
(2015) 07 MAD CK 0106

In the Madras High Court

Case No : Writ Appeal (MD) No. 311 of 2015 and M.P. No. 1 of 2015

The District Elementary Educational Officer and Others

APPELLANT

Vs

S. Ayyavoo

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0106

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : V.R. Shanmuganathan, Special Government Pleader, for the Appellant; A. Mohan for K. Vellaisamy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Challenge in this Writ Appeal is to the directions of the Writ Court, wherein the Principal Secretary to the Government, Education Department, fifth appellant herein, has been directed to consider the case of the respondent, in the light of the judgment of the Hon''ble Division Bench in The Government of Tamil Nadu and Another Vs. S.V. Paul Jayaraj, (2001) 3 MLJ 430 : (2001) WritLR 852 and G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983 and G.O.Ms. No. 396, Education Department, dated 12th September, 1977 and to pass appropriate orders, within a period of three months from the date of receipt of a copy of the said order.

2. Case of the respondent, an octogenarian, is that he joined the Elementary school on 19.07.1949, under the Control of Thiruparankundram Panchayat. He rendered continuous service of 14 years and 9 months. Due to health grounds, he submitted a resignation letter on 20.10.1964. Resignation was accepted with effect from 21.10.1964. During the relevant period, pensionary benefits were not extended to teaching and non teaching staff. Representations were sent to the Additional Elementary Educational Officer, Thiruparankundram, Madurai and others, for pension. As there was no response, the respondent was constrained to send a representation to the Hon''ble Chief Minister of Tamil Nadu and vide

proceedings, dated 16.02.2010, the respondent was informed that his request would be considered. However, there was no progress. Again, the respondent made a representation to the Hon'ble Chief Minister of Tamil Nadu, for which, vide letter, dated 18.05.2010, a reply was given.

3. Thereafter, the respondent was constrained to file W.P. No. 12295 of 2010, which came to be disposed of on 12.03.2012, with a direction to the Principal Secretary to the Government, School Education Department, the fifth appellant herein, to consider the proposal dated 27.05.2010, sent by the Director of Elementary Education, Chennai, and to pass appropriate orders, in accordance with law, within a period of 8 weeks from the date of receipt of a copy of the order, by taking note of an earlier order passed in a similar writ petition, in W.P. No. 12157 of 2009, dated 07.09.2011.

4. The respondent/writ petitioner has further contended that since the order made in W.P. No. 12295 of 2010, dated 12.03.2012, was not complied with, Contempt Petition No. 677 of 2012 was filed, and taking note of the Government letter No. 13440/S2/2012-5, dated 12.11.2012 of the Secretary to the Government, School Education Department, Chennai, rejecting the request of the respondent/writ petitioner, Contempt Petition was closed, which resulted in filing of W.P.(MD) No. 915/2013, challenging the letter.

5. Before the Writ Court, grounds raised to quash Government letter No. 13440/S2/2012-5, dated 12.11.2012, are that in G.O.Ms. No. 1015, Education Department, dated 05.06.1981, the Government have decided to provide pension to the staffs, both teaching and non-teaching staff of aided educational institutions and Panchayat Union schools and inasmuch as the respondent had worked in a Panchayat Union School and relieved from the post on 20.10.1964, he is eligible for pensionary benefits.

6. The respondent/writ petitioner has also submitted that he had rendered 14 years and 9 months of service and thus, satisfied the requirements for grant of pension. A further contention has also been raised that G.O.Ms. No. 806, Education Department, dated 21.05.1971, is not applicable to the case of the respondent/writ petitioner.

7. First appellant in his counter affidavit has contended that the respondent/writ petitioner cannot be granted pension, as no material documents were produced within the stipulated time of 3 years. In the Government letter No. 13440/S2/2012-5, dated 12.11.2012, the following reasons have been assigned for rejection:

"As per G.O.Ms. No. 806, Education Department, dated 21.05.1979, pension is permissible only to those persons, working in aided and local body schools, resigned on medical grounds and that they should submit the medical certificate within a period of three years. The respondent has not submitted medical certificate within the stipulated time. Though the respondent has stated that he resigned on medical grounds, he submitted his representation, after a lapse of

44 years, after the date of resignation on medical grounds. However, in the service book of the respondent, it is recorded only as resigned from service, without any indication of the reasons. Thus, he has not satisfied the condition, as per the Pension Rules, relating to the servants in nongovernment educational institutions."

Contention has also been made that resignation entails forfeiture of past services and since the respondent has failed to submit the application, within the stipulated time, it was rightly rejected by the fifth appellant.

8. The Accountant General (A & E), Tamil Nadu, Chennai, fourth appellant has also filed a counter affidavit, stating that the writ petition filed after 45 years, is hit by delay and laches.

9. Adverting to the above submissions, by considering G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983, in which, clarifications have been issued to the earlier G.O.Ms. No. 1015, Education Department, dated 05.06.1981, and in particular to Clause 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, taking note of the decision of the Hon'ble Division Bench in The Government of Tamil Nadu and Another Vs. S.V. Paul Jayaraj, (2001) 3 MLJ 430 : (2001) WritLR 852 , overruling the objections of delay and laches and taking note of Clause 4 of G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983, which contains the following, viz., "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." the Writ Court has set aside the impugned letter, dated 12.11.2012, of the Principal Secretary, Education Department, Chennai and consequently, directed him, to consider the case of the respondent, in the light of the decision of the Hon'ble Division, cited supra and Government Orders, viz., G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983 and G.O.Ms. No. 396, Education Department, dated 12th September, 1977, passed in the case of Mr. T.A.P. Srinivasan and further directed that such exercise shall be completed within a period of three months, from the date of receipt of a copy of the order. Being aggrieved, the present appeal is filed.

