**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 03.09.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**
**and**
**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)Nos.114 and 115 of 2023 and 1119 of 2022**
**and**
**C.M.P.(MD)Nos.1487 &1489 of 2023 & 8877 of 2022 & 694 of 2024**

**In all Writ Appeals:**

1.Harveypatti High School,
Rep. by its Secretary / Correspondent,
Harveypatti, Madurai-625 005.

2.P.Muthuvelraj ... Appellants / Respondents 3 & 4

-vs-

1.A.Geetha ... 1st respondent / Writ Petitioner

2.The Chief Educational Officer,
Madurai District.

3.The District Educational Officer,
Madurai, Madurai District.
... Respondents 2 & 3 / Respondents 1 & 2

**PRAYER:** Appeal filed under Clause 15 of Letters Patent, to set aside the common order dated 05.10.2021 in W.P.(MD)Nos.20879, 20880 and 20881 of 2017.

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| For Appellants | : | Mr.Ajmalkhan,<br>Senior Counsel,<br>For C.Deepak |
| For R-1 | : | Mr.G.Prabhu Rajadurai,<br>For Mr.A.Rahul |
| For R-2 & R-3 | : | Mr.S.P.Maharajan,<br>Special Government Pleader |

## COMMON JUDGMENT

**[Judgment of the Court was made by R.SUBRAMANIAN, J.]**

The appellant is aggrieved by the direction of the learned Single Judge to pay interest at 18 percent per annum on the retiral benefits of the 1st respondent which were withheld at the instance of the private school management. The 1st respondent who was working as a teacher in the aided private school was slapped with an order of suspension on 06.10.2017 which was challenged in the 1st writ petition. A retention order was also passed by the school on 01.11.2017 which was the subject matter of challenge in the 2nd writ petition. A 3rd writ petition was also filed seeking to quash the charge memo dated 01.11.2017 and for a consequential direction to settle the terminal benefits.

2. It was the contention of the respondent before the Writ Court that she was appointed as a Secondary Grade Teacher on 02.08.1982 and thereafter she was appointed as B.T.Assistant and she took charge in the

post of the Headmistress from 08.06.1998 to 01.10.2012. On 01.10.2012, the petitioner was relieved from the post of Headmistress and permitted to continue as B.T.Assistant in the school. Thereafter, a charge memo was issued to her claiming that she has not handed over the income and expenditure accounts to the management, an enquiry was conducted and punishment of dismissal was imposed on her. When the management sought for approval of the punishment the Educational authorities, namely, the District Educational Officer and the Chief Educational Officer, refused to grant approval on the ground that the charge itself was not in relation to the responsibility she was expected to perform. In the meanwhile, the petitioner attained the age of superannuation on 31.10.2017. On 01.12.2017, the management passed an order retaining her in service without allowing her to retire.

3. A charge memo was also issued on 01.11.2017. The suspension order was impugned in W.P.(MD)No.20879 of 2017, the retention order was impugned in W.P.(MD)No.20880 of 2017 and the charge memo was impugned in W.P.(MD)No.20881 of 2017. All the three writ petitions were taken up together for hearing and were disposed of by a common order dated 05.10.2021. The Hon'ble Single Judge found that there was no justification for retention and as a private management, the school namely, the respondents 3 and 4, did not have any right to retain an employee in service after retirement, that power is available only to the Government

and it will apply only to the Government servants and not others. Therefore, the writ Court quashed the suspension, set aside the order of retention as well as the charge memo. A consequent direction was issued for payment of retiral benefits. As far as the interest on the retiral benefits is concerned, the writ Court having held that the delay was caused by the action of the management, namely, the respondents 3 and 4, directed the management to pay interest at 18 percent per annum on the retiral benefits.

4. We have heard Mr.Ajmal Khan, learned Senior Counsel appearing for Mr.C.Deepak for the appellant, Mr.Prabhu Rajadurai, learned counsel appearing for Mr.A.Rahul and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondents 2 and 3.

5. Mr.Ajmal Khan, the learned counsel appearing for the appellant would vehemently contend that an appeal against the order refusing permission is pending with the Joint Director of School Education and therefore, the direction to pay interest cannot be sustained. He would also point out that if eventually approval is granted, then the 1st respondent would not be entitled to any benefits and hence, the direction to disburse the benefits is not just and proper.

6. Contending contra, Mr.Prabhu Rajadurai, learned counsel appearing for the respondent would submit that the order refusing approval was made as early as on 03.02.2014 and the authorities cannot endlessly keep the appeal pending. Even otherwise, the learned counsel would submit since now the 1st respondent has attained superannuation and the school itself has been closed, no useful purpose would be served by keeping the appeal pending for so longer.

7. Mr. S.P.Maharajan, learned Special Government Pleader appearing for the respondents 3 and 4 would submit that the school was put under direct management some time back and since the students strength dwindled, the school was eventually closed even in the year 2021. He would also point out that it is because of the fact that the school did not forward the pension proposals, the retiral benefits were not disbursed.

8. We have considered the submissions made by the counsels for the parties. The premise on which the writ petitions were allowed, namely, there is no power in a private management to retain its employee after superannuation and such power is available only to the Government, cannot be disputed at all. Therefore, the order in the writ petition allowing all the three writ petitions quashing the impugned proceedings namely, the order of supension, the order of retention and the charge memo has to be straight away upheld. The only question that would remain for

consideration is as to the direction regarding payment of interest on the retiral benefits by the management, namely, the appellants herein.

9. Though Mr.Ajmal Khan, learned senior counsel would contend that in view of the pendency of the appeal, the learned Single Judge ought not to have granted interest, that too at 18 percent per annum. Mr.Prabhu Rajadurai would submit that the writ Court had found that the management was singularly responsible for the delay in payment of retirement benefits and therefore, a grant of interest at 18 percent per annum is justified. We do find some force in the contention of Mr.Prabhu Rajadurai. However, we find that grant of interest at 18 percent per annum is too steep, considering the prevalent rate of interest on deposits by financial institutions. However, the Payment of Gratuity Act, 1972, requires the employer to pay interest at 9 percent on the gratuity and the Pension Rules also impose a similar obligation of the employer. We therefore reduce the interest granted to 9 percent per annum from the date of retirement till today.

10. Mr.S.P.Maharajan would submit that in order to enable payment of pension, the pension proposal must emanate from the management. Now that the school has been closed and the service register of the 1st respondent is available with the District Educational Officer, there will be a direction to the District Educational Officer to prepare the pension

proposals as well as determine the retiral benefits, namely, leave salary, gratuity, provident fund etc., that are payable to the 1st respondent and pay the principal amount within a period of twelve (12) weeks from the date of receipt of a copy of this order. As regards the interest, the quantum will be informed and it will be open to the 1st respondent to take appropriate proceedings as against the appellants for recovery of the same. If the amount is not determined and paid by twelve (12) weeks, the Government will pay the said 9 percent interest on the gratuity and pension from today till the date of payment.

11. With the above modification, these Writ Appeals are partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**[R.S.M., J.]** **[L.V.G., J.]**

**03.09.2024**

NCC :Yes/No
Index :Yes/No
Internet: Yes
Sml / Mrn

To

1.The Chief Educational Officer,
Madurai District.

2.The District Educational Officer,
Madurai, Madurai District.

**R.SUBRAMANIAN, J.**
**and**
**L.VICTORIA GOWRI, J.**

Sml / Mrn

**W.A(MD)Nos.114 and 115 of 2023 and 1119 of 2022**

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