



WEB COPY

W.P.No.14900 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.02.2024
Pronounced on	18.03.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.14900 of 2020
and
WMP.Nos.18494 & 18495 of 2020

- 1.N.Gopal[deceased]
- 2.S.Karuppiah [deceased]
- 3.N.Palani
- 4.T.Girija Sekaran [deceased]
- 5.C.Aruna
- 6.M.Palanisamy
- 7.D.Emmanuel Selvakumar
- 8.T.Nalini [deceased]
- 9.Nagarathinam
- 10.Kartheeswari Karuppaih
- 11.P.Rupavathi



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12.K.Shankara Mennakshi

13.P.Yaalini

[P10 to P13 are substituted as LR's of P2, as per order dated 20.12.2023]

14.K.T.Balaji Moorthy

15.Logalakshmi

[P14 to P15 are substituted as LR's of P8, as per order dated 20.12.2023]

16.Raj Ganesh

[P16 is substituted as LR's of P4, as per order dated 20.12.2023]

17.G.Chandra

18.D.Sasikala

19.S.Devi

20.G.Balaji

21.L.Chitra

[P17 to P21 are substituted as LR's of P1, as per order dated 20.12.2023]

... Petitioners

Vs.

1. The Principal Secretary to
Government of Tamil Nadu
School Education Department,
Secretariat, Chennai 600 009.

2. The Director of School Education,
Chennai 600 006.

3. The State Secretary,



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Bharat Scouts and Guides of Tamil Nadu
Kamarajar Salai,
Chennai 600 005.

...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus to call for the records of the 2nd respondent in its Na.Ka. No.080477/L/ES/2019 dated 28.08.2020 and quash the same and consequently direct the respondents to sanction pension to the petitioners on par with Government employees with effect from their respective dates of employment and pay the same with all arrears and other attendant benefits including dearness relief and continue to pay.

For Petitioner : Mr.V.Vijayashankar

For Respondents : Mr.M.Rajendran,
Additional Government pleader.

ORDER

Heard, Mr. V.Vijayashankar, learned Counsel for the petitioner and Mr.M.Rajendran, learned Additional Government pleader for the respondents and perused the materials available on records.

2. A Writ of Certiorarified Mandamus has been filed by



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challenging the impugned order dated 28.08.2020 of the 2nd respondent and consequently to direct the respondents to sanction pension to the petitioners on par with Government employees with effect from their respective dates of employment and pay the same with all arrears and other attendant benefits including dearness relief.

3. All the petitioners are employees of the Bharat Scouts and Guides, which is an organ of the Department of Education, Government of Tamil Nadu. Since petitioners 1, 2, 4 and 8 died during the pendency of the proceedings, their legal heirs were impleaded as petitioners 10 to 21. The petitioners, excluding the legal heirs, were recruited through employment exchange to work for Bharat Scouts and Guides. They have been given with the pay and allowances on par with government employees. Their service conditions were also similar to those of government servants in respect to the grant of other allowances, festival advance, selection grade, special grade of pay, etc.

4. A government order was issued in G.O.Ms.No.544, Education



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(W1) Department, dated 16.04.2019, issued to constitute a separate fund for meeting the pensionary benefits for the employees of Bharat Scouts and Guides, as there were only 18 to 20 regular employees. A fund of Rs.3,00,000/- was given as a corpus fund. Later, the corpus fund was raised to Rs.15,00,000/- through a government order in G.O.Ms.155, dated 25.05.1999. In the year 2014, the said corpus fund was raised further to Rs.3,00,00,000/- through a government order in G.O.Ms.No.38 dated 27.02.2015. Even though the petitioners were granted earned leave encashment, gratuity and other commutation of pension, they have not been paid regular pension with reference to their salary; hence, the petitioners made representations and then filed a writ petition in W.P.No.34518 of 2019.

5. In pursuant to the direction given in the above writ petition, the 2nd respondent has passed an order sanctioning a meager amount of Rs. 1000/- and Rs.1500/- which is under challenge now.



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6. It is claimed by the petitioners [ex-employees] that they worked under the direct control and supervision of the Education Department of the government. Hence, the petitioners are entitled to a regular pension. Even though the government has not regularized their services in view of their continuous service for more than several years, their services have not been regularized for all purposes.

7. The service conditions for the petitioners were also similar to those of government servants. Hence, the respondents are bound to sanction pensions to the petitioners on par with other government employees, and there shall be no arbitrariness in the sanction of a monthly pension commensurate with the salary of the petitioner; no appointments were made after 1989, and hence the petitioners are the last batch of available retired employees. Since sufficient funds are available to generate reasonable income for meeting the pensionary liabilities of the petitioners, there would not be any financial burden on the government.