10. Assailing the correctness of the impugned order made in W.P.(MD) No. 915 of 2013, dated 19.09.2014, Mr. V.R. Shanmuganathan, learned Special Government Pleader submitted that the decision in The Government of Tamil Nadu and Another Vs. S.V. Paul Jayaraj, (2001) 3 MLJ 430 : (2001) WritLR 852 , does not lay down any ratio decidendi that all the teaching and non teaching staff, covered under 1958 rules, and resigned, after the cut off date, are entitled to pension. According to him, Rule 23 of the Tamil Nadu Pension Rules, 1978, which entails forfeiture of past service, upon resignation, has not been considered.

11. It is also his submission that G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983, cannot override the statute, in particular, Rule 23 of the Tamil Nadu Pension Rules, 1978. According to him, G.O.Ms. No. 37, can be made applicable only to those, who retired and resigned, before the crucial date, fixed by the Government and not later. As the respondent resigned, after the crucial date, the said G.O., cannot be made applicable to him.

12. Inviting the attention of this Court to Paragraph 4 of G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983, learned Special Government Pleader further submitted that what is recorded in Paragraph 4 of the said Government Order, that "Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particular individuals, relaxed the stipulations and allowed retirement benefits to "resigned" teachers also", is only an observation and that cannot be construed and interpreted to mean that the Government have decided to extend the pensionary benefits, to all those persons, who have resigned, after the crucial date.

13. Learned Special Government Pleader further submitted that the respondent resigned on 21.10.1964. As per G.O.Ms. No. 1015, Education Department, dated 05.06.1981, pensionary benefits have been extended to both teaching and non-teaching staffs of aided schools, if they had retired before 31.05.1958 and not to others.

14. Reiterating the grounds of rejection in the Government letter No. 13440/S2/2012-5, dated 12.11.2012 of the Secretary to the Government, School Education Department, Chennai, learned Special Government Pleader submitted that the said order ought not to have been interfered with. On the above grounds, he sought for reversal of the order made by the Writ Court.

15. On the other hand, placing reliance on the order made in W.P. No. 12295 of 2010, dated 12.03.2012, Mr. A. Mohan, learned counsel for the respondent submitted that the Principal Secretary to the Government, Education Department, Chennai, has not considered the directions issued in W.P. No. 12295 of 2010, dated 12.03.2012, in proper perspective. According to him, in the abovesaid case, the Writ Court has specifically directed the Government to consider the proposals, dated 27.05.2010, sent by the Director of Elementary Education, Chennai and pass orders, on the same lines, by taking note of the order passed in W.P.(MD) No. 12157 of 2009, dated 07.09.2011. According to him, in the latter Writ Petition, directions were given to pay pension and therefore, pension ought to have been granted to the respondent, by applying the order made in W.P.(MD) No. 12157 of 2009 dated 07.09.2011.

16. Learned counsel for the respondent also placed reliance on an order in *Alice R.T. Solomon v. The Commissioner, Secretary, Government of Tamil Nadu, Department of Education, Secretariat, Chennai* reported in CDJ 2010 MHC 362, rendered by one of us (Hon"ble Mr. Justice S. Manikumar), and prayed to sustain the order impugned in this appeal.

17. Attention of this Court was also invited to the contents of the Service Register and Government Letter No. 37093/Elementary Education 3(2)/2013, dated 13.12.2013, addressed to the Government of Tamil Nadu, State Information Commission, wherein, a reply has been given to the effect that as and when, proposals are received from the Office of the Deputy Director, Directorate of Elementary Education, Chennai, for relaxation, the application of the applicant therein would be considered as per G.O.Ms. No. 37.

18. Learned counsel for the respondent further submitted that the order made in S.V. Paul Jeyaraj's case (cited supra), has been upheld by the Hon'ble Apex Court in S.L.P. (Civil) No. 22469/2001 and thereafter, Government have implemented the order of this Court, by issuing G.O.Ms. No. 123, Education, dated 07.08.2002. He further submitted that G.O.Ms. No. 37, has been implemented in many cases, including the case of one Mr. Sankaran, aged 83 years, who had resigned from service in the year 1964, and given pensionary benefits, after 46 years, as per the order made in W.A.(MD) No. 333 of 2011.

Heard the learned counsel for the parties and perused the materials available on record.

19. Before advertng to the facts of the case, this Court deems it fit to consider the Government Orders, dealing with grant of pension to non-Governmental teachers, prior to introduction of the Tamil Nadu Pension Rules, 1978. By G.O.Ms. No. 1109, Education Department, dated 31.05.1958, Government have framed the Tamil Nadu Non-Government Teacher's Pension Rules, 1958, with effect from 1st April, 1955. The said Government Order is extracted hereunder:

"THE TAMILNADU NON-GOVERNMENT TEACHERS" PENSION RULES 1958 - ISSUED IN G.O.MS. NO. 1109, EDUCATION, DATED 31ST MAY 1958

CHAPTER I - GENERAL

1. (i) These rules may be called the Tamil Nadu Non-Government Teachers' Pension Rules, 1958.

