



W.P.(MD)No.12327 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.12327 of 2017

and

W.M.P.(MD)No.9493 of 2017

1.K.Mayilvahanan

2.R.T.Subramanian

... Petitioners

/Vs./

1.The Principal Secretary,
School Education Department,
Fort St.George,
Chennai – 9.

2.The Director of Elementary Education,
College Road,
Chennai – 6.

3.The District Elementary Educational Officer,
Dindigul,
Dindigul District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders passed by the 3rd respondent in Na.Ka.No. 594/A1/2014 dated 28.08.2014 passed against the 1st petitioner and Na.Ka.No.601/A3/2014 dated 09.09.2014 passed against the 2nd petitioner, quash the same and consequently, direct the respondents to extend the benefit of G.O.Ms.No.210, School Education Department dated 14.08.2009.

For Petitioners : Mr.B.Vinothkumar

For Respondents : Mr.T.Amjad Khan

Government Advocate

ORDER

This writ petition has been filed challenging the impugned orders dated 28.08.2014 passed by the third respondent against the first petitioner and the order dated 09.09.2014 passed by the third respondent against the second petitioner, rejecting the respective petitioners' request to extend the benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009 to them.



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2. Under the impugned orders, the respective petitioners' plea has been rejected by relying upon G.O.Ms.No.146, School Education Department, dated 19.06.2012, wherein the State Government had granted the benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009 to 260 persons, who have got similar relief from the Court, however confined the relief to the persons, who have retired from service during 01.06.1988 to 30.09.1994 alone.

3. The State Government, by way of G.O.Ms.No.210, School Education Department, dated 14.08.2009 granted monetary benefits to the middle school headmasters by fixing selection / special grade in the cadre of middle school headmaster by counting their earlier services rendered in the cadres of secondary grade teacher, elementary school headmaster and middle school headmaster.

4. The respective petitioners approached the respondents by way of their representations to extend the benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009 referred to supra to them as



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well, but their representations were not considered and the petitioners were constrained to approach this Court by filing a writ petition in WP.No.16628 of 2010, the said writ petition came to be disposed of by order of this Court dated 03.08.2011 by directing the respondents to consider the petitioners' representations within a time frame fixed by this Court. Based on the directions issued by this Court in WP.No.16628 of 2010, the third respondent had rejected the first petitioner's request by order dated 28.08.2014 and the second petitioner's request by order dated 09.09.2014 by holding that subsequent to passing of G.O.Ms.No.210, School Education Department, dated 14.08.2009, another Government Order in G.O.Ms.No.146, School Education Department, dated 19.06.2012 was passed, which granted the benefit only to the persons, who had retired from service during the period from 01.06.1988 to 30.09.1994.

5. The learned counsel appearing the petitioners would submit that since the respective petitioners have fulfilled the relevant criteria for extending the benefit granted vide G.O.Ms.No.210, School Education Department, dated 14.08.2009, which is also not disputed by the



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respondents, they ought to have been granted the benefit under the said Government Order. He would submit that, by total non application of mind, by relying upon irrelevant Government Order, namely, G.O.Ms.No. 146, School Education Department, dated 19.06.2012, the petitioners' request has been rejected under the impugned orders.

6. The learned counsel appearing for the petitioners also drew the attention of this Court to the orders passed by this Court in identical matters, one of which is order dated **19.12.2014** passed by this Court in ***WP.No.33763 of 2014*** in the case of ***D.Edward and another vs. the Government of Tamilnadu, School Education Department and Others***, wherein it has been held that the date of retirement has no relevance for the purpose of applicability of G.O.Ms.No.210, School Education Department, dated 14.08.2009.

7. The learned counsel appearing for the petitioners would submit that the same contention that has been raised in the impugned orders for rejecting the petitioners' plea was considered in the aforesaid decision and the learned Single Judge of this Court had held that G.O.Ms.No.146,



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School Education Department, dated 19.06.2012, was issued to another set of 260 persons, who had approached this Court and got orders and those persons retired on various dates and the last person retired on 30.09.1994. The learned Single Judge also held that G.O.Ms.No.146, School Education Department, dated 19.06.2012 was passed to implement the various orders of this Court and hence, the date of retirement has no relevance.

8. The learned counsel appearing for the petitioners also drew the attention of this Court to an order dated 19.12.2014 passed by the another learned Single Judge of this Court in WP.No.33764 of 2014, wherein also it was held that G.O.Ms.No.146, School Education Department, dated 19.06.2012 has no relevance. The learned counsel appearing for the petitioners also relied upon two other authorities rendered by this Court one dated 19.07.2016 passed in WP(MD)No.12633 of 2016 and another dated 21.06.2016 passed in WP(MD)No.10891 of 2016 extending the benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009 to the similarly placed persons as that of the petitioners herein.



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9. On the other hand, the learned Government Advocate appearing for the respondents drew the attention of this Court to paragraph No.5 of the counter affidavit filed by the third respondent as well as paragraph No.8 and relying upon the same, he would submit that there is an inordinate delay on the part of the petitioners in seeking benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009 and therefore, in view of the delay, G.O.Ms.No.146, School Education Department, dated 19.06.2012 comes into play and as per the said Government Order, the relief could be granted only to the persons, who have retired between 01.06.1988 and 30.09.1994. In support of his contention that on account of the delay on the part of the petitioners to seek the relief, the learned Government Advocate appearing for the respondents also drew the attention of this Court to the Division Bench Judgment of this Court dated 25.06.2018 passed in WA.Nos.429 to 438 of 2018 and relying upon the said decision, he would submit that the petitioners are not entitled to get the benefit at this belated stage.