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8. A counter argument- of the government respondents is that the Bharat Scouts and Guides of Tamil Nadu is a registered organization and that it is only a non-governmental organization; the office bearers of the association are elected through election conducted by the Tamil Nadu Bharat Scouts and Guides once in every 5 years; for the retired employees pensions were sanctioned by the authorities, and they have also received the same, the employees of the non-governmental organization administered by the elected members cannot claim that they should be considered as government servants; The government is not obliged to pay any pension to the petitioners; in pursuant to the directions issued in WP.No.23739/2013, the corpus fund was enhanced by the government from Rs.15,00,000/- to Rs.3,00,00,000/- in the case of the retired employees of the organization. The applicability of the rules for the Tamil Nadu Pension Rules is only to count the qualifying service for the pension, but they are not eligible to get the pension as per the Tamil Nadu Pension Rules.

9. The petitioners who have been working with Bharat Scouts and



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Guides, have not been appointed by the government and hence, they are not the staffs of the government. The Education Department might have been in compelling circumstances to work with Bharat Scouts and Guides in view of the fact that the students were involved in choosing Scouts and Guides as an extracurricular activity. But Bharat Scouts and Guides is a non-governmental organization and it has been managed by its own elected office bearers.

10. It might be true that, as per the decision of the persons in charge of society, the employees of Bharat Scouts and Guides might have been paid with the salary equal to that of government servants. They would have also obtained other benefits similar to the government employees. But still Bharat Scouts and Guides is not an organ of government. Just because there is an interaction with the Government, the petitioners cannot claim that the government is their employer.

11. In the case of other government servants who are eligible for pension, the pension is met by the funds of the government and no corpus is allocated to meet out the said purpose. Since the petitioners are



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not government servants, in pursuant to the directions of this court in WP.No.23739/2013, the corpus fund meant for pension, etc., was increased to Rs. 3,00,00,000/-. The pension commitment is being met only from the income generated from the corpus fund.

12. Initially, when the first government order was passed for creating a separate fund for meeting the retirement benefits of the staff working in Bharat Scouts and Guides, the Director of School Education was given the authority to operate the said funds. He was also given with the authority to sanction the pension and other benefits by following the Tamil Nadu Pension Rules. However, the government has not undertaken to bear the monetary burden for the pension from the government funds. Only an arrangement has been made by allocating certain sum to the corpus funds. Immediately after the corpus fund was raised, the petitioners past arrears of pension were also sanctioned and paid to them.

13. The applicability of pension rules to the petitioners is only in terms of counting the qualifying service meant for getting pension and not for fixing the pension on par with that of government servants.



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WEB COPY 14. The petitioners have misconceived that they were treated as government employees just because there was some interaction with the Education Department. Since the corpus has to be maintained, the responsibility was given to the Directorate of Education Department. Hence, the petitioners cannot construe that they have been treated as government servants. Depending on the financial position of the organization, the petitioners could have got monetary benefits like salary, allowance, etc., more or less similar to the government servants.

15. So far as the terminal benefits are concerned, the government has made it specific by issuing several government orders that the petitioners are entitled to get those benefits only from those funds and not otherwise. Even then, the petitioner attached to the Bharat Scouts and Guides may not be entitled to get the quantum of pension on par with the government servants.

16. According to the submission made by the learned counsel for the petitioners, they have never been absorbed by the government as



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government servants. They have been all along working with the organization, which was managed by its office bearers. However, it is submitted that the corpus fund is lying idle and it can be utilized to the best advantage of the petitioners and like others. If the funds remained unutilized, the request of the petitioners can be considered favorably.

17. In view of the above stated reasons, the respondents 1 to 3 are directed to consider to increase the pension benefits to the extent possible and pass suitable orders within a period of six weeks from the date of receipt of a copy of this order, accordingly.

With these directions, this Writ Petition is **disposed**. No costs. Consequently connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
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Neutral Citation : Yes/No

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R.N.MANJULA, J.

jrs

To

1. The Principal Secretary to
Government of Tamil Nadu
School Education Department,
Secretariat, Chennai 600 009.
2. The Director of School Education,
Chennai 600 006.
3. The State Secretary,
Bharat Scouts and Guides of Tamil Nadu
Kamarajar Salai,
Chennai 600 005.

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