IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2024

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.563 of 2021
and C.M.P.No.2330 of 2021

1. The Government of Tamil Nadu,
   Represented by Secretary to Government,
   School Education Department,
   Fort St. George, Chennai – 600 009.

2. The Director of Elementary Education,
   College Road, Chennai – 600 006.

3. The District Educational Officer,
   Tiruppur District, Tiruppur.

4. The District Educational Officer,
   Coimbatore North,
   Coimbatore District. ... Appellants

Vs.

1. M.K.Ramasamy
2. The Accountant General,
   Teynampet, Chennai – 600 018. .. Respondents

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 18.08.2017 made in W.P.No.10735 of 2012.

For Appellants	:	Mr.E.Sundaram, Government Advocate
For Respondents	:	Mr.R.Saseedharan [R1] Mr.V.Vijayashankar, Standing Counsel [R2]

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the Writ Court dated 18.08.2017 made in W.P.No.10735 of 2012.

2. That the first respondent joined in service in an aided school as a Secondary Grade Teacher on 10.06.1960 and after working for several years, he resigned on 07.01.1974. In this context, it is to be noted that even though a pension scheme has been introduced from 01.04.1955 by the Government, without having knowledge about the said scheme, the teachers, who had been working in the private aided schools, number of such teachers like the first respondent have resigned the job.

3. Though they rendered atleast the minimum qualifying service to be considered for the purpose of pension under the scheme introduced by

the Government, since they have resigned the post they did not raise the point of pension also.

4. Subsequently only, some of such teachers seems to have raised that point to get pension. At that time based on the earlier Government Orders, which were issued in 1955 and 1981, there had been some confusions with regard to the entitlement of these teachers, who resigned from the post to get a pension and in this context, the Government has come forward to issue G.O.Ms.No.37, School Education Department, dated 05.01.1983, where two clarifications sought for by the Accountant General as to the eligibility for resigned teachers and such a clarification has been answered by the Government. In order to appreciate the said position, the relevant portion of the G.O.Ms.No.37 is extracted hereunder:

> *"6.As regard "those who retired before the crucial dates, in the case of non-teaching staff etc., who were given pension benefit from 05.06.1981. There are specific general instructions in page 6 of G.O.1015/5.6.81 permitting the allowing of pension to "Resigned" persons also; but there are no such general instructions permitting the allowing of pension to "Resigned" teachers (who were*

given pension benefits from 1.3.68 as per G.O.Ms.1505/24.9.68) orders are however being issued in individual cases of such teachers who had "resigned" before the crucial dates. In this context, the Accountant General has asked for a clarification on the following two points:- (1) whether it is the intention of the Government to allow pension to all the teaching staff of Aided and Local Body Schools and Teaching date/dates of the respective Government Order introducing pensionary benefits. (ii) and it so whether they are eligible to draw pension from 1.3.68 with reference to Government order Ms.No.1505, Edn, dated 24.9.68 read with Government Memo. No.21344/E.6/68-5 Edn. 18.11.68.

7. The Government now clarify point (i) above in the affirmation i.e., the staff in question may be sanctioned pension by the respective authorities competent to sanction pension (without the need for any specific orders of any higher authorities of Government condoning the "resignation" in each individual case).

8. However, as regard point (ii) above, the Government direct that the persons benefitted with reference to the above clarification need be allowed pension only from 5.6.81 that no arrears need be allowed for the periods prior to 5.6.81."

5. Therefore, it has become clear that the staff in question may be sanctioned pension by the respective authorities competent to sanction pension for which no specific orders are required from the higher authorities of the Government condoning such resignations in each individual case, that was the first clarification given by the Government in the said G.O.

6. The second clarification was given by the Government that such a benefit of pension if at all eligible that shall be only from 05.06.1981, therefore, prior to 1981 even though such teachers had resigned from the post, after resignation till 1981 they are not entitled to get pension, this is the second clarification made by the Government in G.O.Ms.No.37.

7. Only in the said circumstances, the first respondent had made a request to consider him for getting the pension as per the scheme, which was envisaged in the year 1955 and it was continuing till the Tamil Nadu Pension Rule is introduced on 01.01.1978.

8. When this request had been made, it has been recommended and

forwarded by the District Educational Officer, Tiruppur, Coimbatore District vide his proceedings dated 06.10.2004, under which, the District Educational Officer had issued a proceedings with regard to the eligibility of getting the pension and family pension of the first respondent.

9. Though such a recommendatory report had been made, when the case came up for consideration, the Accountant General has raised an objection stating that under G.O.Ms.No.37, even in cases of resignation after the crucial date, the Government have in number of hard cases of particular individuals have relaxed the stipulations and allowed the retirement benefits to resigned teachers also. When that being so, the first respondent since has resigned the service on 07.01.1974 i.e., after the crucial date, it is felt that specific orders of the Government relaxing the various provisions of the Rules are necessary.

