



W.P.No.197 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.197 of 2022 and
WMP.Nos.229 & 230 of 2022

Bro.K.K.Thomas

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep. By its Secretary,
Department of School Education,
Fort St.George,
Chennai 600 009
- 2.The Principal Accountant General (civil audit),
Tamilnadu and Puducherry,
361, Anna Salai,
Teynampet, Chennai 600 018
- 3.The Director of School Education,
College Road, Chennai 600 006
- 4.The Chief Educational Officer,
Salem,
District Collectorate Campus,
Salem 636 001
- 5.The District Educational Officer,
Salem,
District Collectorate Campus,
Salem 636 001
- 6.The Correspondent,
Montford Anglo Indian Higher Secondary School,
Yercaud 636 601
Tamilnadu

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the Inspector of Anglo Indian Schools (now District Educational Officer) in O.Mu.No.1064/Aa/2018 dated 30.05.2018 (as signed), quash the same and further direct the respondents to release the pension for the petitioner for the pensionable service he rendered as Secondary Grade Teacher and BT Assistant Teacher.

For Petitioner : M/s.H.Mary Sowmi Rexi

For Respondents

For R1,3 to 5 : Mrs.S.Mythreye Chandru,
Special Government Pleader

For R2 : Mrs.Hema Murali Krishnan

For R6 : M/s.A.Arul Mary for
M/s.Father Xavier Associates

ORDER

This writ petition has been filed challenging the order dated 30.05.2018 passed by the Inspector of Anglo Indian Schools, now the fifth respondent herein, rejecting the pension proposal sent by the sixth respondent for the petitioner.

2. The petitioner was initially appointed as Secondary Grade



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Teacher with effect from 08.06.1981 in a recognized minority institution.

Thereafter, the petitioner was transferred to various schools and finally he was transferred to the sixth respondent school on 04.06.1993. Thereafter, the petitioner was promoted to the post of BT Assistant in English and he continued till 05.06.1997. On 05.06.1997, he was relieved from service to do religious and social service. Therefore, pension was requested since he put up sixteen years of service. However, the request made by the sixth respondent was rejected by the Inspector of Anglo Indian Schools, now the fifth respondent herein, by an order dated 30.05.2018.

3. The learned counsel for the petitioner would submit that as per Section 43(2) of Tamilnadu Pension Rules, 1978, the qualifying service for pension is only 10 years and as such, the petitioner is entitled for pension.

4. Heard, the learned counsel appearing on either side.

5. Admittedly the petitioner was relieved from the post of BT Assistant on 05.06.1997 from the sixth respondent school. Though the petitioner had put in nearly 16 years of service, he is not eligible for



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pension since the approved period is 20 years. In this regard, the learned counsel for the second respondent relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***C. Jacob Vs. Director of Geology and Mining and another*** reported in ***(2008) 10 SCC 115***, wherein it is held as follows:

Pension for service of less than 20 years

17. In this case, taking advantage of the fact the department did not have any records and by not producing the order terminating his service, the petitioner vaguely alleged that he was 'terminated' from service in the year 1982, without specifying whether it was by way of dismissal, removal or compulsory retirement or otherwise. If his termination was by way of dismissal or removal, he would have forfeited his past service as also his pension and gratuity under the pension Rules. Even if it assumed that he was not dismissed or removed, but was retired from service, the question is whether he is entitled to pension on the basis of 14 years of service.

18. The appellant relied on Rule 43(2) of the Tamil Nadu Pension Rules, 1978 ('TNP Rules' for short) to contend that on completion of 10 years of service, a government servant is entitled to pension. Relevant portion of the said rule is extracted below:



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"43(2) In the case of a government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below namely :"(emphasis supplied)

As similar contention is frequently raised under the corresponding Rule 49(2)(b) of CCS Pension Rules ('CCSP Rules' for short), we will for convenience refer to the corresponding provisions of CCSP Rules also.

19. Rule 43(2) relied on by the petitioner falls under Chapter VI of TNP Rules (corresponding to Rule 49(2)(b) in chapter VII of CCSP Rules) dealing with 'Regulation of amount of pension'. The said rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are :

	<i>Classes of Pension (vide chapter V of the Pension Rules)</i>	<i>CCSP Rules</i>	<i>TNP Rules</i>
(i)	Superannuation pension	Rule 35	Rule 32
(ii)	Retiring pension	Rule 36	Rule 33
(iii)	Pension on absorption in or under a corporation, company or body owned/controlled by the State/Central Government	Rule 37 Rule 37-A	Rule 34



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	<i>Classes of Pension (vide chapter V of the Pension Rules)</i>	<i>CCSP Rules</i>	<i>TNP Rules</i>
(iv)	Invalid pension	Rule 38	Rule 36
(v)	Compensation pension payable on discharge owing to abolition of the post	Rule 39	Rule 38
(vi)	Compulsory retirement pension	Rule 40	Rule 39
(vii)	Compassionate allowance to government servants who forfeit their pension on being dismissed or removed	Rule 41	Rule 40

20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in chapter V of the pension Rules, there is no question of having recourse to the rules in the chapter dealing with regulation of amount of pension (chapter VI of TNP Rules or chapter VII of CCSP Rules) for determining the quantum of pension.

23. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the



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said rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the pension rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension.

24. Under Chapter V, in certain situations, a Government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36, and 38 of TNP Rules (Rules 35, 38 and 39 of CCSP Rules) do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of TNP Rules (Rule 49(2)(2) of CCSP Rules) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/ removed/ compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying



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service, become entitled to pension. Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier, comes into play only when the Government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rule) dealing with the quantum of pension refers to a government servant retiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension.

6. Thus it is clear that Rule 43(2) refers to payment of pension to a person who has a qualifying service of not less than 10 years. It does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that Government servants who are dismissed/ removed/ compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension.



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7. Admittedly the petitioner was relieved from duty and he did not complete 20 years of qualifying service for getting pension. Therefore, the petitioner is not entitled for pension as per Rule 43 of Tamilnadu Pension Rules.

8. In view of the above, this Court finds no infirmity or illegality in the impugned order. However, the petitioner is entitled for other retirement benefits. If the petitioner was not settled with other retirement benefits, the sixth respondent is directed to send fresh proposal claiming retirement benefits to the fifth respondent and on receipt of the same, the fifth respondent is directed to consider the same in accordance with law.

9. With the above direction, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

02.07.2024
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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order



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To
1.Secretary,
The State of Tamilnadu,
Department of School Education,
Fort St.George,
Chennai 600 009
2.The Principal Accountant General (civil audit),



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- Tamilnadu and Puducherry,
361, Anna Salai,
Teynampet, Chennai 600 018
3.The Director of School Education,
College Road, Chennai 600 006
4.The Chief Educational Officer,
Salem,
District Collectorate Campus,
Salem 636 001
5.The District Educational Officer,
Salem,
District Collectorate Campus,
Salem 636 001
6.The Correspondent,
Montford Anglo Indian Higher Secondary School,
Yercaud 636 601
Tamilnadu

G.K.ILANTHIRAIYAN, J.

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