



W.A.No.382 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.382 of 2021
and
C.M.P.No.1528 of 2021

1.The Joint Director of School Education
(Secondary),
Chennai – 6.

2.The Chief Educational Officer,
Thuthukudi,
Thuthukudi District.

3.The District Educational Officer,
Kovilpatti,
Thuthukudi District.

... Appellants

Vs.

M.Karuppasamy (Died)

1.Krishnammal
2.Veeralakshmi
3.Pechiammal

4.The Secretary,
Parvathy High School,
Illuppaiurani,
Kovilpatti Taluk,
Thuthukudi District.

... Respondents



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Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 15.12.2017 made in W.P.No.16986 of 2004.

For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader

For R1 to R3 : Mr.P.Ganesan

For R4 : No appearance

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 15.12.2017 made in W.P.No.16986 of 2004.

2. That one M.Karuppasamy who was the original writ petitioner who died during the pendency of the writ petition in whose place the respondents 1 to 3 have been impleaded, was working as Part-time Vocational Instructor at the 4th respondent School from 1961 onwards.

3. The School was upgraded in 1989 as a High School. When the School was upgraded, the said Karuppasamy also was inducted in the High School and he was continued to work in that High School and receiving the salary by getting the grant from the Government. However,



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in the year 1994 the Chief Educational Officer, Tuticorin District by proceedings dated 11.01.1994 had issued an order cancelling the earlier order dated 06.07.1990 under which the said Karuppasamy was inducted into the upgradation of the High School was to be cancelled accordingly cancelled that order.

4. By virtue of the said order passed on 11.01.1994 by the Chief Educational Officer concerned, the grant hitherto paid to the School was stopped from 17.03.1994. Thereafter it seems that the said Karuppasamy had been continuing in the 4th respondent School till his superannuation for which only the School Management seems to have paid some salary and after superannuation on 31.12.1998 he has been re-appointed by the School Management for another year and after serving the said period he retired from service.

5. In the meanwhile it is to be noted that, the Government had issued a Government Order in G.O.(Ms).No.109 School Education Department dated 26.04.1999. As per the said G.O., those who had been working as qualified Vocational Instructors in Middle School and they having acquired the necessary qualification to hold the post in High



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School, in case the Middle School where if such Vocational Instructor hitherto had been working is upgraded into High School and on the date of the order of the G.O. i.e. 26.04.1999 if he or she are continuously working then such a Teacher can be fitted at the High School.

6. However, at the time of upgradation those who do not have the qualification to hold the post in the High School, those teachers can be permitted to continue in the said post with the salary hitherto they received.

7. The relevant portion of the said import of the G.O.(Ms).No.109 reads thus:

“2. பள்ளிக் கல்வி இயக்குநரின் கருத்துருவை பரிசீலித்த அரசு கீழ்க்கண்டவாறு ஆணையிடுகிறது:-

(அ) நடுநிலைப்பள்ளியில் பணிபுரியும் முழுத் தகுதிப்பெற்ற பகுதிநேர கைத்தொழில் ஆசிரியர்கள் மற்றும் நடுநிலைப் பள்ளிகளுக்கான தகுதி பெற்ற கைத்தொழில் ஆசிரியர்கள் இப்பள்ளிகள் உயர்நிலைப்பள்ளியாக தரம் உயர்த்தப்படும்போது அதற்குரிய கல்வித்தகுதி பெறாதிருப்பின் அத்தகைய ஆசிரியர்கள் அப்பணியிடத்தில் பணிபுரியும்வரை அவர்கள் நடுநிலைப்பள்ளியில் எந்த ஊதியம் பெற்றனரோ அதனையே தொடர்ந்து பெறுவர்.

(ஆ) பகுதிநேர கைத்தொழில் ஆசிரியர்களை இனி உயர்நிலைப் பள்ளிகளில் அனுமதிக்கக்கூடாது.”



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8. On the basis of the G.O.(Ms).No.109, in order to get the benefits of the salary as well as pensionary benefits after retirement the said Karuppasamy approached the Writ Court and filed the said writ petition in W.P.No.16986 of 2004.

9. During the pendency of the writ petition since the said Karuppasamy died, his legal heirs were impleaded as petitioners 2 to 4 who are the respondents 1 to 3 herein. The learned Judge who heard the writ petition having accepted the plea raised on behalf of the writ petitioners allowed the said writ petition with the following terms.