10. A doubt has arisen in the mind of the Accountant General, therefore, seeking such a clarification or permission from the Government to give such a clarification as per G.O.Ms.No.37, the Accountant General has turned down the case of the first respondent

though he considered for grant of such pension under the scheme of the year 1955. Challenging the same, the first respondent filed Writ petition in W.P.No.10735 of 2012, which was disposed of by the Writ Court on 18.08.2017, under which, the learned Judge allowed the writ petition by setting aside the order dated 04.01.2008 issued by the second respondent therein and further directed to sanction the pension to the petitioner as per the proceedings of the District Educational Officer, Tiruppur dated 06.10.2004 with arrears of pension.

11. Aggrieved over the same, the present appeal had been directed.

12. Assailing the order passed by the Writ Court, Mr.E.Sundaram, learned Government Advocate appearing for the Government and Mr.VVijayashankar, learned Standing Counsel appearing for the Accountant General/second respondent submitted that the scheme though was introduced in the year 1955, a cut off date has been fixed that was originally of the year 1968. However, the teacher concerned i.e., first respondent since has resigned only in the year 1974 as per the scheme envisaged in the year 1955, he would not be entitled to get such a benefits.

13. Assuming that subsequently G.Os. were issued, where also the cut off date was fixed at 01.04.1955 even before that if the first respondent resigned the post and if it is a hard case, based on the individual merits of the case, the Government has to consider such a plea to be made by the individual and relaxation to be given and specific order to be made by the Government, in the absence of any such relaxation given by the Government, the teacher is not eligible to get such benefit, they contended.

14. In support of their contention, the learned counsel appearing for the appellants have relied upon a Division Bench judgment of this Court dated 27.03.2019 made in W.A.No.1793 of 2018 in the matter of ***Poornima Vs.The Secretary to Government of Tamil Nadu, Department of School Education and Ors.***

15. On the other hand, Mr.R.Saseedharan, learned counsel appearing for the first respondent would submit that, though the scheme was introduced in the year 1955, majority of the teachers, who had been working at that time in various aided schools like the first respondent did

not know about the scheme.

16. Subsequently only they came to know about the scheme and accordingly, the individuals had approached the authorities concerned to get a pension. Insofar as the first respondent is concerned, immediately after resignation since he was not aware of the availability of the scheme, he could not made such request or seek sanction of pension, but in the year 2004, such a request having been made, which was considered and forwarded by the District Educational Officer recommending the case of the first respondent for consideration of sanction of pension as per the scheme, which was then prevailing prior to the Tamil Nadu Pension Rules, 1978 came into effect.

17. The learned counsel would also submit that, insofar as the doubt that has arisen in the mind of the Accountant General, which was reflected in the order dated 05.01.2005, which ultimately ended in the order impugned before the Writ Court is concerned, even under G.O.Ms.No.37, dated 05.01.1983, no such stipulation of crucial date has been fixed. The two clarifications that has been sought for by the Accountant General has been clarified by the Government stating that whoever eligible to get a pension as per the scheme, they can be

considered and extended the benefit of pension. This has been made clear in paragraph 7 of the G.O.Ms.No.37. The only controlling effect was that such a benefit if it is sanctioned,which cannot be sanctioned retrospectively prior to 05.06.1981 as it could be allowed only from 05.06.1981 i.e., the crucial date fixed in the subsequent G.O.

18. Except these two clarifications, no other fixation has been made by the Government while issuing G.O.Ms.No.37, School Education Department, dated 05.01.1983.

19. The learned counsel would also submit that based on G.O.Ms.No.37, whether the crucial date theory can be invoked by the appellant Department for giving pension to eligible teacher as per the scheme had engaged this Court in a related case reported in ***2001 Writ L.R. 852*** in the matter of ***The Government of Tamil Nadu rep. By the Secretary, Department of Education Vs.S.V.Paul Jeyaraj.*** Therefore, the learned counsel has relied upon the said Division Bench judgment, where the Division Bench has made it clear that even after the crucial date, pension can be sanctioned by the respective authorities competent to sanction pension without any specific orders from the higher

authorities of the Government. Therefore, the learned counsel would contend that having considered all these aspects, the learned Judge, who heard the writ petition since has allowed the same, the impugned order does not warrant any interference at the hands of this Division Bench.

20. We have given our anxious consideration to the submission made in rival by the respective counsel appearing for the parties and have perused the materials placed before this Court.

21. The only point to be clarified or considered is that, whether the crucial date theory adopted or intended to be adopted by the Accountant General in his order dated 05.01.2005 is justifiable or not. Correspondingly, a further doubt arisen in the minds of the Accountant General driving the authority to go before the Government to get specific order of sanction giving relaxation to their resignation because such resignation has taken place after the crucial date, was justifiable or not.

