



W.P(MD)No.5879 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.5879 of 2024

1.S.Narayanan

2.V.Sannasi

3.L.Dominic Savio

4.B.Immanuel

5.S.K.Subramanian

6.A.Manoharan

7.A.Maria Juliar

8.S.Krishnamal

... Petitioners

Vs.

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Joint Director of School Education,
(Higher Education),
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Madurai, Madurai District.



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5.The Secretary,
MLWA Higher Secondary School,
Madurai-625 001,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 3 and 4 herein to sanction forthwith eight months salary from October 2011 to May 2012 to the petitioners worked in the 5th respondents school and to revise the pension from the respective date of retirement with all attendant benefits including the arrears of salary and allowance.

For Petitioners : M/s.A.Amala

For R1 – R4 : Mr.M.Sarangan
Additional Government Pleader

ORDER

The present writ petition have been filed seeking direction to the respondents 3 and 4 herein to sanction forthwith eight months salary from October 2011 to May 2012 to the petitioners who worked in the 5th respondents school and to revise the pension from the respective date of retirement with all attendant benefits including the arrears of salary and allowance.



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2. The 1st petitioner herein was initially appointed as PG Assistant in St.Mary's Higher Secondary School, Vikramasingapuram, Tirunelveli District on 31.12.1983. Later, he was appointed in the 5th respondent school on 04.01.1985. On attainment of age of superannuation, he was relieved from service on 31.05.2017. With regard to 2nd petitioner is concerned, he was initially appointed as PG Assistant in S.B.K.Higher Secondary School, Kalloorani on 06.01.1983. Later, he was appointed as PG Assistant in the 5th respondent school on 18.01.1985 and on attainment of age of superannuation, he was relieved from service on 31.03.2017.

3. The 3rd petitioner was initially appointed as PG Assistant in St.Mary's Higher Secondary School, Vikramasingapuram, Tirunelveli District on 28.10.1981 and later, he was appointed in the 5th respondent school on 13.03.1985 and on attainment of age of superannuation, he was relieved from service on 31.07.2017. The 4th petitioner was initially appointed as PG Assistant in the 5th respondent school on 17.01.1986 and on attainment of age of superannuation, he was relieved from service on 30.09.2015.

4. The 5th petitioner was initially appointed as PG Assistant in Rajas Higher Secondary School, Ettayapuram on 13.01.1984 and later, he was



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appointed in the 5th respondent school on 18.01.1985 and on attainment of age of superannuation, he was relieved from service on 31.10.2014. The 6th petitioner was initially appointed as Office Assistant in the 5th respondent school on 18.12.1993, Later, he was promoted as Record Clerk and as Junior Assistant on 02.11.2009 and 01.12.2014 respectively and on attainment of age of superannuation, he was relieved from service on 30.11.2015.

5. The 7th petitioner was initially appointed as Office Assistant in the 5th respondent school on 23.07.1990 and on attainment of age of superannuation, he was relieved from service on 31.01.2019. The 8th petitioner was initially appointed as Scavenger in the 5th respondent school on 17.08.1990 and on attainment of age of superannuation, he was relieved from service on 31.01.2015. From the respective date of retirement, the petitioners had been sanctioned with terminal benefits and pensions.

6. During the year 2011, the 5th respondent school was facing problem in running the school due to fall in students strength. Hence, the 5th respondent school requested the official respondents to close down the school referring poor student's strength. In view of the same, the 2nd respondent / Joint Director



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of School Education issued orders to the CEO and DEO to deploy the teaching as well as the non-teaching staff working in the 5th respondent school to the needy school and to report the same to the 2nd respondent. Despite specific instructions from the 2nd respondent to deploy all the petitioners to the needy school, the respondents 3 and 4 did not deploy the petitioners working in the 5th respondent school. However, after the intervention of the District Collector, Madurai, the educational authorities took appropriate steps to revive the school with effect from 01.06.2012 since then the 5th respondent school is running smoothly till date. Since the school did not function during the period between October 2011 to May 2012, the respondents did not pay the salary to the petitioners. Despite the written requests of the petitioners to the respondents seeking payment of salary, the same was not heeded to by the respondents and the salary was not given to the petitioners. Though school was not functioning during the whole academic year of 2011-12, the 4th respondent disbursed the salary only for the period from June 2011 to September 2011. But failed to pay salary from October 2011 to May 2012. On 12.04.2018, the 4th respondent DEO had addressed to the 2nd respondent regarding the payment of salary to all the petitioners and to similarly placed persons who are working in the 5th respondent school. Since the request was not considered, similarly placed



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persons who are in service of the 5th respondent school have filed W.P(MD)Nos.9928 to 9934 of 2019 before this Court seeking direction against the respondents to pay eight months salary from 01.10.2011 to 31.05.2012.