“23.In the result,

(a) this writ petition is allowed by setting aside the impugned order in Aa.thi.Mu.12263/Aa3/99, dated 30.12.1999 passed by the second respondent, as confirmed by the first respondent in Mu.Mu.No.124422/T3(9)/01, dated 25.03.2004.

(b) the respondent authorities are directed to pay arrears of salaries and other benefits including the pension to the petitioners.



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(c) the said exercise shall be done within a period of

eight weeks from the date of receipt of a copy of this order.

No cost. Consequently, connected miscellaneous petition is closed.”

10. Aggrieved over the same, the present appeal has been filed at the instance of the appellant Government.

11. Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellants has relied upon the following averment made in the counter affidavit.

“2) It is submitted that the Fourth Respondent Schools was originally a Middle School and the Petitioner was employed in the School as a Part-time Vocational Instructor in Agriculture. When the Fourth Respondent School was upgraded as High School from 1988-1989, the Petitioner who was not entitled to be taken into the High School was wrongly inducted into High School by the Chief Educational Officer, Thoothukudi, in his Proceedings Rc.No.21607/A3/1988, Dated 06-07-2000 from 01-03-1990 and he was continued to be paid grant by the Department. However, when the irregular induction of the Petitioner to



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High School came to the notice of the Chief Educational Officer, Thoothukudi, revoked the induction of the Petitioner into High School, by his Proceedings Rc.No.7691/A3/1993, Dated: 11-01-1994 and the grant paid to the Petitioner was stopped from 17.03.1994.

3) It is submitted that the Petitioner was inducted into High School from 01-03-1990 by the Chief Educational Officer, Thoothukudi. However, his induction was cancelled as soon as it came to light that such induction is wrong, by the Chief Educational Officer, Thoothukudi, himself by his proceedings Rc.No.7691/A3/1993, Dated 11-01-1994, and the grant paid to him was stopped from 17-03-1994. Thereafter, the Petitioner was continued in service by the management of the Fourth Respondent School till 31-12-1998 the date on which he attained 58th year of age and the management also granted re-employment to him from 01-01-1999 to 31-05-1999 and paid the salary to him for the period of his service from 17-03-1994 to 31-05-1999 by the management. It is true that Government issued G.O.Ms.No.109, School Education Department (D1), Dated: 26-04-1999 to the effect that Part-time Pre-vocational Instructors who are fully qualified and Part-time Pre-Vocational Instructors who are fully qualified and Part-time Pre-vocational Instructors who are fully qualified



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and Part-time Pre-vocational Instructors who are qualified to work in Middle School, and working in Middle Schools shall continue to draw their existing pay even after the upgradation of the Middle School into High School, so long as they work in the post even though they did not acquire the requisite qualifications, and that in future Part-time Pre-vocational Instructors should not be permitted to work in High Schools. This Government Order cannot be applied to the case of the Petitioner as he retired from service even before the issue of the Government Order.”

12. Relying upon these averments and the stand that has been taken by the appellant Department, the learned Special Government Pleader would contend that, the import of the G.O. itself is that, on the date of G.O. if anybody was working as Part-time Vocational Instructor with or without qualification, how such an incumbent alone has to be treated has been provided in para 2(a) of the G.O.(Ms).No.109 whereas the said Karuppasamy since retired on superannuation on 31.12.1998 first of all the import of the G.O.(Ms).No.109 cannot be made applicable to his case.

13. That apart, the learned Special Government Pleader would also



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contend that, insofar as the case of the said Karuppasamy is concerned, by virtue of the order that has been passed by the C.E.O. dated 11.01.1994 the earlier order passed on 06.07.1990 since has been cancelled, the grant that was given to the School where he was working was also stopped with effect from 17.03.1994 thereafter he was working only as a Management Staff or Teacher till his superannuation, therefore at the time of superannuation or at time of issuance of G.O.(Ms).No.109 he was not working as a Teacher getting the aid from the Government for the salary. Therefore at no stretch of imagination, the benefit arising out of G.O.(Ms).No.109 can be extended to the said Karuppasamy. However, without having this legal and factual position in proper perspective, the learned Judge since has allowed the said writ petition through the impugned order, the learned Special Government Pleader would contend that the same is liable to be interfered with.

