



W.P(MD)No.16523 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16523 of 2020

R.Chokkar

... Petitioner

Vs.

1.The Principal Secretary to the Government,
Finance Department,
Fort St.George,
Chennai-9.

2.The Principal Secretary to the Government,
School Education Department,
Fort St.George,
Chennai-9.

3.The Director of School Educaion,
DPI Compound,
College Road,
Chennai-600 006.

4.The Joint Director (Vocational),
Director of School Education,
DPI Compound, College Road,
Chennai-600 006.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.28668/V1/E3/2020, dated 06.08.2020 on the file of the third respondent and quash the same as illegal and consequently for a direction, directing the respondents to re-fix the scale of pay of the petitioner and provide the revised commutation and gratuity along with other monetary benefits in accordance with the Tamil Nadu Revised Pay Rules, 2017, within the time period stipulated by this Court.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The only question that arises for consideration is whether the petitioner is entitled to the benefit of 7th Pay Commission recommendation. It is not in dispute that the said recommendation came into force notionally with effect from 01.01.2016 and with monetary benefit from 01.10.2017. The case of the petitioner is that he retired on 31.12.2015 and that by virtue of the order passed by this Court in W.P.(MD)No.49577 of 2006 (K.L.Ramamoorthy Vs. The Secretary to Government), he should be deemed to have retired only on 01.01.2016.



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3. The learned counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order rejecting the petitioner's request and allow the writ petition and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents and pressed for dismissal of the writ petition.

5. The petitioner was born on 05.12.1957. He reached the age of 58 years on 04.12.2015. During the relevant time, retirement age was 58 years. He should have exited from government service on 05.12.2015 itself. However, by virtue of Fundamental Rule 56(1), he could remain in service till afternoon of 31.12.2015. Fundamental Rules 56(1) is as follows:-

Retirement on Superannuation-(a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but shall not be retained after the age of sixty years except in very special circumstances.

6. Thus, the petitioner could stretch his service till 31.12.2015 only by virtue of Fundamental Rule 56(1). Service already extended cannot be further extended by taking recourse to certain notional devices. Tamil Nadu Revised Pay Rules, 2017 is clear and categorical. Clause 1(2) of the Rules is as under:-



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1.(2)- They shall be deemed to have come into force notionally with effect from 1st day of January 2016 and with monetary benefit from 1st October 2017.

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Clause 14 of the Rules is as under:-

14.Date of effect- The revised pay level for regular Government employees and employees on special time scales of pay / consolidated pay / fixed pay / honorarium shall take notional effect from 1st January, 2016 with monetary benefit from 1st October 2017.

7. By no stretch of imagination, the petitioner can be said to have been in service on 01.01.2016. I decline to follow the order dated 02.02.2012 made in W.P.(MD)No.49577 of 2006 because it does not make any reference to Fundamental Rules 56(1). The effect of Fundamental Rules 56(1) has already been set out.

8. In this view of the matter, the order impugned in the writ petition does not call for interference. The writ petition is dismissed. No costs.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.



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