



W.P.(MD) No.18308 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 05.09.2023

ORDERS PRONOUNCED ON : 10.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.18308 of 2016

V.Shanmugasamy

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.The Accountant General,
261, Anna Salai,
Chennai-600 018.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records passed by the first respondent herein in Letter No.28589/Na. Va.2(1)/2014-1 dated 08.06.2015 and the consequential letter No.23726/Tho. Ka.2(2)/2015-2 dated 25.05.2016 and quash the same and consequently direct the first respondent herein to allow the pensionary benefits to the petitioner herein.



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For Petitioner : Ms.M.Padmavathy
For R1 : Mr.V.Nirmal Kumar
Government Advocate
For R2 : Mr.P.Gunasekaran
Standing Counsel

ORDER

Heard Ms.M.Padmavathy, learned counsel for the petitioner, Mr.V.Nirmal Kumar, learned Government Advocate appearing for the 1st respondent and Mr.P.Gunasekaran, learned Standing Counsel appearing for the 2nd respondent.

2. The case of the petitioner is that he joined the services as Junior Grade Teacher in Shanmuga Aided Primary School, Vela Village, Thiruppullani Panchayat Union, Ramanathapuram on 01.07.1957 and was continuously serving in the said school on duty till 31.07.1977. He was not able to attend duty from 01.08.1977 to 10.09.1977. He was therefore, relieved from service by the Correspondent of the said school on 11.09.1977, which had also been certified by the Headmaster of the school.



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3. He would submit that though he was relieved from duty as early as on 11.09.1977, till date the petitioner was not disbursed with any pensionary benefits in accordance with the Government Orders, inspite of repeated requests made by the petitioner. Therefore, the petitioner gave a petition on the Grievance Day on 17.07.2000 to the District Collector, Ramanathapuram. Considering the same, the District Educational Officer, Ramanathapuram, directed the District Elementary Educational Officer, Ramanathapuram to take necessary action on the request made by the petitioner by proceedings dated 28.07.2000. The District Elementary Educational Officer, Ramanathapuram *vide* his communication dated 25.08.2000, had stated that the petitioner's pensionary proposal had not been forwarded through proper channel and directed the petitioner to submit his Service Register to the Additional Elementary Educational Officer, Thiruppullani. Since the Service Records will always be only under the custody of the Management, the petitioner submitted to the educational authorities stating that his Service Records are not available within him and requested the authorities to process his proposal pensionary benefits. However, no further progress was made on the petitioner's request.



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Therefore, the petitioner preferred an appeal to the 1st respondent to disburse his pensionary benefits. Since no orders were passed on the said appeal, the petitioner filed W.P.(MD) No.11266 of 2014. The said writ petition was disposed of by this Court by order dated 23.07.2014 directing the 1st respondent to consider and dispose of the petitioner's appeal petition dated 20.05.2014 within a period of six months from the date of receipt of a copy of the order on the basis of the available document, in case the service register is still not available.

4. The Additional Assistant Elementary Educational Officer, Ramanathapuram *vide* his proceedings dated 06.12.2014, communicated to the District Elementary Educational Officer, Ramanathapuram stating that he had received details from the Correspondent, Shanmuga Aided Primary School that the petitioner had worked as Junior Grade Teacher from 01.07.1957 to 11.09.1977 and that the documents pertaining to the same are not available in the school due to the fire accident that occurred in the year 1982. He had also added that the attendance register of the Teachers for the month of August, 1977 is available in the school and that he had sent three



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copies of pensionary proposals with necessary documents to get consent from the 1st respondent.