14. On the other hand, we have heard Mr.P.Ganesan, learned counsel appearing for the respondents 1 to 3 who would submit that, at the time of upgradation of the School if the incumbent already been working with or without qualification depending upon the qualification the decision as to whether he can be deputed in the School with the same



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salary or different salary alone has to be decided as per the import of G.O.(Ms).No.109, therefore at the time of upgradation of the School since the said Karuppasamy was working, of course without the qualification to hold the post in the High School, he should have been permitted to continue with the same salary and merely because the G.O. has come after the superannuation of the said Karuppasamy, the import of the G.O. or the benefit arising out of the G.O. cannot be denied to him.

15. We have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. Even though the import of the G.O. has made it clear that, the benefit that has accrued arising out of the G.O.(Ms).No.109 would be made applicable to those who have been working at the time of issuance of the G.O. i.e. dated 26.04.1999, we feel that, even out of the purview of this G.O. otherwise whether the said Karuppasamy was entitled to get such benefits of continuous salary till his superannuation is the question.

17. To delve into that question if we look at the service carrier of the said Karuppasamy as Part-time Vocational Instructor in the year



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1961 he had been continuously working till his superannuation in the year 1998, therefore 37 years of service he has rendered.

18. Assuming that, he had been working as a Part-time Vocational Instructor, atleast 50% of his service has to be taken for the purpose of backwages even otherwise i.e. outside the purview of the G.O.(Ms). No.109 which had paved the way that those who had been working at the time of issuance of G.O.(Ms).No.109 with the qualification to hold the post of High School can be deputed in the High School and continue to work in the High School with higher salary, however those who do not have such qualification at the time of upgradation of the School can be permitted to continue in that School with the low salary.

19. Even though that G.O. had come on 26.04.1999 and before which the said Karuppasamy retired on 31.12.1998 the import of the G.O. in substance can very well be applied to the case of the said Karuppasamy. The reason being that, he had been continuously working in a sanctioned post on permanent basis from 1961 for a period of 37 years and after having rendered service in a sanctioned post one cannot be sent out home without paying the retirement and pensionary benefits.



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20. Therefore merely because a proceedings had been issued by the

C.E.O. on 11.01.1994 whereby the deputation of the said Karuppasamy in the High School at the time of upgradation though has been cancelled and pursuant to which only from 17.03.1994 though the grant was also stopped that would not take away or infringed the right of the said Karuppasamy to seek for continuous pay atleast till his superannuation and to get the retirement and pensionary benefits by calculating his service of 37 years.

21. If at all any objection has come from the appellant side that, though he had been working for 37 years his service was only a Part-time service, therefore it cannot be treated as a full service for the purpose of pension for having rendered 37 years of his service is concerned, already number of such cases decided by this Court where atleast 50% of such service rendered by the Part-time Vocational Instructor can be taken for the purpose of calculating the previous service. Here in the case in hand, since 37 full years have been served by the said Karuppasamy, out of which 50% of his service can be taken into account for the purpose of calculating his pensionable service.



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22. That apart, the salary hitherto was paid to the said Karuppasamy before such a proceedings was issued by the C.E.O. dated 11.01.1994 followed by the stopping of the grant dated 17.03.1994 can also be extended to be paid to him. This in fact has been reiterated and amplified by the Government Order in G.O.(Ms).No.109 as we have discussed herein above. Therefore, for all these reasons we are inclined to dispose of this writ appeal with the following orders:

(i) That the order passed by the learned Judge which is impugned herein dated 15.12.2017 made in W.P.No.16986 of 2004 is liable to be modified to the following effect:

(a) That the respondents 1 to 3 being the legal heirs of the erstwhile Teacher viz., Karuppasamy are entitled to get the retirement and pensionary benefits for the service rendered by the said Karuppasamy between 1961 and 1998 at the 4th respondent School as Part-time Vocational Instructor.

(b) It is made clear that, for the said purpose of pensionable service since he had been working only as Part-time Vocational Instructor, 50% of his service alone shall be taken into account accordingly the pro-



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rata pension shall be calculated and be paid to the widow of the said Karuppasamy and the retirement benefits also be calculated and paid to the legal heirs of the said Karuppasamy who are the writ petitioners and presently the respondents 1 to 3 in this appeal.

(c) The needful as indicated above shall be undertaken by the appellant Department within a period of three months from the date of receipt of a copy of this judgment.

23. With the above directions to the extent indicated above, the order passed by the learned Judge which is impugned herein is modified accordingly, therefore this writ appeal is ordered partly and rejected with regard to the remaining part. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]
12.01.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



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