



W.A(MD) No.1364 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 14.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE MS.JUSTICE R.POORNIMA**

W.A(MD) No.1364 of 2018

**The Principal Accountant General
(Accounts and Entitlements)
Tamil Nadu Office @
361, Anna Salai, Chennai- 600 018**

...Petitioner

Vs.

- 1. Vasantha**
- 2. The District Elementary Educational Officer
Sivagangai, Sivagangai District.**
- 3. The Assistant Elementary Educational Officer
Sakkottai @ Karaikudi
Sivagangai.**

... Respondents

PRAYER: Writ Appeal filed under clause 15 of Letters Patent Act to set aside order passed in W.P(MD) No.9956 of 2012 dated 10.02.2017.

For Petitioner : Mr. P.Gunasekaran



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W.A(MD) No.1364 of 2018

For R-1 : Mr. Aju Tagore
For R2 and R3 : Mr. Ramesh Arumugam
Government Advocate

JUDGMENT

The first respondent in W.P. No.9956 of 2012, aggrieved by the order dated 10.02.2017 of the learned Single Judge, by which order, the writ petition filed by the first respondent herein had been allowed, has filed the present writ appeal.

2. In order to facilitate easier understanding, the parties would be referred to in the same nomenclature as referred to in the writ petition. It would indicate that the appellant herein would be referred to as first respondent and the first respondent would be referred to as the writ petitioner.

3. The writ petition had been filed in the nature of certiorarified mandamus seeking to quash the proceedings in அ.தி.மு.எண்.205/அ/2011 dated 27.01.2011 passed by the third respondent in the writ petition,



W.A(MD) No.1364 of 2018

Assistant Elementary Educational Officer, Sakkottai @ Karaikudi, Sivagangai District and to direct the respondent in the writ petition to grant pension to the writ petitioner from 31.12.1980 with 18% compound interest for the arrears amount.

4. It must be stated that the writ petitioner had been appointed as Secondary Grade Teacher on 28.03.1996 at Sivankoil Municipal School, Karaikudi and she also worked at Nallaiyan Asari Street Municipal School, Karaikudi and finally, resigned owing to her family circumstances on 21.01.1981. She claims that she had put in 14 years and 10 months of service. Thereafter, in the year 2012, after nearly 31 years from the date of resignation, she had filed the writ petition seeking pension to be paid together with 18% compound interest. She had not approached any authority for the past 31 years. Even at the outset we cannot refrain from expressing an opinion that it is highly preposterous on her part to seek pension to be paid and further seek the same to be paid with interest at 18% p.a., to be compounded every year. The delay in filing the writ petition after 31 years had not been explained.



W.A(MD) No.1364 of 2018

5. In the order of the learned Single Judge, it had been stated that she had awaited the orders of the Hon'ble Supreme Court which had passed orders for similarly placed employees on 30.09.2010 and thereafter, she had filed the writ petition. She could be termed only as a fence-sitter and therefore, even on that ground, the issue of latches arises against the writ petition.

6. Be that as it may, the learned Single Judge had examined the provisions of G.O.Ms.No.37, Department of Education, Science and Technology, dated 05.01.1983, according to which, a cut off date had been prescribed for teaching staff in aided school who had resigned/retired within that particular date and had examined grant of pension for other staff. However the learned Single Judge had not placed reliance on the said Government Order, but had extended the benefit by stating that there were a few other individuals who had been granted relaxation and therefore, held that the writ petitioner also deserves to be granted relaxation and had therefore allowed the writ petition.



W.A(MD) No.1364 of 2018

WEB COPY

7. A few further aspects to the examined are the provisions of Tamil Nadu Non Government Teachers Pension Rules, 1958 and the impact of G.O.Ms.No.37, Department of Education, Science and Technology dated 05.01.1983.

8. The Tamil Nadu Government had passed the Tamil Nadu Non Teachers Pension Rules in the year 1958 consequent to the passing of G.O.Ms.No.1109, Education, dated 31.05.1958. Those Rules were called the Tamil Nadu Non Government Teachers Pension Rules 1958. They came into force on and from 01.04.1955. The Rules were applicable to trained teachers, employees in recognized elementary schools, secondary schools including post basic schools and also schools run by the aided Management, Municipal Council, District Boards and Panchayats.