5. The District Elementary Educational Officer, Ramanathapuram, by his proceedings dated 09.12.2014, had forwarded the proceedings of the Additional Assistant Elementary Educational Officer, Ramanathapuram dated 06.12.2014 to the District Elementary Educational Officer, Chennai with the pensionary proposals to comply with the order of this Court. But to the petitioner's dismay, the 1st respondent had rejected his request for pension *vide* his letter dated 08.06.2015 in Letter No.28589/Na. Va. 2(1)/2014-1 stating that the order obtained by the petitioner from the High Court is not applicable to him and further stated that as the petitioner had resigned from service as per Rule 12(a) of the Tamil Nadu Non-Governmental Teachers Pension Rules, 1958 (hereinafter referred to as “the 1958 Rules”) the petitioner is not entitled for pension.

6. Aggrieved by the letter of the 1st respondent dated 08.06.2015, the petitioner submitted a review petition dated 14.07.2015. However, the



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1st respondent rejected the same by his consequential letter dated 25.05.2016 in Letter No.23726/Tho. Ka.2(2)/2015-2. Therefore, the petitioner is before this Court by way of this writ petition.

7. Learned counsel for the petitioner contends that the 1st respondent had failed to see that as per Rule 12(a) of the 1958 Rules, the incumbent is entitled for pension, if he had completed ten years of service prior to discharge or retirement. Hence, the petitioner is entitled for pensionary benefits. The 1st respondent did not consider that the Service Records of two other colleagues of the petitioner could not be maintained along with the Service Record of the petitioner.

8. Learned counsel further contends that the 1st respondent has admitted that the pensionary proposals of the petitioner had been forwarded to the Inspector of Schools with the endorsement of the Correspondent of the School for a service period of 20 years and 10 days. In spite of the same, the 1st respondent had denied the petitioner's request for disbursement of pensionary benefits. Further, when there is a specific direction from this



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Court to consider the petitioner's request for pension with the available documents, the 1st respondent ought not to have denied the petitioner's pension on the ground that the petitioner's Service Records are not available and prays for allowing the writ petition.

9. A counter affidavit has been filed on behalf of the 1st respondent.

10. It is averred in the said counter affidavit that the petitioner has served as Junior Grade Teacher at Shanmuga Aided Primary School, Vela Village, Thiruppullani from 01.07.1957 to 11.09.1977. He was relieved from service on 01.08.1977 due to his health reasons. The District Elementary Educational Officer, Ramanathapuram had instructed the Assistant Elementary Educational Officer, Thiruppullani in his proceedings in ROC.No.489/A5/2014, dated 12.02.2014 to send pension proposals of the petitioner as per rules. The Secretary of the school has informed that the records relating to the service of the petitioner were destroyed during the communal clash that took place in the year 1982 and therefore, the school is



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not in a position to send the pension proposal. The petitioner submitted representation to the Secretary to the Government, School Education Department, Chennai requesting to consider his claim for pension and to issue direction to the then District Elementary Educational Officer, Ramanathapuram to arrange to send the pension proposals to the office of the Accountant General, Chennai. The petitioner had also filed W.P.(MD) No.11266 of 2014 before this Court and the same was disposed of by order of this Court dated 23.07.2014 with a direction to the 1st respondent to dispose of the appeal dated 20.05.2014 preferred by the petitioner on the basis of the available records.

11. It is further averred in the counter affidavit that after getting information from the School Management, particulars were forwarded by the District Elementary Educational Officer to the Director of Elementary Education, Chennai, who has forwarded his proposal in the month of January, 2014 *vide* proceedings in R.C.No.26418/H2/2014, to the Government for considering the representation as per the directions of this Court. The representation of the petitioner was examined in detail by the



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Government based on the proposal of the Director of Elementary Education and the claim of the petitioner was rejected by the impugned order stating that the petitioner is not entitled for pension as per Rule 12(a) of the 1958 Rules, after the cut of date prescribed by the Government vide G.O.(Ms) No.37, Education, Science and Technology Department, dated 05.10.1983.

