



W.P.(MD) No.22243 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.08.2023

ORDERS PRONOUNCED ON : 20.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.22243 of 2016

Usha Rani

... Petitioner

Vs.

1.The Director of School Education,
Directorate of School Education,
Chennai.

2.The Joint Director of School Education,
Directorate of School Education,
Chennai.

3.The Chief Education Officer,
Office of Chief Education Officer,
Collectorate Complex, Virudhunagar.

... 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 in Na.Ka.No.1130/A2/2015, on the file of the 3rd respondent and quash the same as illegal and to direct the respondents to take into account the period



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of service rendered by the petitioner in the Matric Secondary School, Sivakasi from 01.06.1982 to 12.12.1988 along with the period of service rendered under the respondents for calculating and arriving at quantum of superannuation pension in the light of the provision of Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service and Rule 27(1) of the Tamil Nadu Pension Rules, 1978 and pay the superannuation pension within the time span as fixed by this Court.

For Petitioner : Mr.S.Ramesh
For Respondents : Mr.V.Nirmal Kumar
Government Advocate

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to quash the impugned order passed by the 3rd respondent in Na.Ka.No.1130/A2/2015, dated Nil.10.2015 and for a consequential direction to the respondents to take into account the period of service rendered by the petitioner in the V.S.K.D. Matric Higher Secondary School, Sivakasi from 01.06.1982 to 12.12.1988 along with the period of service rendered under the respondents for calculating and arriving at



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quantum of superannuation pension in the light of the provision of Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service and Rule 27(1) of the Tamil Nadu Pension Rules, 1978 and pay the superannuation pension within the time span as fixed by this Court.

2. Learned counsel for the petitioner submits that the petitioner is having the educational qualification of M.A., B.Ed. She was appointed as Post Graduate Teacher on 01.06.1982 in V.S.K.D. Matric Higher Secondary School, Sivakasi, which is an un-aided School, but recognised by the Director of School Education. After completion of the period of 6 years and 6 months service in the aforesaid School, the petitioner was recruited directly as a Post Graduate Teacher through Tamil Nadu Teachers Recruitment Board. The petitioner was recruited in the post of Teachers in Language, which comes under Class II Category as per Special Rules for the Tamil Nadu Higher Secondary Educational Service. Appointment order was issued by the 2nd respondent on 15.12.1988. Initially, the petitioner was working in the Municipality Higher Secondary School, Cuddalore. She was transferred to R.K.Government Higher Secondary School, P.Ramachandara



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Puram, Virudhunagar District. Thereafter, the petitioner was promoted as Headmistress and posted in the Government Higher Secondary School, Krishnankovil, Sirvilliputtur Taluk, Virudhunagar District. The petitioner retired from service on 30.06.2013 and she continued to be in service till 31.05.2014, since her service was extended.

3. Learned counsel for the petitioner submits that as per the pension scheme, the petitioner is entitled for superannuation pension after her retirement. The total period of service rendered by the petitioner under the respondents is 24 years, 6 months and 17 days. The respondents had calculated the superannuation pension on the aforesaid period alone. However, they ignored the period of the petitioner's service i.e., 6 years, 6 months and 12 days rendered as Post Graduate Teacher in V.S.K.D. Matric Higher Secondary School, Sivakasi. Hence, the petitioner sent a representation dated Nil-12-2014 to the 3rd respondent to include the period of her service rendered in V.S.K.D. Matric Higher Secondary School, Sivakasi from 01.06.1982 to 12.12.1988 along with the period of service rendered in the Government post for the calculation of pension. On



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11.02.2015, the petitioner sent another representation to the 3rd respondent along with relevant Government Order and Rules for the calculation of pension. The same was rejected by the third respondent on 05.10.2015.

4. Learned counsel for the petitioner submits that the period of service in any school recognised by the Director of School Education has to be taken into consideration along with the period of service in the Government post for the purpose of superannuation pension in the Government Service as per Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service.

5. Learned counsel for the petitioner submits that the 3rd respondent rejected the representation of the petitioner as per G.O.(Ms)No. 314, dated 12.11.1999. According to the learned counsel for the petitioner, the said Government Order was passed without considering the Special Rules for the Tamil Nadu Higher Secondary Educational Service. He further submits that if any ambiguity arises between the Rules and Government Order, the Rules will prevail. In support of his contention, learned counsel



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for the petitioner relied on a judgment of this Court in W.A.No. 1267 of 2014, dated 05.07.2018 in the case of ***The Secretary to Government, Rep. by School Education Department, Chennai and others Vs. S.Veerabadran.***

As per the Rules, the respondents ought to have calculated the superannuation pension from 01.06.1982 till the date of retirement of the petitioner.