9. The writ petitioner had been appointed as Secondary Grade Teacher in Sivankoil Municipal School at Karaikudi and later, worked as Nallaiyan Asarai Street Municipal School Karaikudi. She can be categorized as one of the teachers who would fall within the purview of



W.A(MD) No.1364 of 2018

the Tamil Nadu Non Government Teachers Pension Rules 1958 in consonance with G.O.Ms.No.1109, Education dated 31.05.1958. It must be kept in mind that the said Rules came into force from 01.04.1955.

10. Thereafter, the Government had taken into consideration the plight of those who had either retired or resigned before the coming into effect of the said Rules and therefore, had extended grant of pension to even those individuals who had either retired or resigned before the crucial date fixed by the Government. That particular crucial date was fixed by G.O.Ms.No.37, Department of Education, Science and Technology dated 05.01.1983. In that particular Government Order, so far as teaching staff of aided and local body school teachers, the date on which the pension scheme was introduced on 01.04.1965 (*which should actually be read as 01.04.1955*) . The crucial date was determined as 01.03.1968. This was the date before which an individual should have retired. In para 4 of the said government order, it had been extended not only to those who had retired but also to those who had resigned before that particular crucial date.



W.A(MD) No.1364 of 2018

11. The Government had raised a clarification with respect to individuals who had resigned before that particular crucial date and the Accountant General had issued a clarification that without the specific orders of any higher authority or Government, those who had retired or resigned before the crucial date would be eligible to be granted the benefit.

12. The issue is with respect to individuals who retired or resigned after that particular crucial date like the writ petitioner herein. The writ petitioner had resigned on 21.01.1981 which was after the crucial date namely 01.03.1968.

13. The petitioner had joined into service on 28.03.1966. The petitioner had filed the writ petition in the year 2012. By applying G.O.Ms.No.37, Department of Education, Science and Technology dated 05.01.1983 the petitioner stood ousted from grant of any relief so far as pension is concerned.



W.A(MD) No.1364 of 2018

WEB COPY

14. We are fortified in this view by a judgment of the Division Bench of the Principal Bench in W.A.No. 2590 of 2018 wherein by judgment dated 27.06.2019, a Co-ordinate Division Bench had also examined the very same issue and had proceeded to allow the writ appeal therein. That writ appeal had been filed questioning the grant of pension to the first respondent in that particular writ appeal. The issue therein was in respect to non teaching staff. The crucial date for non teaching staff as provided in G.O.Ms.No.37 was 05.06.1981.

15. The learned Single Judge in the instant case had proceeded to consider the case of the writ petitioner by pointing out that when a benevolent concession is granted it cannot be taken away by the subordinate authorities. However, a careful perusal of the records shows that “benevolent concession” was extended only to those who had retired before the crucial date and in accordance with the clarification issued by the Accountant General. The G.O has to be followed in letter and spirit which would indicate that those had retired/resigned after the crucial date



W.A(MD) No.1364 of 2018

cannot be granted pension. Additionally, the writ petitioner in this case had come to Court after a period of nearly 31 years.

16. The learned Government Advocate placed reliance on the judgment of the Hon'ble Apex Court in the case of State of **Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others** reported in **(2015) 1 SCC 347**, wherein it is held as follows:

"23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1)

*(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. **Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or***



W.A(MD) No.1364 of 2018

the acquiescence, would be a valid ground to dismiss their claim.

(Emphasis supplied)

17. In this case, the writ petitioner had resigned on 21.01.1981 had come to Court after 31 years seeking pension and the same to be paid with interest and the interest to be compounded year after year. The respondent in the writ petition had stated that she had not made any representation for nearly 31 years. The writ petitioner is a fence sitter.

18. We are of the firm view that the order of the learned Single Judge does not withstand the scrutiny of this Court and the same is liable to be set aside.

19. Accordingly the writ appeal stands allowed. No cost.

(C.V.K.,J.) (R.P.,J.)
14.10.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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W.A(MD) No.1364 of 2018

To

WEB COPY

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WEB COPY



W.A(MD) No.1364 of 2018

C.V.KARTHIKEYAN, J.
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W.A(MD) No.1364 of 2018

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