12. It is further averred that aggrieved by the rejection of his request, the petitioner submitted a review petition dated 14.07.2015, which was again examined by the Government. The petitioner has not produced the relevant documents/records to substantiate that he has resigned from service in 1977 and was relieved by the competent authority and as this Court has directed the 1st respondent to consider the representation of the petitioner based on the available records in the absence of Service Register, an enquiry was conducted by the Assistant Elementary Educational Officer concerned and it was found that two other colleagues in the school in which the petitioner was serving have retired from service and are receiving pension. So there is no possibility for the Service Register of the petitioner alone being burnt/destroyed in the communal clash/fire accident in 1982.



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13. It is further averred that even after the long unauthorized absence, the petitioner has not produced any evidence regarding his resignation from service. Even if it is assumed that he has resigned from service on 11.09.1977, as per G.O.(Ms) No.37, Education, Science and Technology Department, dated 05.10.1983 in respect of teaching staff of the aided school, those who have resigned before the cut of date, i.e., 01.04.1965 are entitled for pension with effect from 01.03.1968. Since the petitioner has stated that he resigned on 11.09.1977, i.e., after the crucial date for pension as per the above Government Order, the review petition of the petitioner was rejected by the Government by order dated 25.05.2016.

14. Learned Government Advocate appearing for the 1st respondent contends that pursuant to the orders passed by this Court, explanation was called for from the School Management for non-furnishing of Service Register of the petitioner. The School Management has stated that the petitioner himself had relieved from service on 11.09.1977 and no details were available with them relating to resignation of the petitioner. In



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the letter dated 04.08.2000 written by the Correspondent of the said School addressed to the Additional Assistant Elementary Educational Officer, it is clearly stated that the petitioner has joined the service on 01.07.1957 and relieved himself from the service on account of his personal reasons from the school on 11.09.1977 and he being the husband of the Correspondent of the school, he had taken all documents regarding his service register from the school without any permission which was not even denied by him till date.

15. Learned Government Advocate further contends that entitlement of pension to an employee depends on the nature of service, period of service, continuity of service and whether he forfeited his service by resignation or not etc., all of which could be inferred only from the Service Records, which is not available in the case of the petitioner. Further, the claim of the petitioner is hit by delay and laches and the writ petition is liable to be dismissed.



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16. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the material available on record.

17. As per the contention of the petitioner, he served as Junior Grade Teacher in Shanmuga Aided Primary School, Thiruppullani from 01.07.1957 to 31.07.1977. Due to his health problems, he could not attend duty from 01.08.1977 to 10.09.1977. He tendered resignation and the Correspondent of the School relieved the petitioner from service on 11.09.1977. On perusal of the letter of the Correspondent of the School dated 04.08.2000, it is clear that these facts are established. As the petitioner was not granted pensionary benefits, he represented the respondents several times and thereafter, he filed an appeal dated 20.05.2014 before the 1st respondent herein. Aggrieved by the inaction of the 1st respondent in disposing the appeal, the petitioner filed W.P.(MD) No. 11266 of 2015 before this Court and the same was disposed of by order dated 23.07.2014 with a direction to the 1st respondent to consider and



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dispose of the appeal dated 20.05.2014 on the basis of available documents, in case Service Register is still not available within a period of six months. Consequently, the 1st respondent rejected the request of the petitioner *vide* letter dated 08.06.2015. The petitioner filed a review petition dated 14.07.2015 before the 1st respondent. The same was rejected by letter dated 25.05.2016. Aggrieved by the same, the present writ petition is filed.

18. It is the contention of the petitioner that the Inspector of Schools with the endorsement of the Correspondent of the School forwarded pensionary proposals of the petitioner to the competent authorities on consideration of the service period of 20 years and 10 days. In spite of the same, the petitioner's request for pensionary benefits was rejected by the 1st respondent.