(ii) They shall be deemed to have come into force on the 1st April 1955:

Provided that in respect of Items (l) to (w) in category II and all the items in categories III and IV of rule 2 below the payment of pension shall commence only from 1st April 1958 without claim for any arrears prior to 1st April, 1958.

2. These rules shall apply to the following cases of Trained teachers employed in recognized elementary schools, secondary schools, including post-basic schools and training and special schools (Nursery, Montessori, Kindergarten and Pre-basic Schools), Oriental Schools and schools for handicapped children and Anglo-Indian Schools, run by aided managements, Municipal Councils, District Boards and Panchayats.

Note: (1) Trained Teachers who have been exempted from the operation of teachers provident fund rules and who subscribe to private funds of the

institutions accepted by the Director of Public Instruction will also be eligible for pension subject to other conditions being satisfied.

NOTE-(2) The term "Trained Teacher" wherever it occurs in the rules shall include a language Pandit, a Specialist teacher such as Physical Training Instructor, Craft Instructor, Music Instructor, teacher employed under the bifurcated courses of studies, pre-vocational instructor in higher elementary schools, who possess the qualifications prescribed for such appointment in the Madras Educational Rules or Rules relating to elementary schools or in the Code of Regulations for Anglo-Indian Schools. In the case may be, and a teacher who has been permanently exempted from the competent authority from the possession of the prescribed qualifications.

CATEGORY I - ELEMENTARY SCHOOLS

- (a) Lower Elementary Grade
- (b) Higher Elementary Grade (including Junior Basic Trained).
- (c) Secondary Grade (including Senior Basic Trained)
- (d) Collegiate Grade
- (e) Pre-Vocational Instructors.
- (f) pundits (appointed in the place of Secondary Grade teacher in complete higher elementary schools).
- (g) Music Teachers.
- (h) Supervisors of elementary schools.

CATEGORY II - SECONDARY SCHOOLS INCLUDING POST BASIC SCHOOLS

- (a) Elementary and Secondary Grade
- (b) Pandits (appointed before 1926 and who do not hold Oriental Titles.
- (c) Second Grade Pandits
- (d) Oriental Title-holders (Pandits who are placed in Grade II only)
- (e) Hindi Pandits (Second Grade)
- (f) Physical Training Instructors (Second Grade)
- (g) Drawing Masters
- (h) Manual Training Instructors and Assistant Manual Training Instructors.
- (i) Craft Instructors.
- (j) Music Teacher - Grade I and II.
- (k) Sewing and Needlework Mistresses.

- (l) Teachers in Drawing and Painting under bifurcated courses eligible for the scale of pay applicable to Secondary grade teachers.
- (m) Headmasters including District Board Educational Officers and L.T. Assistants.
- (n) Grade I Pandits
- (o) Physical Directors and Physical Training Instructors (Grade-I)
- (p) Secretarial Assistants.
- (q) Commercial Instructors.
- (r) Engineering Instructors and Assistant Instructors.
- (s) Agricultural Instructors.
- (t) Domestic Science Assistants (bifurcated courses).
- (u) Teachers in Music and Drawing (bifurcated courses).
- (v) Teachers in Drawing and Painting under bifurcated courses possessing the qualification prescribed for those who will be eligible for the L.T. Assistants' scale of pay.

CATEGORY III - TRAINING AND SPECIAL SCHOOLS

- (a) Headmasters and L.T. Assistants
- (b) Grade I Pandits
- (c) Physical Training Instructors (Grade I)
- (d) Secondary Grade Teachers.
- (e) Grade II Pandits
- (f) Physical Training Instructors - Grade II
- (g) Drawing Masters
- (h) Music Teachers.
- (i) Manual Training Instructors and Craft Instructors.
- (j) Sewing and Needlework Mistresses.
- (k) Elementary Grade Teachers.

CATEGORY IV-ANGLO-INDIAN SCHOOLS

- (a) Headmasters and B.T. Grade Assistants
- (b) High Grade Trained
- (c) Middle Grade Trained
- (d) Language Pandits

(e) Specialist Teachers,

(f) Primary Grade Trained

CHAPTER II - CONTRIBUTORY PROVIDENT FUND

3. The provident fund instituted by the Government for the benefit of teachers in non-pensionable service And the provident funds instituted by District Boards And Municipal Councils will continue to be maintained according to the rules in force immediately before the date of coming into force of these rules.

Note - (1) Trained teachers on schools under private management who were in service on the 1st April 1955 or who entered service after the 1st April 1955 shall be required to contribute to the provident maintained for teachers in non pensionable service (or to the private provident fund maintained by certain managements) in accordance with the rules relating to the said fund from the 1st April 1955 from the date on which the contribution is compulsory as per the said rules whichever is later if the teachers have not already been contributing to the fund provided that such contribution shall not be obligatory on the part of teachers belonging religious orders, unless they voluntarily opt to contribute. Trained teachers in schools under local bodies who were in service on the 1st April 195 or who entered service after the 1st April 1955 shall also be required to contribute to the Provident Funds instituted by the respective local bodies in accordance with the rules relating to such funds from the 1st April 1955 or from the date on which contribution is compulsory as per the said rules whichever later if the teacher have not already been contributing to the fund.

Note - (2) The period of service during which a teacher has as per note (i) above to contribute to Provident Fund but fails to do shall be forfeited for purpose of pension, unless such non-contribution is satisfactory explained by the teacher to the Concerned Divisional/Inspector of schools and the Divisional Inspector specifically condones it.

In the case of institutions intended for girls and women the D.P.I. shall exercise the powers of condonation.