7. This Court by an order, dated 25.04.2019 was pleased to dispose of those writ petitions directing the respondents to consider the representations of the petitioners therein on merits. The 4th respondent had rejected their request vide order, dated 07.08.2019. Challenging the said order, yet another writ petition in W.P(MD)No.23720 of 2019 was filed before this Court. This Court was pleased to allow the same by an order, dated 22.12.2022 directing the respondents to pay salary for the period between October 2011 to May 2012. Following which, the respondents had complied the said order passed by this Court by proceedings, dated 06.12.2023 thereby sanctioning 8 months salary for the teachers in service and also revised their pay accordingly. However, the salary of the petitioners for the period between 01.10.2011 to 31.05.2012 is not yet paid. The petitioners have sent several representations, dated 30.01.2024, 02.02.2024 and the last of which was made on 23.02.2024. Since there was no response from the respondents, this writ petition came to be filed.



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8. The learned counsel appearing for the petitioner submitted that this issue is squarely covered by the orders of this Court made in W.P(MD)No. 23720 of 2019, dated 22.12.2022. Following the same mandates, the petitioners are also entitled to be paid with the salary for the period from October 2011 to May 2012 and pressed for allowing the writ petition.

9. Per contra, the learned Additional Government Pleader appearing for the official respondents submitted that the request of the petitioners cannot be considered and acted upon positively on the basis of “No Work No Pay”. Since the petitioners have not served during that period, the question of disbursing salary for that period would not arise and pressed for dismissal of the writ petition.

10. I have carefully considered the rival submissions made on either side and perused the materials available in record.

11. This Court has dealt with a similar case in W.P(MD)No.23720 of 2019, dated 22.12.2022 and the relevant portion of which is extracted as follows:



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*“7. The School was not running during the intermediate period. However, the respondents have paid salary from 01.06.2011 to 01.09.2011. The School was revived from June 2012 onwards. During the period from October 2011 to May 2012, the School was not functioning due to the above reasons stated supra. The learned Counsel for the petitioners relied on the judgment reported in **2007 (2) CTC 135 (Munivenkatappa Vs. State Bank of India and others)** and the relevant portion of the judgment is extracted here under:*

*“13. (a) The Honourable Supreme Court in the decision reported in **Srikantha S.M. v. Bharath Earth Movers Ltd., 2005 (8) SCC 314**, considered the unjust denial on the part of the employer to assign work and held that the employee is entitled to get salary and other benefits and the principle of 'No work, No pay cannot be applied in such cases. In paragraphs 28 to 30, the Honourable Supreme Court held as follows:*

"28. The next question is, as to what benefits the appellant is entitled to As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15.1.1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of no work, no pay would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.



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29. *We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava, 1998 (9) SCC 559 and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha v. Project & Development India Ltd., 2002 (3) SCC 437 this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to full salary and allowances of the entire period he was kept out of service. In Balram Gupta, 1987 Supp SCC 228 in spite of specific provision precluding the Government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits,*

30. *For the foregoing reasons, in our opinion, the Appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4.1.1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent-Company is directed to treat the appellant in continuous service up to the age of*



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superannuation i.e. 31.12.1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15.1.1993 or thereafter. The Appeal is accordingly allowed with costs."

(b) In the decision reported in Shambhu Murari Sinha v. Project & Development India Ltd., 2002 (3) SCC 437, the Honourable Supreme Court considered as to whether voluntary retirement offer could be withdrawn and even after the withdrawal of voluntary retirement request, if a person is relieved, whether he is entitled to rejoin duty and shall be paid all his salary and other benefits during the period he was out from the service and if a person reached the age of superannuation he shall be paid full salary and allowances for the entire period he was out of service till the date of his superannuation and thereafter he shall be entitled to get all retiral benefits counting the above period as if he was in service.