22. In this context, as has been rightly pointed out by the learned counsel for the first respondent that these two issues had been cleared unambiguously by two clarifications in paragraph Nos. 7 and 8 of

G.O.Ms.No.37, which in fact has been extracted herein above. The Government has made it very clear that the staff in question may be sanctioned pension by the respective authorities competent to sanction pension without the need for any specific orders of any higher authorities of the Government condoning the resignation in each individual case. Therefore, the Government has made it clear that no specific orders condoning such resignation is required from higher authorities of the Government. Moreover, nowhere in G.O.Ms.No.37, such a crucial date as has been stated by the Accountant General has been fixed.

23. In fact, when this issue came up for consideration in ***S.V.Paul Jeyaraj's*** case (cited supra), the Division Bench has considered the earlier G.O.s, as well as G.O.Ms.No.37 and has ultimately held in paragraph 7 to the following effect:

> *"7. It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in favour of the respondent teacher and we find that the*

learned Single Judge has also relied on the aforementioned Government Order, G.O.Ms.No.37. This is apart from the fact that even the language of the Government Order dated 5.6.1981 and more particularly of paragraph 6 (ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms.No.37 is more than clear. Therefore, we confirm the judgment of the learned single Judge. We are told that there is a stay in the matter. We direct the government to finalise the pension of the respondent teacher within three months from today."

24. Therefore, the Division Bench in unequivocal terms has made it very clear that a teacher, who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning such resignation in each individual case. This be the query raised by the Accountant General. When this judgment has been made on 27.07.2001, this kind of doubt need not have arisen in the mind of the Accountant General on

05.01.2005.

25. Moreover, since it is a welfare measure drawn in by the Government, therefore the scheme has been envisaged to extend the benefit of pension to the teachers, who had been working in various aided private schools in those days i.e., prior to introduction of Tamil Nadu Pension Rules, 1979.

26. In this context, even though an argument can be advanced by the learned Counsel appearing for the appellant that though he resigned in the year 1974 after 30 years, in 2004 only he has raised the issue of getting the pension, therefore, it is hit by the *Doctrine of laches.*

27. We are not impressed with the said submission made by the learned counsel appearing for the appellants because, the benefit of getting pension is a continuous cause of action, therefore, the theory of laches cannot be put against the plea raised for getting the pension, as till the life time the petitioner, and thereafter, the family of the pensioner would be entitled to get the family pension, therefore such kind of laches point cannot be raised.

28. Even though the Division Bench judgment in ***Poornima's*** case as cited supra in W.A.No.1793 of 2018 has been relied upon heavily by the second respondent, the facts of the case would not any way advance the case of the appellant in the present case because, in that case the very teacher, who has resigned the post only after 1978 i.e., after the Tamil Nadu Pension Rules came into effect, once the pension Rules is introduced by the Government, such teachers who resigned after 01.01.1978 would not be eligible or entitled to get the benefit of pension scheme of the year 1955. Therefore, the said judgment is clearly distinguishable and in no way help the appellants.

29. Therefore for all these reasons, we do not find any error in the approach of the learned Judge in allowing the said writ petition.

30. The only thing is that as per the G.O, the teacher even though resigned in the year 1974, he is entitled to get the pension from 05.06.1981 as per the two clarifications of G.O.Ms.No.37, therefore from that date the first respondent would be eligible and entitled to get the

pension, but at this stage, it has been brought to our notice by the learned counsel for the appellants that till 1992, the first respondent/teacher had been working somewhere for gain. If that being so, up to the date of 1992, the first respondent may not be eligible and entitled to seek for pension as it would amount to double pension, therefore, that factor has to be verified by the appellants and thereafter, if the teacher had been working and superannuated in the year 1992, after 1992 i.e., after his superannuation his pensionary benefits under the scheme of the year 1955, as discussed herein above, shall be calculated with arrears and be paid to the first respondent/teacher. Therefore, the following orders are passed in this writ appeal:

(i) That the order passed by the learned Single Judge, which is impugned herein is to be sustained with the following modifications:

- That there shall be a direction to the appellant Department to verify whether the first respondent/teacher had been working for gain till 1992 as claimed by the appellants and if it is so, after the superannuation only, the teacher would be entitled to get the pension under the 1955 scheme as has been reiterated in the subsequent G.O including G.O.Ms.No.37, dated 05.01.1983.

- Such a pensionable benefits shall be calculated with arrears from his date of superannuation i.e., after the re-employment of the teacher as claimed by the appellants and be paid to him within a period of three(3) months from the date of receipt of a copy of this order and such pension shall be continued till the entitlement of the first respondent/teacher.

With these modifications and directions, this writ appeal is disposed of. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.) **(K.B., J.)**

27.02.2024

Index: Yes

Speaking Order

Neutral Citation:Yes

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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