(G.O. No. 944, Education, dated 4th June 1964)

None - (3) Trained teachers who have retired prior to the 31st December 1959 and have not contributed to any provident fund may be sanctioned pension provided they are otherwise Eligible

(G.O.Ms. No. 57), Education dated 20th January 1963)"

20. Chapter IV deals with pension and gratuity. Relevant Rules 12(a) and 12(b) read as follows:

"12(a) A teacher shall be eligible for payment of pension or gratuity, as the case may be:--

(i) Retirement on superannuation or voluntary retirement after 30 years of

qualifying service or

(ii) on discharge due to abolition of post or

(iii) on discharge due to closure of school or consequent on withdrawal of recognition of school or

(iv) on discharge due to invalidation on medical grounds, or

(v) on retirement on the date of commencement of the School year just preceding completion of 55 years or 60 years as the case may be, in order to avoid dislocation in the Middle of the School year or

(vi) on discharge due to compulsory retirement as a measure of punishment.

The grant of pension under (vi) shall be on the basis of Articles 465(B) of the Madras Pension Code.

(b) A teacher shall be eligible for pension, if he has rendered a total qualifying service of 10 years or more and discharged or retired, as per the rules and orders. In the case of teachers of elementary schools, coming under Category I of Rule 2,...."

21. In so far as delay in submission of medical certificate and condonation by the Director of School Education, Chennai, Government have issued G.O.Ms. No. 806, Education Department, dated 21.05.1979 and the same is extracted hereunder:

"The Director of School Education, has reported that number of representations are being received from teachers who have retired on medical grounds, for condonation of delay in between their dates of actual relief and the dates of medical certificate invalidating them and for sanction of pension to pension to them from the date of their actual relief itself. At present all such case are being submitted to Government and their orders as obtained condoning the delay in the production of medical certificate, so as to enable the pension sanctioning authorities to sanction pension from the date of their relief. Since cases of this kind are now on the increase and with a view to avoid delay and hardships to the retired teachers concerned, the Director of School Education has suggested that powers may be delegated to him to condone the delay from the date of relief to the date of the production of medical certificate in respect of teachers who retired on medical certificate in respect of teachers, who retired on medical grounds. The Accountant-General has stated that the proposals are acceptable.

2. The Government, after careful consideration accepted the above proposal of the Director of School Education and they accordingly, authorise the Director of School Education to condone the delay in the production of medical certificate in respect of teachers of non Government Schools (Aided and Local Body) upto the period of three years only from the date of relief so as to enable the individual to get pension from the date following the date of relief itself. The cases requiring condonation of delay of more than three years from the date of relief shall

however be referred to the Government for orders."

22. The Government have issued G.O.Ms. No. 1015, Education Department, dated 05.06.1981, fixing crucial date, for grant of pension, both to teaching and non-teaching staff in aided educational institutions and Panchayat Union schools. The said Government Order is also extracted hereunder:--

EDUCATION DEPARTMENT

G.O.Ms. No. 1015, Education

Dated: 05.06.1981

ABSTRACT: Pension for staff of Non-Government Educational Institutions. i) Non teaching staff of Aided schools and colleges. ii) Teaching and non teaching staff of Aided Technical Educational Institutions and iii) Staff of Regional Engineering College Tiruchirappalli. Those who retire before the respective crucial dates - pension sanctioned from date of order.

Read: From the Director of School Education 160820/PD2/73, dated 22.4.1975.

ORDER

The crucial dates from which the pension scheme for staff of non Government Educational Institutions was introduced for various categories of staff in non-Government Educational Institutions are as follows:--

So far as teaching staff of non Government Schools and Aided Colleges are covered items I.(a) and (b) and iii under para I above, teachers who retired before the respective crucial date have been given pension with effect from 1.3.68 (as per G.O.Ms. No. 1505 Education dated 24.9.1968). While the teachers who retired from the schools in the transferred area before 1.11.56 are getting pension only with effect from 1.5.77 with reference to G.O.Ms. No. 1994 Education dated 17.6.77.

3. So far as (1) non teaching staff of Aided schools and colleges (ii) Teaching and non-Teaching staff of aided Technical Educational institutions and (iii) staff (teaching and non teaching) of Regional Engineering College, Tiruchirappalli are concerned items ii, iii (b), (iv)(a) and (b) and V under para I above Family Pension benefits in respect of cases of Family Pension cases which occurred before the respective crucial dates have already been extended from 1.4.79 as per G.O.Ms. No. 465, Education dated 13.3.80. The Government now direct that the benefit of pension (under the non-Government Teacher's pension Scheme) be also extended with effect from the date of this order to persons belonging to the above three categories of staff who retired at any time before the respective crucial dates. No arrears of pension shall be paid for any period prior to the crucial date of this order.

4. Full retirement benefits as admissible under the Liberalised pension rules have

so far not been extended to the teaching and non teaching staff of Aided Technical Educational Institutions and the question of such extension is separately under consideration, pending such extension staff who retired from Aided Technical Educational Institutions before 1.1.1975/1.4.77 will get from the date of this order the benefit of pensions only and not DCR Gratuity. The other two categories (viz. Non teaching staff of Aided Schools and colleges and staff of Regional Engineering college, Tiruchirappalli) who retired before the crucial dates, will however be eligible for pension as well as Death-Cum Retirement Gratuity.