6. Learned counsel for the petitioner further submits that the guidelines for calculation of superannuation pension are given under Rule 27(1) of the Tamil Nadu Pension Rules, 1978. As per guideline (a), one-fourth of the length of service rendered by the petitioner in V.S.K.D. Matric Higher Secondary School is 19 months and 18 days. As per guideline (b), the age at the time of recruitment was 33 years, 6 months and 12 days and hence, the period exceeds 30 years is 3 years, 6 months and 12 days. As per guideline (c), the Service Period is Five years. After applying these three guidelines, the lesser period shall be taken into account for the purpose of calculation of superannuation pension. The lesser period is 19 months and 18 days.



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7. Learned counsel for the petitioner submits that the respondents calculated superannuation pension of the petitioner as the period of 24 years, 6 months and 17 days without applying Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service and Rule 27(1) of the Tamil Nadu Pension Rules. As per provisions, the respondents ought to have calculated superannuation pension for the period of 26 years, 4 months and 5 days (i.e., 24 years, 6 months and 17 days + 19 months and 18 days) instead of 24 years, 6 months and 17 days. Further, the respondents have not considered G.O.Ms.No.37, dated 05.01.1983 for pension scheme of non-government education institutions. As per the said Government Order, the recognised un-aided school can be considered as aided for retirement benefits. Without considering the aforesaid rule, the 3rd respondent passed the impugned order, which is perverse. Learned counsel for the petitioner would submit that in any event, the impugned order is liable to be set aside.

8. Learned counsel for the petitioner has placed reliance on ***Ashok Ram Parhad and others Vs. State of Maharashtra and others⁽ⁱ⁾***, wherein

(i) 2023 SCC OnLine SC 265



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the Hon'ble Apex Court held that the Government resolutions cannot override statutory rules, and the resolutions neither speaking about promotion to the post of Divisional Forest Officer, nor about seniority conclusively, the Proviso would operate with full force.

9. A counter affidavit has been filed on behalf of the respondents.

10. Learned Government Advocate appearing for the respondents submits that on superannuation of the petitioner, the retirement benefits were settled by taking her service rendered in the Government School from 15.12.1988 to 30.06.2013 i.e. 24 years, 6 months and 17 days. After receipt of the entire terminal benefits, she gave a representation dated Nil-12-2014 seeking to include the period of 6 years, 6 months and 12 days (from 01.06.1982 to 12.12.1988) rendered by her as Post Graduate Teacher in V.S.K.D. Matric Higher Secondary School, Sivakasi for the purpose of calculating revised pension.



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11. Learned Government Advocate contends that as per G.O. (Ms).No.314, School Education (D2) Department, dated 12.12.1999, cut-off date has been fixed and the period of employment for the persons employed in the Matriculation School prior to the cut-off date shall be taken into account only for the purpose of promotion and the said period will not be considered for calculating the pension benefits and in view of the said Government Order only, the 3rd respondent has rightly rejected the petitioner's request. He would further submit that even if the principal laid down in G.O.Ms.No.118, dated 14.02.1996 is applied in the case of petitioner, she is not entitled for any benefits as claimed by her. As per G.O.Ms.No.118, dated 14.02.1996, the service under non-pensionable establishment should have been on time scale of pay. But the service rendered by the petitioner in the said private school is not on time scale. Another condition is that the service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break. The petitioner categorically admitted that she had resigned from the post of Post Graduate Teacher and joined in the



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Government post. The petitioner had not been absorbed in the pensionable service directly. Therefore, the claim of the petitioner to count her service rendered at V.S.K.D. Matric Higher Secondary School, Sivakasi for the purpose of calculating pensionable service cannot be accepted. Therefore, the question of applying Rule 27(1) of the Tamil Nadu Pension Rules, 1978 itself does not arise.

12. He would further submit that it is settled principal law that if any teacher or employee resigns from his earlier service in order to join in other service, he will automatically loose all service benefits in the post resigned by him.

13. Learned Government Advocate further contends that Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service issued *vide* G.O.Ms.No.720, Education, dated 28.04.1981 is not applicable to the present case, due to the reason that the school, where the petitioner worked earlier, was not recognised by the Director of School Education.



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14. Having heard the submissions of the respective counsels and upon perusal of the material available on record, there is no dispute with regard to the admitted facts in this case.