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10. Admittedly, G.O.Ms.No.210, School Education Department, dated 14.08.2009 and G.O.Ms.No.190, School Education Department, dated 12.07.2010 have not been withdrawn through the subsequent Government Order namely, G.O.Ms.No.146, School Education Department, dated 19.06.2012, which has been relied upon by the respondents. G.O.Ms.No.146, School Education Department, dated 19.06.2012 was passed only for the implementation of the Court orders in respect of the similarly placed persons, who had approached the Court. Under G.O.Ms.No.210, School Education Department, dated 14.08.2009, it has been made clear that to get the benefit of the said Government Order, the petitioners should have rendered the services in the cadre of secondary grade teacher as well as elementary school headmaster before the crucial date of 01.06.1988.

11. In the case on hand, the first petitioner had served as secondary grade teacher as well as the elementary school headmaster before the crucial date of 01.06.1988. Even though the second petitioner had served only as elementary school headmaster before the crucial date of 01.06.1988, the salary of both elementary school headmaster and



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secondary grade teacher being the same, certainly, G.O.Ms.No.210, School Education Department, dated 14.08.2009 has to be made applicable to him also.

12. When G.O.Ms.No.210, School Education Department, dated 14.08.2009 has not been withdrawn in G.O.Ms.No.146, School Education Department, dated 19.06.2012, which is relied upon by the respondents for rejection of the petitioners' plea, the question of non-applicability of G.O.Ms.No.210, School Education Department, dated 14.08.2009 to the case of the petitioners does not arise. There cannot be discrimination between the similarly placed persons, who have already got the benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009, pursuant to various orders passed by this Court, which have been relied upon by the learned counsel appearing for the petitioners.

13. It is also to be noted that the G.O.Ms.No.146, School Education Department, dated 19.06.2012 relied upon by the respondents for rejecting the petitioners' plea was passed only in respect of 260 persons, who had approached this Court by filing writ petitions and



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therefore, the said Government Order fixing the eligibility period cannot be made applicable to the case of the petitioners. Infact, as noticed in G.O.Ms.No.146, School Education Department, dated 19.06.2012, the last person, out of 260 persons, had retired from service in the year 1994 and only on that basis, the cut-off date was fixed, which cannot be certainly made applicable to the petitioners herein.

14. The learned Government Advocate appearing for the respondents also relied upon the Division Bench judgment of this Court dated 25.06.2018 passed in W.A.Nos.429 to 438 of 2018 and submitted that due to the inordinate delay in approaching this Court, the petitioners are not entitled for any benefit as per G.O.Ms.No.210, School Education Department, dated 14.08.2009.

15. However, as seen from the facts of the present case, this Court is of the considered opinion that there is no delay on the part of the petitioners to approach this Court for the following reasons:

(a) G.O.Ms.No.210, was passed by the School Education Department on 14.08.2009;



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(b) Both the petitioners had submitted their representations seeking for the relief immediately after passing of the said Government Order on 14.10.2009 and 15.10.2009 respectively;

(c) Since their representations were not considered, they approached this Court by filing a writ petition for mandamus in the year 2010;

(d) Pursuant to the directions issued by this Court on 03.08.2011, the respondents have considered the petitioners' request, which has been rejected under the impugned orders dated 28.08.2014 and 09.09.2014 respectively;

(e) The present writ petition has been filed in the year 2017, within three years from the date of the impugned orders;

(f) Now, the first petitioner is aged about 80 years and the second petitioner is aged about 84 years.

16. For the foregoing reasons, this Court does not find any inordinate delay on the part of the respective petitioners to file this writ petition. In the Division Bench judgment relied upon by the learned Government Advocate appearing for the respondents, the petitioners



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therein had approached this Court after a lapse of 25 years and therefore, the said decision has no applicability to the facts of the instant case. The plea of delay is therefore rejected by this Court.

17. Since it is clear that G.O.Ms.No.210, School Education Department, dated 14.08.2009 is applicable to the case of the respective petitioners and they are entitled to the benefit provided under the said Government Order, this Court is of the considered view that arbitrarily and by erroneously applying G.O.Ms.No.146, School Education Department, dated 19.06.2012, which has no relevancy, the third respondent has passed the impugned orders dated 28.08.2014 and 09.09.2014 rejecting the respective petitioners' request. Therefore, the impugned orders have to be quashed and the writ petitions will have to be allowed.

18. Accordingly, the impugned order dated 28.08.2014 passed by the third respondent against the first petitioner and the order dated 09.09.2014 passed by the third respondent against the second petitioner are hereby quashed and this writ petition is hereby allowed. The first



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respondent is hereby directed to extend the benefit of G.O.Ms.No.210, School Education Department, dated 14.08.2009 to the respective petitioners and grant necessary monetary benefits as per the said Government Order to the respective petitioners within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2024

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Principal Secretary,
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Fort St.George,
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College Road,
Chennai – 6.
- 3.The District Elementary Educational Officer,
Dindigul,
Dindigul District.



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ABDUL QUDDHOSE, J.

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Order made in
W.P.(MD)No.12327 of 2017

Dated:
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