5. The calculation of pension (and where admissible Death-Cum-Retirement Gratuity will be only on the basis of the pay last drawn during the last 10 months or 12 months or 36 months service, as the case may be, depending on the date of retirement of the concerned persons concerned. The minimum pension admissible now shall however be sanctioned in all cases and future increases in minimum pension sanctioned in future will automatically be admissible.

6. On the analogy of the orders in Government Memo No. 21244/E6/63-5 Education dated 18.11.68, G.O.Ms. No. 1483, Education dated 28.8.73 and G.O.Ms. No. 1196, Education dated 15.7.75, the following further clarifications are also issued.

(i) the minimum pension admissible may be sanctioned on the basis of collateral evidence even where service books are not available and where no records are available to verify the service particulars.

(ii) Pension can be sanctioned even in cases where the incumbents had "resigned" since they could not have foreseen the institution of pension code had not scheme at the time they "resigned".

(iii) in the case of invalidation on Medical grounds pension can be sanctioned even in cases where the procedure prescribed in the Tamil Nadu Pension code had not been followed.

7. The authorities who can sanction pension with reference to these orders will be the State as these sanctioning pension to the respective categories who retired after the crucial dates.

8. The expenditure will be debited to the relevant heads of accounts of which the expenditure on retirement benefits to the particular kind of non-Government Educational Institution is debited.

9. This order issues with concurrence of the Finance Department vide its G.O. No. 4784/pension/81-1 dated 27.5.01."

BY ORDER OF THE GOVERNOR

C. Ramdoss "Commissioner and Secretary to Government

23. Subsequently, the Government have issued G.O.Ms. No. 37, Department of

Education, Science and Technology, dated 05.01.1983, regarding grant of pension to staff, in Non-Governmental Educational Institutions, Teaching Staff of Aided and Local Body Schools and teaching staff of Aided Colleges, who resigned before the relevant crucial dates and as to their eligibility for pension from 05.06.1981. Clarificatory order issued in G.O.Ms. No. 37, reads as follows:

ABSTRACT

Pension to Staff Non-Government Educational Institutions Teaching Staff of Aided and Local Body Schools and teaching staff of aided colleges who resigned before the relevant crucial dates -Eligibility for pension from 5-6-81 clarificatory orders issued.

DEPARTMENT OF EDUCATION SCIENCE AND TECHNOLOGY

G.O.Ms. No. 37

Dated: 5-1-1983

ORDER:

The crucial dates from which the pension scheme for staff of non government educational institutions was introduced for various categories of staff in non-govt. educational institutions and the dates from which those who retired before the crucial dates were allowed pension are as follows.

2. Many beneficiaries under G.O.Ms. No. 1505, dt. 24-9-68 would have found it difficult to produce service particulars to claim pension. It is likely that in some cases service registers might have been either lost or misplaced. In very many cases it would be even difficult to check the service details and then calculate pension eligibility due to sheer lapse of time. To obviate hardship and difficulties the authorities sanctioning pension were in Govt. memo No. 21344/E6/68-5, Education, dt. 18-11-1968) authorised to sanction the minimum pension in all such cases where Teachers Service registers are not available or it is difficult to verify service particulars of the applicant.

3. When authorising sanction of pension from 1-3-68 (under G.O.Ms. No. 1505/24-9-68) to Arumariammal who served as teacher in non-Government schools from 1912 to 1928 in G.O.Ms. No. 1196, Education, dt. 15-7-75, the Government enunciated the following general principal regarding admissibility of Pension to Persons who had resigned before the relevant crucial dates:--

"At the time the teacher "resigned" from service no one could have fore seen the institution by the Government of any pension scheme for teachers in non-Government service and it did not matter then whether one "resigned" from service or "left" service or got oneself discharged as physically unfit on production of Medical certificate, It is considered hard to deny pension in such cases even though such teachers may technically be said to have "resigned". It is in this spirit that instructions were issued in Memo. No. 21344/E6/685 Education, dt. 18-11-1968 allowing the sanction of minimum pension even in cases where

records like "Teachers" service Registers are not available of where it is difficult to verify the service particulars of Teachers"

4. Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particular individuals, relaxed the stipulations and allowed retirement benefits to "resigned" teachers also.

5. When Pension was sanctioned from 5-6-81 to non-teaching staff etc., Who had retired before the crucial dates, the following specific orders were issued.

(i) the minimum pension admissible may be sanctioned on the basis of collateral evidence even where service books are not available and where no records are available to verify the service particulars.

(ii) Pension can be sanctioned even in cases where the incumbents had "resigned" since they could not have foreseen the institution of pension scheme at the time they "resigned".

(iii) In the case of Invalidation on Medical grounds Pension can be sanctioned even in cases where the procedure prescribed in the Tamil Nadu Pension code had not been followed (G.O.1483, Edn./27-8-73).

6. As regard those who retired before the crucial dates, in the case of non-Teaching staff etc. who were given Pension benefits in para 6 of the G.O.1015/5-6-81 permitting the allowing of pension to "Resigned" persons also; but there are no such general instructions permitting the allowing of pension to "Resigned" teachers (who were given pension benefits from 1-3-68 as per G.O.Ms. No. 1505/dt. 24-9-68). Orders are however being issued in individual cases of such teachers who had "resigned" before the crucial dates. In this context, the Accountant General has asked for a clarification on the following two points:--

(i) Whether it is the intention of the Government to allow pension to all the teaching staff of Aided and Local Body Schools and Teaching Staff of Aided Colleges who had "resigned" from service prior to the respective crucial date/dates of the respective Government order introducing pensionary benefits?

