

S.Ayyavoo Vs. 1.The District Elementary Educational Officer,

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Court : Chennai

Decided On : Sep-19-2014

Judge : K.K.Sasidharan

Appellant : S.Ayyavoo

Respondent : 1.The District Elementary Educational Officer,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

19. 09.2014 CORAM: THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
W.P.(MD)No.915 of 2013 S.Ayyavoo : Petitioner Vs. 1.The District Elementary Educational Officer, R.M.S.Road, Madurai-1. 2.The Director of Elementary Education, Nungambakkam, Chennai. 3.The Additional Assistant Elementary Educational Officer, Thiruparankundram at Thirunagar, Madurai-625 006. 4.The Accountant General (A&E), Tamil Nadu, Chennai-18. 5.The Principal Secretary, Education Department, School Education, Fort St. George, Chennai-9. : Respondents Prayer Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings dated 12.11.2012 issued in the reference letter No.13440/S2/2012-5 of the fifth respondent and quash the same and direct the respondents to pay pension to the petitioner. !For Petitioner : Mr.K.Vellaiswamy For Respondents 1to3&5 : Mr.J.Gunaseelan Muthiah, Government Advocate For Respondent No.4 : Mr.P.Gunasekaran :

ORDER

The application submitted by the petitioner for pension was rejected by the fifth respondent primarily on the ground that his resignation was subsequent to the cut-off date. BRIEF FACTS:

2. The petitioner joined the Government service as Elementary School Teacher on 19 July, 1949. The petitioner submitted resignation on 20 October, 1964, due to health reasons. The resignation was accepted with effect from 21 October, 1964. The petitioner was in continuous service for 14 years and 9 months.

3. The Government have issued an order in G.O.Ms.No.1015, Education Department, dated 05 June, 1981, providing for pension to the staff of Aided Educational Institutions and Panchayat Union Schools. Since the petitioner worked in a Panchayat Union School and relieved from the post on 21 October, 1964, he is also entitled to the benefits of the Government Order.

4. The petitioner earlier filed a Writ Petition before this Court in W.P.(MD)No.12295 of 2010. The Writ Petition was disposed of, by order dated 12 March, 2012, directing the Secretary to Government, School Education Department, Chennai, to consider the proposal sent by the Director of Elementary Education, Chennai and pass appropriate orders. The fifth respondent, ultimately, passed the impugned order, rejecting the claim for pension. Feeling aggrieved by the said order, the petitioner has come up with this Writ Petition.

5. The first respondent, in her counter-affidavit, justified the impugned order. According to the first respondent, the petitioner was required to produce the medical certificate, within a period of three years, in the light of the Government Order in G.O.Ms.No.806, dated 21 May, 1979. Since the petitioner failed to submit the medical certificate within three years, his application was rightly rejected by the fifth respondent.

6. The fourth respondent filed a separate counter-affidavit, wherein it was contended that the petitioner made a claim, after a period of 45 years and as such, the very Writ Petition is liable to be dismissed on the ground of laches.

7. I have heard the learned counsel for the petitioner, the learned Government Advocate appearing on behalf of respondents 1 to 3 and 5 and the learned Standing Counsel for the fourth respondent. ANALYSIS:

8. The petitioner was a teacher of Panchayat Union School. The petitioner resigned from his job and it was accepted by the appointing authority. Since there was no provision to pay pension at that point of time, the petitioner failed to make a claim. Subsequently, the Government introduced Teachers Pension Scheme. Since the Pension Scheme was not applicable to those teachers who have resigned prior to the introduction of the said Scheme, the Government passed various orders to protect the interest of employees. We are now concerned with the Government Order in G.O.Ms.No.37, Education Department, dated 05 January, 1983, clarifying the earlier order in G.O.Ms.No.1015, dated 05 June, 1981.

9. The Government Order in G.O.Ms.No.1015, dated 05 June, 1981 contains a clause in paragraph 6(ii) to the effect that pension can be sanctioned even in cases where the incumbents had resigned since they could not have foreseen the introduction of Pension Scheme at the time they resigned.

