



W.P.(MD)No.9446 of 2018

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 23.02.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P.(MD)No.9446 of 2018**

Dr.K.Kani,  
Associate Professor (retired),  
32, Rajaji Street,  
Gandhi Nagar,  
Madurai - 625 020,  
Madurai District.

... Petitioner

Vs.

1. The Accountant General of Tamil Nadu,  
Office of the Accountant General,  
Chennai - 600 018.
2. The Joint Director of Collegiate Education,  
Madurai Region,  
Madurai - 625 020.
3. The Secretary and Correspondent,  
Pasumpon Muthuramalinga Thevar College,  
Usilampatti - 625 532,  
Madurai District.

... Respondents



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**PRAYER :** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the first respondent herein in No.P25/4/12516128/ADK273 dated 04.12.2017, quash the same and further direct the respondents herein to sanction and disburse forthwith pension, Death-cum-Retirement Gratuity (DCRG), Earned Leave benefits, Leave on Private Affairs benefits and other retiral benefits with appropriate interest.

|                 |   |                                                                                                 |
|-----------------|---|-------------------------------------------------------------------------------------------------|
| For Petitioner  | : | Mr.E.V.N.Siva                                                                                   |
| For Respondents | : | Mr.P.Gunasekaran for R1<br>Mr.T.Amjadkhan<br>Government Advocate for R2<br>Mr.R.Amarnath for R3 |

### **O R D E R**

This Writ Petition has been to call for the records of the impugned proceedings in No.P25/4/12516128/ADK273, dated 04.12.2017 issued by the first respondent, quash the same and direct the respondents to sanction and disburse forthwith pension, Death-cum-Retirement Gratuity (DCRG), Earned Leave benefits, Leave on Private Affairs benefits and other retiral benefits with appropriate interest to the petitioner.



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2. The case of the petitioner is that he retired from service as Associate Professor and Head of the Commerce Department from the third respondent College on 31.10.2017. The third respondent College is governed by the provisions of Tamil Nadu Private Colleges (Regulation) Act and Rules. The third respondent College allowed him to retire from service on 31.10.2017. But no-due certificate, provisional pension paid certificate, audit objection pending certificate were not issued by the third respondent College. Even before his retirement, the third respondent College has submitted a proposal to the second respondent dated 13.07.2017 seeking to sanction pension, death-cum-retirement gratuity, commutation pension and other retiral benefits. But the second respondent has returned the proposal vide proceedings dated 21.08.2017 stating that the Service Book of the petitioner has been sent to the Director of Collegiate Education. The second respondent had sanctioned the benefits vide proceedings dated 06.11.2017. After sanctioning of pension, the second respondent has forwarded the proposal along with the sanction order for authorization to the first respondent as per Rule 64 of the Tamil Nadu Pension Rules, 1978. The first respondent vide proceedings dated 04.12.2017 returned the



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proposal stating that a criminal case has been pending against the petitioner.

The third respondent College has again resubmitted the proposal and the same has been returned by the second respondent stating that the petitioner is entitled only for provisional pension as per the proceedings issued by the first respondent dated 04.12.2017. As on date, no disciplinary proceedings is pending against the petitioner and the third respondent has issued 'No Objection Certificate' for receiving pension and therefore, the respondents 1 and 2 cannot deny his pension and other retiral benefits. Challenging the impugned order, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that admittedly the petitioner is not a Government employee and he was the employee of the Private College which is governed by the provisions of Tamil Nadu Private Colleges (Regulation) Act and Rules. The appointing authority of the College is the College Committee and not the Joint Director of Collegiate Education. Even if the Joint Director of Collegiate Education is the approval authority, mere approval for appointment does not make the petitioner a Government employee and hence terming the petitioner as a



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Government servant and rejecting the petitioner's proposal is not a sustainable one.

4. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of ***Director of Elementary Education, College Road, Chennai and others vs. G.Vijayalakshmi and another*** reported in **(2015) 6 MLJ 315** more particularly, in the following observations as under:

*"32. On this aspect, firstly we wish to consider the decision made in K.Michael Antony v. State of Tamil Nadu reported in 2010 (4) MLJ 1207. In the reported case, the request of the petitioner therein, for alteration of Date of Birth was rejected, on the ground that as per Rules framed under the Rules, applicable to government servants the respondents therein are not bound to entertain any application for alteration of date of birth, received after lapse of 5 years from the date of entry into service. Adverting to the above, with reference to the service conditions of the employees in a private school, governed under the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, and the Rules made thereunder vis-a-vis the applicability of the Tamil Nadu State and Subordinate Service Rules, framed*



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*under Article 309 of the Constitution of India, only to the members of the State service and the decision of this Court in The Director of School Education, College Road, Chennai and others v. Geldon Wifred Viola and others reported in 2009 (2) TNLJ 101 (Civil), wherein, this Court held that, "the Government Order which was issued in exercise of the powers under Article 309 of the Constitution of India would be made applicable only to the Government servants viz., the teachers who are employed in Government schools and not to the teachers in Private Schools as they are governed only by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the rules made thereunder", at Paragraph 11 in K.Michael Antony's case (cited supra), this Court held as follows:*

*"11. Under Article 309 of the Constitution of India, the Governor of a State has the authority to make rules regulating recruitment and the conditions of service of persons appointed in public service in connection with the affairs of the State. Therefore, by no stretch of imagination it can be said that Tamil Nadu State and Subordinate Service Rules would apply to the teachers working in Private Schools."*



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5. The learned counsel appearing for the first respondent would submit that as per the Tamil Nadu Pension Rules, 1978, there is a bar for sanctioning the pension in favour of the petitioner since a vigilance and anti corruption case is pending against the petitioner before this Court, and unless the case is disposed in the manner known to law, the petitioner is not entitled for pension. Hence, the pension proposal was returned as per Rules 9(4) and 69 of the Tamil Nadu Pension Rules, 1978. Accordingly, he prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly, the petitioner was the employee of the third respondent College as Associate Professor and Head of the Commerce Department and he attained the age of superannuation on 31.10.2017, for which, the pension proposal was forwarded to the second respondent and the second respondent has also forwarded the same to the first respondent for approval. However, the first



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respondent has passed the impugned order dated 04.12.2017 citing Rule 9(4) and Rule 69 of the Tamil Nadu Pension Rules, 1978 that the vigilance and anti corruption case is pending against the petitioner before this Court.

8. For better appreciation, Rule 9(4) and Rule 69 of the Tamil Nadu Pension Rules as follows:

*"Rule 9(4): In the case of a Government Servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), (or any enquiry is being conducted by the Director of Vigilance and Anti Corruption), a provisional pension as provided in Rule 60 or Rule 69, as the case may be, shall be sanctioned.*

*Rule 69(1)(a): In respect of a Government servant referred to in sub-rule(4) of Rule 9, the Head of office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant."*



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9. The issue now arises in the present Writ Petition is whether the petitioner is a Government servant or not and the Tamil Nadu Pension Rules is applicable to him or not. Admittedly, the petitioner has been appointed in the third respondent College, however, his appointment is approved by the Joint Director of Collegiate Education and the salary was paid through grant-in-aid by the Government. Once the petitioner is appointed by the College and the approval is granted by the Government, for all practical purposes, the petitioner becomes a Government Servant.

10. Under the Tamil Nadu Private Colleges (Regulation) Rules, 1976, more particularly, the Rule No.11(9), every teacher or other person employed in a College shall, subject to the orders issued by the Government, from time to time, be eligible for pension. Even the Tamil Nadu Private Colleges (Regulation) Rules, 1976, makes it clear that the Government is the competent authority to sanction the pension and when such being the position, claiming the entire benefits during the pendency of the criminal case is unsustainable and the petitioner is entitled only for provisional pension as per Rule 9(4) and Rule 69 of the Tamil Nadu Pension



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Rules, 1978. Hence, the impugned order passed by the first respondent is perfectly in order, which cannot be interfered with. However, there shall be a direction to the respondents to examine the case of the petitioner as per Rule 9(4) and Rule 69 of the Tamil Nadu Pension Rules, 1978 after ascertaining the pendency of the criminal case and, if the case is still pending proceed to pay provisional pension. If the criminal case is found disposed of, the respondents shall process the pension proposal and do the needful accordingly. The above exercise shall be completed by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ Petition is dismissed in the above terms.

No costs.

**23.02.2023**

NCC: Yes / No  
Index : Yes / No  
Speaking Order : Yes / No

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