(ii) and if so, whether they are eligible to draw pension from 1-3-63 with reference to Government Order Ms. No. 1505, Edn., dt. 24-9-68 read with Government Memo, No. 21344/E8/68-5, Edn. dt. 18-11-68.

7. The Government now clarify point(i) above in the affirmative i.e., the staff in question may be sanctioned pension by the respective authorities competent to sanction pension (without the need for any specific orders of any higher authority or of Government condoning the "resignation" in each Individual case)

8. However, as regards point (ii) above, the Government direct that the persons benefited with reference to the above clarification need be allowed pension only from 5-6-81 and that no arrears need be allowed for period prior to 5-6-81.

9. This order issued with the concurrence of the Finance Department vide its U.O. No. 144586/Pen 82-1, dt. 10/14-12-82.

(By order of the Governor)

Sd. C. Ramdas, Comm, and Secretary to Govt.

/True copy/"

24. Reading of the abovesaid orders, makes it clear that the Government have intended to grant pension to various categories of persons, mentioned in G.O.Ms. No. 37, viz., teaching and non-teaching staffs of Aided and Local Body Schools/ colleges, teaching staff of non Governmental Schools, teaching and non-teaching of Aided Technical Educational Institutions and Regional Engineering College, Tiruchirappali, who have resigned or retired before the crucial date, as mentioned in the relevant Government Orders, morefully set out in G.O.Ms. No. 37 and insofar as teachers (Aided for the purpose of retirement benefits, and included recognised "unaided" schools also. In so far as Anglo Indian Schools), are concerned, the scheme has been introduced from 01.04.1965 onwards and those, who retired before the crucial date, fixed in G.O.Ms. No. 1109, Education Department, dated 31.05.1958, have been allowed pension from 01.03.1968 onwards.

25. Further, in Paragraph 3 of G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983, the Government have considered the case of those, who had resigned before the crucial date, as to whether, they were "resigned" from service or "left" service or got one-self discharged, as physically unfit on production of Medical Certificate and that the Government have issued orders in G.O.Ms. No. 1196, Education, dated 15.07.1975, not to deny pension in such cases, even though such cases may be may be technically be said to have "resigned". For better understanding, it is relevant to extract Paragraph 3 of G.O.Ms. No. 37, as follows:

"When authorising sanction of pension from 01.03.1968 (under G.O. Ms. No. 1505/24.09.68) to Arumariammal, who served as teacher in non-Government Schools from 1912 to 1928 in G.O.Ms. No. 1196, Education, Dated 15.07.1975, the Government enunciated, the following general principal regarding admissibility of Pension to Persons who had resigned before the relevant crucial date:--

"At the time the teacher "resigned" from service no one could have foreseen the institution by the Government of any pension scheme for teachers in non Government service and it did not matter then whether one "resigned" from service or "left" service or got oneself discharged as physically unfit on production of Medical Certificate, it is considered hard to deny pension in such cases even though such teachers may technically be said to have "resigned". It is in this spirit that instructions were issued to Memo. No. 21344/E6/68-5, Education, dated 18.11.1968, allowing sanction of minimum pension even in

cases where records like "Teachers" service Registers are not available of where it is difficult to verify the service particulars of Teachers."

26. At Paragraph 4 of G.O.Ms. No. 37, the Government have recorded as follows:

"Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particular individuals, relaxed the stipulations and allowed retirement benefits to "resigned" teachers also."

27. The Government have also considered the case of one T.A.P. Srinivasan, who had retired from service, after the crucial date. Earlier his request for sanction of pension, was rejected, which came to be challenged in W.P. No. 3066 of 1995 and this Court, vide order, dated 14.03.1997, has set aside the rejection order. In compliance of the order made in W.P. No. 3066 of 1995, dated 14.03.1997, Government have issued orders in G.O.Ms. No. 396, dated 12.09.1997, as hereunder:

"3. Thiru. T.A.P. Srinivasan had worked as a trained Secondary Grade Teacher in Chengalpattu Board Schools from 19.06.50 to 16.04.61. After the introduction of Panchayat Unions, the Board Schools were transferred to the Control of Panchayat Unions and the individual was promoted as H.M., and transferred to the single teacher Elementary School, Nellothambakkam, on 16.04.1961. On transfer due to family circumstances, the individual had left his services on his own, thereafter without joining the post. Thiru. T.A.P. Srinivasan and the Assistant Educational Officer, Chittlapakkam had produced copies of service certificates for the period from June 1950 to January 1951. 11.01.1951 to 31.12.1954, 01.01.1955 to 1957 and 1957 June to 10.04.1961. But his service register is not available for verification of leave particulars. As the teacher had left the service well before 1961 prior to the taken over by the Government from panchayat union in 1981, it is not possible to locate the service book of the teacher at this stage and steps have been taken to find out the service register but it is not available. In order to comply the High Court judgment, dated 14.03.1997 and to avoid further proceedings by the High Court and in the event of the opinion of the Special Government Pleader (Education), High Court, Chennai that the above case is not fit for appeal, the D.E.E., has requested the Government to sanction minimum pension to Thiru. T.A.P. Srinivasan, with effect from 1963 as ordered by the High Court in its judgment, dated 14.03.1997 in W.P. No. 3066 of 1995.

4. The Government have decided to comply with the orders of the High Court. Accordingly, they sanction minimum pension and other consequential benefits to Thiru. T.A.P. Srinivasan, w.e.f. 01.03.1968.