15. The only issue to be considered in this Writ Petition is whether the petitioner is entitled to take into account the period of service rendered by her in V.S.K.D. Matric Higher Secondary School, Sivakasi from 01.06.1982 to 12.12.1988 along with the period of service rendered under the respondents for calculation of pension or Not?

16. Initially, the petitioner worked as Post Graduate Teacher in V.S.K.D. Matric Higher Secondary School, Sivakasi from 01.06.1982 to 12.12.1988. After completion of the period of 6 years and 6 months in the said school, she was directly recruited as Post Graduate Teacher through Tamil Nadu Recruitment Board on 15.12.1998 and retired from service on 30.06.2013. The respondents, calculating the service rendered by the petitioner under them, calculated the superannuation pension. The request



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of the petitioner is to count the service of 6 years, 6 six months and 12 days rendered in V.S.K.D. Matric Higher Secondary School, Sivakasi also for calculation of the pension on attaining the superannuation.

17. The stand of the respondents to reject the request of the petitioner by the impugned order is that as per G.O.(Ms).No.314, School Education (D2) Department, dated 12.12.1999, the petitioner is not entitled for counting the service rendered by her in V.S.K.D. Matric Higher Secondary School, Sivakasi.

18. The contention of the petitioner is that as per Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service, issued *vide* G.O.Ms.No.720, Education, dated 28.04.1981, the petitioner is entitled to count the period of services rendered by her in V.S.K.D Matric Higher Secondary School, Sivakasi for counting of pension, as the said school is recognised by the Director of School Education.



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19. For proper adjudication of the case, it is appropriate to extract Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service hereinunder:

“10. Pension.—Every Person appointed to Classes II and III of the Service by direct recruitment from among the teachers employed in any school recognised by the Director of the School Education shall count, for the purpose of superannuation pension in Government Service the period of service counting for pension in such school recognised by the Director of School Education.”

20. Perusal of the above extracted Rule would reveal that the period of service in any school recognised by the Director of School Education shall be considered for the calculation of superannuation pension.

21. The respondents stated that V.S.K.D. Matric Higher Secondary School is not recognised by the Director of School Education. But the petitioner's filed proceedings dated 13.01.1984 of the Director of School



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Education, Madras as additional typed set of papers would prove that V.S.K.D. Matric Higher Secondary School, Sivakasi is recognised by the Director of School Education, Madras on 13.01.1984. It is placed on record. On perusal of the same, it is clear that there is no substance in the contention of the learned Government Advocate for the respondents that the school in which the petitioner earlier worked for 6 years, 6 months and 12 days is not recognised by the Director of School Education and the petitioner proved by placing the proceedings of the Director of School Education, dated 13.01.1984 to the effect that the said school is recognised by the Director of School Education and as such, Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service is squarely applicable to the petitioner.

22. As rightly contended by the learned counsel for the petitioner that if any ambiguity arise between the Rules and the Government Order, the Rules will prevail.



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23. Learned counsel for the petitioner, to substantiate his contention, placed reliance on the judgment in *Ashok Ram Parhad* (*cited supra*), wherein the Hon'ble Apex Court held that the Government Resolution cannot override statutory rules. As such, the respondents ought to have considered the service rendered by the petitioner in the school recognised by the Director of School Education for counting pensionary benefits of the petitioner. It appears, the respondents, without looking into Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service, passed the impugned order, which in the considered opinion of this Court, is illegal, unjust and against to Rule 10 of Special Rules for the Tamil Nadu Higher Secondary Educational Service and as such, it is liable to be set aside.

24. Learned Government Advocate appearing for the respondents has placed reliance on a judgment of this Court in W.A.No.1267 of 2014, dated 05.07.2018. This Court carefully considered the said judgment. In our opinion, the said judgment is not applicable to the facts and circumstances of the present case.



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25. For the above stated reasons, this Writ Petition is allowed with the following directions:

- i. The impugned order in Na.Ka.No.1130/A2/2015 dated Nil.10.2015 is set aside;
- ii. The respondents are directed to take into account the period of service rendered by the petitioner in V.S.K.D. Matric Higher Secondary School, Sivakasi from 01.06.1982 to 12.12.1988 along with the period of service rendered under the respondents for calculating the superannuation pension to the petitioner; and
- iii. The respondents are directed to pay the superannuation pension to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

26. There shall be no order as to costs.

20.10.2023

Note: Issue order copy by 25.10.2023

NCC : Yes/No

Index : Yes/No

CM/abr



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To

1.The Director of School Education,
Directorate of School Education,
Chennai.

2. The Joint Director of School Education,
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BATTU DEVANAND, J.

CM/abr

Pre-delivery Order made in
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20.10.2023