secretary and others Vs. Pallivasal Primary School, represented by its Correspondent*** reported in ***2004-2-L.W.591***. In the said judgment, the Division Bench of this Court has held that the past services rendered by the Teachers shall be counted for pension. By following the judgment of the Division Bench, a learned Single Judge of this Court allowed writ petitions in W.P.(MD) Nos.21803 and 21804 of 2019 and 8154 of 2016 by order dated 25.11.2019 directing the respondents to count the services of the petitioners therein rendered before their approval for pensionary benefits. In the writ appeal filed against the orders of the learned Single Judge in W.P.(MD) No.8154 of 2016, by order dated 28.07.2021, in W.A.(MD) No.1464 of 2021, a Division Bench of the Madurai Bench of this Court dismissed the said writ appeal confirming the order of the learned Single Judge.

13. In fact, in the present writ petition also, the petitioner was appointed prior to 01.04.2003 and his appointment was approved by the



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Respondent No.3. The ratio in the judgment referred above is squarely applicable to the facts of the present case. Therefore, the impugned order is liable to be set aside.

14. For the above mentioned reasons, this Writ Petition is allowed with the following directions:

- i. The impugned order in No.AG (A&G) PEN P25/12519316/5/R2519316 dated 26.12.2018 is set aside;
- ii. The respondents are directed to count the service of the petitioner from 26.02.1998 to 01.06.2003, which is rendered prior to his approval for payment of pensionary benefits; and
- iii. There shall be no order as to costs.

26.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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BATTU DEVANAND, J.

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To

- 1.The Principal Accountant General,
Office of the Principal Accountant General
(Accounts & Entitlements) Tamilnadu,
361, Anna Salai, Chennai-18.
- 2.The Director of School Education,
College Road, Chennai-6.
- 3.The District Educational Officer,
Sankarankovil, Tirunelveli District.

Pre-delivery Order made in
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26.07.2023