5. The DEE is requested to take necessary action in this regard.

6. This order issues with the concurrence of Finance Department-vide its U.O., dated 05.08.1997."

28. Reference has been made to another order issued by the Government in G.O.

(3D) No. 201, School Education (B2) Department, dated 16.12.2010, issued in favour of one Mr. Alice R.D. Soloman, resigned from service on 18.06.1973, wherein, Rule 12(a) of the Tamil Nadu Non-Government Teacher's Pension Rules, has been relaxed. The said G.O., is also extracted hereunder:

29. As per Rule 12(b) of the Tamil Nadu Non-Government Teacher's Pension Rules, 1958, which came into force from 01.04.1955, teachers are eligible for pension, if they have rendered a total qualifying service of 10 years or more and discharged or retired, as per the rules and orders.

30. Perusal of the additional typed set of papers, filed by the respondent indicates that the Additional Assistant Elementary Educational officer, Tiruparakundram, Tirunagar, Madurai, has received an application of pension and gratuity from the respondent. From the service particulars, entered in the application form, it is also seen that he was working as an Assistant Teacher, Panchayat Union Primary School, Samanatham, till 20.10.1964. The respondent has declared, as voluntarily retired, from the said date.

31. Entry in the copy of the service records further states that the respondent was on unearned leave on medical grounds from 07.08.1963 to 21.10.1964 and extraordinary leave from 06.06.1954 to 19.10.1964 and from 21st onwards, he was relieved. He has put in 14 years and nine months. The Additional Assistant Elementary Educational Officer, Thiruparakundram, Tirunagar, Madurai, has not made any contra opinion. Service records further shows that his resignation has been accepted, with effect from 20.10.1964.

32. In Alice R.T. Solomon v. The Commissioner, Secretary, Government of Tamilnadu, Department of Education, Secretariat, Chennai reported in CDJ 2010 MHC 362, one of us (Hon''ble Mr. Justice S. MANIKUMAR), has considered a similar case of a teacher, who sought for pension, as per G.O.Ms. No. 37, dated 05.01.1983. In the said case, the writ petitioner therein, was relived on 30.06.1994. Reliance was placed on G.O. Ms. No. 288, Education (U2) Department, dated 1.3.1988 and G.O.Ms. No. 1364, dated 14.12.1987, wherein, pension has been granted to teachers, who had retired and resigned.

33. In the said judgment, the petitioner therein, has also pointed out a specific instance, wherein another teacher, Mr. Zdanisla Fernando, Headmaster of DON BOSCO Matriculation Higher Secondary School, Chennai, has been granted pension by the Government.

34. Though the learned Special Government Pleader submitted that Hon''ble the Division Bench in The Government of Tamil Nadu and Another Vs. S.V. Paul Jayaraj, (2001) 3 MLJ 430 : (2001) WritLR 852 , has not laid down a ratio decidendi, that persons, who retired or resigned from service, after the crucial date, are also entitled to pensionary benefits and that Paragraph 4 of G.O.Ms. No. 37, was only a factual statement, made by the Government, in respect of some hard cases of particular individuals, where relaxation of the stipulations, were allowed, the said contention cannot be accepted for the reason that the

Hon"ble Division Bench, while considering the request of the respondent therein, in the above reported judgment, with reference to G.O.Ms. No. 1015, Education Department, dated 05.06.1981 and G.O.Ms. No. 37, Department of Education, Science and Technology, dated 05.01.1983, at Paragraph 7, has categorically held as follows:

"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 afore- mentioned 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 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."

35. Judgment of S.V. Paul Jeyaraj's case (cited supra), has been holding the field from 2001 onwards. It has become final. With due respect, submissions of the learned Special Government Pleader is nothing but an indirect attempt to review the reported judgment and the same is not permissible. From the above, it could be deduced that depending upon individual cases, the Government have issued orders, relaxing Rule 12 of the Tamil Nadu Non-Government Teacher's Pension Rules and granted pensionary benefits to teachers, who have retired or resigned, even after the crucial date.

36. Scrutiny of the order made in W.P. No. 12295 of 2010, dated 12.03.2012, shows that, earlier, when a Mandamus, directing the respondents therein to sanction pension, with effect from 20.10.1964, was sought for, the appellants 1 to 4 herein, have submitted that the writ petition has been filed after a lapse of 40 years, from the date of resignation and therefore, it is not maintainable. Submission has also been made that the authorities concerned, have approached the Government, through proceedings, dated 27.05.2010 and that the same was pending. In the said W.P. No. 12295 of 2010, while considering as to whether the respondent is entitled to claim pensionary benefits, reliance has been made on the earlier decision of this Court in W.P. No. 12157 of 2009, dated 07.09.2011, wherein, a learned single Judge, has held as follows:--

"2. In fact, on a reading of the impugned order passed by the first respondent, it is clear that the first respondent has sent a proposal to the Government for the purpose of grant of pension by taking into consideration the above said period by granting necessary relaxation. Because the Government has not granted

relaxation, the impugned order came to be passed. When admittedly the service rendered in the aided school between 19.07.1963 to 28.11.1990 is a pensionable service, which is more than 10 years, in my considered view it is not fair for the respondent to deny the pensionary benefits to the petitioner. It is also relevant to point out at this stage as submitted by the learned counsel for the petitioner that under similar circumstances in respect of another person by relying upon a letter of the first respondent dated 04.10.1987, the first respondent in categorical terms has stated that persons, who have working in aided schools staffs are entitled to pensionary benefits, even if they resigned from services. The operative portion of the said letter is as follows:--

"In this case as the incumbent resigned from Government service, the service rendered to resignation will be forfeited. As per orders issued in letter 2nd cited above, the staff of non-Government educational institutions i.e. only the aided schools staff are entitled for the benefits even they resigned from service."