14. The stand taken by the respondents that the petitioner is not qualified to go on voluntary retirement as he has not completed 20 years of service and therefore the Bank treated his request as one of resignation, cannot be accepted as the petitioner has not given any letter of resignation nor consent to treat his voluntary retirement request to that of resignation, at y point of time. The Honourable Supreme Court in the decision reported in Prabha Atri (Dr.) v. State of U.P., 2003 (1) SCC 701, at para 10 considered signation in the following manner:



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“10. To constitute a resignation, it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra lyer, 1984 (2) SCC 141 it may amount to a threatened offer more on account of exasperation, to resign on harassed unnecessarily but not, at any rate, amounting to a resignation, account of a feeling of frustration born out of an idea that she was being actual and simple...”

Hence we are of the view that the petitioner is entitled to get salary and other benefits from 1.10.1999 till the date of his reinstatement with continuity of service as the petitioner was unilaterally prevented from attending to his lawful duties by virtue of an illegal order of relieving the petitioner as if he has resigned. It is not the case of the respondents that the petitioner was gainfully employed at any time after 1.10.1999. The same is not pleaded by the respondents either in the counter affidavit or in the grounds raised in the Writ Appeal and not even pleaded at the time of arguments. Hence, the decision of the learned Single Judge denying backwages to the petitioner stands set aside.”

The learned Counsel for the petitioner also relied on the judgment reported in (2005) 8 Supreme Court Cases 314 (Srikantha.S.M. Vs. Bharath Earth Movers Limited) and the relevant portion of the judgment is extracted here under:

“29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava e and a similar argument was advanced by the



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employer. The Court, however, negated the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha I also, this Court held that since the relationship of f employer and employee continued till the employee attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In Balram Gupta² in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits."

8. When the Joint Director has passed an order to deploy the Teachers to other needy place, the Teachers are entitled to salary and pay protection should be granted by the Government. Rightly, the respondents have paid salary for the months June, July, August and September. However, the respondents did not pay from October 2011 to May 2012. For this period, the respondents submitted that there is no work for the Teachers and they were simply visiting the School, since the students were migrated to some School. This reason, cannot be entertained. The respondents had already passed an order to transfer the Teachers to the needy place. If the respondent had passed an order transferring the teachers without delay, then the teachers would have worked during the said period. The fault is on the official respondents for not passing order in time and it is not the fault of the



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teachers. In such circumstances, the petitioners are entitled to salary for the said period. The principle of “No Work No Pay”, is not applicable to the present facts of the case. Therefore, the respondents are incorrect in stating that they are not entitled to salary. The impugned order is quashed. The respondents are directed to pay the salary to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order.

12. In the instant case, though the school was not functioning during the whole academic year 2011-2012, the 4th respondent having paid salary for the period from June 2011 to September 2011, has failed to pay salary from October 2011 to May 2012. However, the cases of similarly placed persons were positively considered by the 4th respondent, while complying with the orders passed by this Court in similar cases in W.P(MD)No.9928 to 9934 of 2019 and W.P(MD)No.23720 of 2019 respectively. The 4th respondent having not taken diligent steps to re-deploy the petitioners to needy schools while the 5th respondent school was dysfunctional during 2011, in view of the fact that the employer-employee relationship continued between the petitioners and the 4th respondent even during 2011, the petitioners are entitled to full salary even during that period and the principle of “ No work no pay” is not applicable to the facts and circumstances of this case.



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13. That apart, fully fortified with the order passed by this Court in the aforesaid case, this Court hereby direct the respondents to pay the salary to the petitioners for the period between October 2011 to May 2012. The respondents are directed to revise the pension of the petitioners from the respective date of retirement with all the attendant benefits including the arrears of salary and allowance. The entire exercise shall be completed within a period of twelve (12) weeks from the date of receipt of copy of this order.

14. With the above said observations, this Writ Petition stands allowed.

No costs.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Joint Director of School Education,
(Higher Education),
College Road, Chennai-600 006.



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- 3.The Chief Educational Officer,
Madurai, Madurai District.
- 4.The District Educational Officer,
Madurai, Madurai District.
- 5.The Secretary,
MLWA Higher Secondary School,
Madurai-625 001,
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L.VICTORIA GOWRI, J.

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