10. The Government Order in G.O.Ms.No.37, Education Department, dated 05 January, 1983, was the subject matter of a Writ Appeal before the Division Bench in The Government of Tamil Nadu and another vs. S.V.Paul Jayaraj [2001(3) MLJ430. The Division Bench considered the Government order in G.O.Ms.No.37, Education Department, dated 05 January, 1983, and held that a teacher, who has resigned even after the crucial date, can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government. The Division Bench was of the view that liberal interpretation should be taken in the matter, in view of the language of the Government Order. The relevant observation reads thus: ".7. It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in

favour of the respondent teacher and we find that the learned Single Judge has also relied on the aforementioned Government order, G.O.Ms.No.37. This is apart from the fact that even the language of the Government Order dated 5.6.1981 and more particularly of paragraph 6(ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving a concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms.No.37 is more than clear. Therefore, we confirm the judgment of the learned Single Judge. We are told that there is a stay in the matter. We direct the Government to finalise the pension of the respondent teacher within three months from today."

11. The petitioner has placed reliance on a similar order passed by the Government in favour of another employee, by name T.A.P.Srinivasan. The said employee worked from 19 June, 1950 to 16 April, 1961. He resigned from the service, after the crucial date of introduction of pension. The Government considered the issue and finally, sanctioned him pension with effect from 01 March, 1968, which is stated to be the crucial date. The petitioner is also similarly placed.

12. The learned Standing Counsel appearing on behalf of the Accountant General submitted that the Writ Petition is liable to be dismissed on the ground of laches. I am not in a position to accept the said contention. The petitioner moved this Court on an earlier occasion and obtained an order to consider his representation on merits. This Court entertained the Writ Petition and issued a Mandamus. It was only pursuant to the said order, the fifth respondent considered the issue and passed the impugned order. We are now testing the impugned order passed by the fifth respondent. The request was not rejected on the ground that it was belated. There is no question of dismissing the Writ Petition on the ground of laches, at this point of time.

13. Clause No.4 of the Government Order in G.O.Ms.No.37, Education Department, dated 05 January, 1983, contains the following statement: ".4. Even in cases of ".resignation". after the crucial dates, the Government have in a

number of hard cases of particulars individuals relaxed the stipulations and allowed retirement benefits to ".resigned". teachers also."

14. The order impugned in this Writ Petition does not contain any indication that the fifth respondent has considered the case of petitioner, in the light of the Government Order in G.O.Ms.No.37, Education Department, dated 05 January, 1983, and more particularly, in the light of Clause 4, which provides that in case of hard cases, lenient view should be taken. Therefore, I am of the view that the issue requires fresh consideration by the Government.

15. In the result, the impugned order dated 12 November, 2012, is set aside and the matter is remitted to the fifth respondent for fresh consideration. DIRECTION:

16. The fifth respondent is directed to consider the case of the petitioner, in the light of the judgment of the Division Bench in The Government of Tamil Nadu and another vs. S.V.Paul Jayaraj [2001(3) MLJ430 cited supra, Government Order in G.O.Ms.No.37, Education Department, dated 05 January, 1983, and the Government Order in G.O.Ms.No.396, dated 12 September, 1997 passed in the case of Thiru.T.A.P.Srinivasan. Such exercise shall be completed, within a period of three months from the date of receipt of a copy of this order.

17. The Writ Petition is allowed as indicated above. No costs. To 1.The District Elementary Educational Officer, R.M.S.Road, Madurai-1. 2.The Director of Elementary Education, Nungambakkam, Chennai. 3.The Additional Assistant Elementary Educational Officer, Thiruparankundram at Thirunagar, Madurai-625 006. 4.The Accountant General (A&E), Tamil Nadu, Chennai-18. 5.The Principal Secretary, Education Department, School Education, Fort St. George, Chennai-9.

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