37. Reading of the order made in W.P. No. 12295 of 2010, dated 12.03.2012, further indicates that a representation has been made by the respondent, that the order, dated 07.09.2011 in W.P. (MD) No. 12157 of 2009, has been implemented. Though objections have been made on the grounds of delay and laches, at Paragraph 9, in W.P. No. 12295 of 2010, the Writ Court held as follows:

"9. On the other hand, in my considered view, since the petitioner is 61 years old, it is just and proper to direct the Government to consider the proposal sent by the Director of Elementary Education, Chennai, as per proceedings, in Na.Ka. No. 2601/B4/2010, dated 27.05.2010, and pass appropriate orders on the same also by taking of the order passed by this Court in W.P.(MD) No. 12157 of 2009, dated 07.09.2011."

38. As rightly contended by the learned counsel for the respondent, in Government letter No. 13440/S2/2012-5, dated 12.11.2012 of the Secretary to the Government, School Education Department, Chennai, there is no reference to the order made in W.P. No. 12157 of 2009, dated 07.09.2011, despite the directions given by the Writ Court to pass orders, on the proposals sent by the Director of Elementary Education, Chennai, vide proceedings, in Na.Ka. No. 2601/B4/2010, dated 27.05.2010, by taking note of the order made in W.P.(MD) No. 12157 of 2009, dated 07.09.2011. The Government ought to have considered the earlier directions, in proper perspective.

39. Even earlier, objections raised on the delay and laches, have been impliedly overruled. Though directions were granted, notwithstanding the delay, again, the said objection has been raised in the impugned letter. Delay cannot be a ground for rejecting the request for pension, for the reason that denial of pension is a continuing wrong committed against the respondent. Claim for pension does not affect the rights of third parties. As the right subsists, remedy can be sought for. Non submission of medical certificate is only a curable defect within the period provided for and it cannot be put against the respondent.

40. Further, non-submission of medical certificate, within a period of three years, cited as one of the reasons, for rejection, cannot be accepted for the reason, that, even prior to resignation from service, the respondent has taken medical leave and that the same has been recorded in the service register. Resignation has been accepted on 21.10.1964. Contention of the learned Special Government Pleader with reference to rule 23 of the Tamil Nadu Pension Rules, 1978, is untenable, as the case of the respondent is considered with reference to 1958 rules.

41. Yet another factor, which requires to be considered is that respondent's son seemed to have sent a representation, seeking relaxation of the condition imposed in G.O.Ms. No. 37, for grant of pension. When a matter was pending, before the State Information Commission, Government of Tamil Nadu, in Case No. 14689/Investigation/C/2013, dated 20.11.2013, a reply in Letter No. 37093/Elementary Education 3(2)/2013, dated 13.12.2013, has been given by the Under Secretary, Public Information Officer, to the State Information Commission that no sooner, proposals are received from the Office of the Deputy Director, Directorate of Elementary Education, Chennai, for relaxation, appropriate orders would be passed as per G.O.Ms. No. 37 in accordance with law. It should be further noted that earlier, before the Writ Court, submissions have been made to the effect that proposals dated 27.05.2010 have been sent by the Directorate, and the prayer made in the writ petition was to consider the proposals and pass order. Now in the form of reply to the State Information Commission, the very same reason is given. Considering the age of the respondent, 83 years and the fight for pension, attention of the Government is invited to the judgment in *Deokinandan Prasad Vs. The State of Bihar and Others*, AIR 1971 SC 1409 : (1971) 1 LLJ 557 : (1971) 2 SCC 330 : (1971) SCR 634 Supp , wherein, it is held that "pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant."

42. In *Dr. Uma Agrawal Vs. State of U.P. and Another*, AIR 1999 SC 1212 : (1999) 2 JT 359 : (1999) 2 SCALE 153 : (1999) 3 SCC 438 : (1999) 2 SCR 42 : (1999) AIRSCW 876 : (1999) 3 Supreme 138 , the Hon"ble Apex Court held that "grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring ever in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."

43. In *State of Kerala v. M. Padmashan Nair*, reported in 1985 AIR 356, the Hon"ble Apex Court held that, "Pension and gratuity are no longer any bounty to

be distributed by the government to its employees on their retirement but have become under the decisions of the Supreme Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

44. In the light of the above discussion and decisions, we are not inclined to interfere with the impugned order, made in W.P.(MD) No. 915 of 2013, dated 19.09.2014. Hence, Writ Appeal is dismissed, with a direction to the Deputy Director, Directorate of Elementary Education, Chennai to send the proposals forthwith, if not sent already. At this juncture, at the risk of repetition, the appellants have already stated that proposals dated 27.05.2010 have been duly sent to the Government. In normal circumstances, the court would not issue a positive direction to grant relaxation. But considering the material on records, age of the respondent, the Principal Secretary to the Government, School Education, Chennai, fifth appellant herein, shall consider the proposals, in the light of what is discussed and observed and grant relaxation of 12(a) and (b) of the Tamil Nadu Non Government Teacher's Pension Rules, 1958, within a period of three weeks, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.