



W.P.(MD).No.13258 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.13258 of 2018

and

W.M.P(MD)Nos.12091 & 13355 of 2018

J.Jessie Suguna Thilagavathi

... Petitioner

Vs.

1.The Director of Elementary Education,
Chennai – 600 006.

2.The District Elementary Educational Officer,
Dindigul District,
Dindigul.

3.The Additional Assistant Elementary
Educational Officer,
Reddiyarchatiram,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.ka.No.1976 /A1/2016 dated Nil.08/2016 signed on 19/09/2016 and the



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consequential impugned order passed by the 3rd respondent in his proceedings in Mu.Mu.No.42/A2/2015 dated 27/01/2017 and quash the same as illegal and arbitrary and in violation of principles of natural justice and consequently directing the respondents permit the petitioner to continue with her old ASTPF Ac.No.322368 for all monetary and other benefits.

For Petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran

For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

The present writ petition is filed challenging the order, dated 19.09.2016 and the consequential order, dated 27.01.2017 with a consequential prayer to direct the respondents to permit the petitioner to continue in the Old Pension Scheme.

2. The brief facts of the case are that the petitioner was appointed as Secondary Grade Assistant in TELC Sr.Bergandhal Girls Higher Secondary School, Kinathukadavu and he was allotted with Teacher Provident Fund ASTPF Ac.No.322368. Subsequently, through employment exchange seniority,



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the petitioner was appointed by the 2nd respondent as Secondary Grade Teacher and posted in Panchayat Union Elementary School on 19.12.2006. Based on this selection, the petitioner has submitted a resignation letter to the earlier management school on 15.12.2006 anticipating the appointment order. The contention of the petitioner is that the petitioner continued in the earlier management school until 19.12.2006 and he has applied Casual Leave on 18.12.2006 and 19.12.2006. The earlier management, namely Chairman Education Board, TELC has passed the proceedings, dated 14.12.2006, it was stated as if the petitioner's application for resignation was accepted w.e.f. 15.12.2006. The contention of the petitioner is that he sent a specific letter, dated 19.12.2006 resigning the post and joined the subsequent post on 20.12.2006. In the service register of the petitioner, there was an entry made to the effect that he was allowed to resign from service w.e.f. 15.12.2006 and the same was also approved by the District Educational Officer, Pollachi. Since this entry is affecting the petitioner's pensionary benefits, the petitioner persistently represented before the management school and a proceeding was issued by the Chairman, Secondary Educational Board, TELC in Cr.No.64/2014, dated 27.06.2014 to the effect that the petitioner's application for resignation was accepted with effect from 19.12.2006 and the said information was also



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reported to the department. Based on this, an enquiry was conducted by District Educational Officer, Pollachi and by his proceedings, dated 25.11.2014 the petitioner was directed to appear for enquiry. The enquiry report stated that the petitioner has submitted two resignation letters, namely 15.12.2006 and 19.12.2006 and instead of considering the resignation letter, dated 19.12.2006, the school has considered the previous request letter dated 15.12.2006 and entered in the service register. Accordingly, a correction was also made in the service register to the effect that the petitioner has resigned his service on 19.12.2006. In spite of the such correction, the petitioner was not granted the old pension scheme. Hence, the petitioner submitted a request to the Commissioner, Government Information Collection Center, Chennai to assign account number for the deposit of provident fund. The Commissioner, vide proceedings, dated 01.04.2015 to the 1st respondent, has recommended the petitioner's case. In turn, the 1st respondent vide, proceedings, dated 23.04.2015 directed the 2nd respondent to make proposal along with his recommendation. The 3rd respondent vide, proceedings, dated 12.06.2015 sought permission to use the old provident fund account. In the meanwhile, the 2nd respondent vide, proceedings, dated 19.06.2016 stated that the petitioner's resignation was accepted on 15.12.2006 and for the remaining period of 16 days, the school



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remitted the salary payable to the petitioner to the Treasury and hence, there is a break in service for 4 days between 16.12.2006 and 19.12.2006. Hence, the petitioner's claim cannot be allowed. Therefore, the respondents have considered the 4 days as break in service and declined to grant the old pension scheme to the petitioner. Aggrieved over the same, the present writ petition has been filed.

3. The respondents have filed a counter stating that the petitioner has submitted 2 resignation letters and this was evident from the enquiry of the District Educational Elementary Officer, Pollachi. Moreover, in the Master's Attendance Register, there was corrections and over writing for the two days that is for 18.12.2006 and 19.12.2006. For 16.12.2006 and 17.12.2006, it is Saturday and Sunday. Therefore, the said dates were considered as holidays. Moreover, the school management has paid salary till 15.12.2006 for 15 days. The excess salary claimed from 16.12.2006 to 31.12.2006 for 16 days was remitted at the Government Treasury. The petitioner was not paid salary for the said 4 days that is from 16.12.2006 to 19.12.2006. Therefore, the same cannot be considered as a working date for the petitioner's service register. Hence, the



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respondents submitted to reject the claim of the petitioner and dismiss the writ petition.

4. Heard Mr.B.Saravanan, learned senior counsel for the petitioner and Mr.S.Kameswaran, learned Government Advocate for the respondents and perused the records.

5. The claim of the petitioner is that the said break in service ought to be regularized. The alternative prayer is such break in service has never occurred at all. The petitioner was serving in the said place until 19.12.2006 and he joined the subsequent service on 20.12.2006. Admittedly 16.12.2006 and 17.12.2006 falls on Saturday and Sunday, which being holiday, the same cannot be taken as a break in service. Now, the question arises only for 18.12.2006 and 19.12.2006.

6. The contention of the petitioner is that she has served in the school until 19.12.2006. However, the school has not considered the same and it had



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taken inconsistency stand. On one hand in the Master's Attendance Register, they have granted attendance to the petitioner by over writing. On the other hand, the management has remitted the salary from 16th onwards. The official respondents have taken a stand since the school has remitted the balance salary, the said period ought to be taken as if the petitioner has not served. Hence, calculated the said 2 days as a break in service period. The remittance of salary back to the authorities for the period from 16.12.2006 to 19.12.2006, has created confusion. According to the petitioner, the petitioner has served for the said 2 days, but the petitioner has also availed casual leave for the said 2 days. Based on the casual leave, there was over writing in the Master's Attendance Register. Therefore, this Court is of the considered opinion that the said two days cannot be taken as break in service. Even if it is considered as break in service, the petitioner is entitled to condone the break period from 16.12.2006 to 19.12.2006. Therefore, the 2nd respondent is directed to condone the said period from 16.12.2006 to 19.12.2006 as stated in Rule 24 of the Pension Rules. The petitioner is entitled to be considered under the old pension scheme. The original allotment shall be granted to the petitioner under ASTPF Ac.No. 322368. The 2nd respondent is directed to pass an order to keep the petitioner under ASTPF Ac.No.322368 account. Whatever that has been deducted under



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the CPS scheme, may be remitted back to the petitioner. The said account in ASTPF Ac.No.322368 shall be regularized within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. For the above said reasons, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

31.01.2023

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

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To

- 1.The Director of Elementary Education,
Chennai – 600 006.
- 2.The District Elementary Educational Officer,
Dindigul District,
Dindigul.



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3.The Additional Assistant Elementary
Educational Officer,
Reddiyarchatiram,
Dindigul District.

S.SRIMATHY, J.

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