19. On careful consideration of the entire material placed before this Court by the petitioner and the respondents, it is clear that Service Register of the petitioner is not available. The reason for non-availability of Service Register is not clear. On one hand, it is stated by the School that



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Service Register of the petitioner is not available in the School due to the fire accident that occurred in the year 1982. On the other hand, it is stated that the petitioner has taken away his Service Register, as the Correspondent of the School is his wife. However, as per the direction of this Court in W.P. (MD) No.11266 of 2014, the 1st respondent ought to have consider the case of the petitioner on the basis of the available documents, as the Service Register of the petitioner is not available. There is no dispute about the service period of 20 years and 10 days rendered by the petitioner in the School. As per Rule 12(b) of the 1958 Rules, Teachers are eligible for pension, if they have rendered a total qualifying service of 10 years or more.

20. Admittedly, there is no clarity whether the petitioner tendered resignation or he voluntarily relieved from service or by accepting the resignation tendered by the petitioner, the Management had relieved the petitioner. However, now the petitioner is aged 86 years. He relieved from service 46 years back, after rendering service of 20 years and 10 days. Under these circumstances, it has to be construed that the petitioner has voluntarily resigned the post and the Management relieved him from service



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with effect from 11.09.1977. As such, the issue as to whether he is eligible for pension is no more *res integra*, in view of the various judgments of this Court in W.A.(MD) No.333 of 2011, dated 26.04.2011, judgment dated 16.07.2015 in W.A.(MD) No.311 of 2015 and judgment dated 23.07.2015 in W.A.No.831 of 2015. After considering various judgments of the Hon'ble Apex Court and orders of this Court, this Court directed the respondents therein to consider the claim of the petitioners therein for pensionary benefits.

21. While considering the aspect of delay and laches, a Division Bench of this Court held at Paragraph No.39 in W.A.(MD) No.311 of 2015 as extracted hereinunder:

“39. Even earlier, objections raised on the delay and laches, have been impliedly overruled. Though directions were granted, notwithstanding the delay, again, the said objection has been raised in the impugned letter. Delay cannot be a ground for rejecting the request for pension, for the reason that denial of pension is a continuing wrong committed against the



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respondent. Claim for pension does not affect the rights of third parties. As the right subsists, remedy can be sought for. Non submission of medical certificate is only a curable defect within the period provided for and it cannot be put against the respondent.”

22. On perusal of the above judgments, it appears, those judgments were rendered in cases of similar set of facts.

23. It is settled law that when a particular set of employees are given or granted relief by Court, other similar situated persons should be treated alike by extending the benefit, failing which it amounts to discrimination and it would be in violation of Article 14 of the Constitution of India.

24. This Court has gone through the reliance placed by the learned Government Advocate in the case of ***A.I.Agnel Ilangovan v. Government of Tamil Nadu*** reported in ***(2016) 3 MLJ 839***. In our view, it is not applicable to the present case, as the facts and circumstances are different.



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25. For the above said reasons and following the judgment of this Court in W.A.(MD) No.333 of 2011, dated 26.04.2011, judgment dated 16.07.2015 in W.A.(MD) No.311 of 2015 and judgment dated 23.07.2015 in W.A.(MD) No.831 of 2015, in the considered opinion of this Court, the order impugned in this writ petition is liable to be set aside with certain directions to the respondents.

26. Accordingly, this Writ Petition is allowed with the following directions:

- i. The impugned orders passed by the first respondent in Letter No. 28589/Na. Va.2(1)/2014-1, dated 08.06.2015 and the consequential Letter No.23726/Tho. Ka.2(2)/2015-2, dated 25.05.2016 are hereby set aside;
- ii. The respondents are directed to consider the claim of the petitioner for granting pensionary benefits in the light of the judgments of the Division Bench of this Court in W.A.(MD) No.333 of 2011, W.A.



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(MD) No.311 of 2015 and W.A.(MD) No.831 of 2015 within a period of six weeks from the date of receipt of a copy of this order.

27. There shall be no order as to costs.

10.10.2023

Note: Issue order copy by 12.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
- 2.The Accountant General,
261, Anna Salai,
Chennai-600 018.



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BATTU DEVANAND, J.

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Pre-delivery Order made in
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10.10.2023