

**(2014) 10 MAD CK 0269**

**Madras High Court**

**Case No:** Writ Petition No. 27358 of 2014 and M.P. No. 1 of 2014

S. Jeganathan

APPELLANT

Vs

The Director of School Education

RESPONDENT

**Date of Decision:** Oct. 28, 2014

**Hon'ble Judges:** M.M. Sundresh, J

**Bench:** Single Bench

### **Judgement**

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.

The petitioner herein reached the age of superannuation after working as a teacher on 30.9.2014. Thereafter, a request was made on behalf of the petitioner by the 4th respondent to the 3rd respondent seeking re-employment of the petitioner till the end of the academic year 2014-2015. The request made was rejected by the 3rd respondent on the sole ground that the petitioner, having not completed ten years of service he is not entitled for re-employment as per the proceedings of the 1st respondent dated 13.8.2008. Challenging the same, the present writ petition has been filed.

2. Learned counsel appearing for the petitioner submitted that the issue involved in this writ petition is no longer res integra. Considering the very same issue, this Court in W.P.No. 23777 of 2012 etc., batch, by Order dated 8.11.2012, after making reliance upon earlier decision of this Court dated 19.7.2010 made in W.P.No. 12883 of 2010 (M.Rajendran Vs The Director of School Education, Chennai-6) was pleased to allow the writ petitions covering the very same issue.

3. Though the matter has been adjourned on the last occasions directing the learned Additional Government Pleader to get necessary instructions in this regard, even today there are no instructions. Therefore, this Court is inclined to proceed with the matter.

4. Considering the very same issue, this Court in W.P.No. 23777 of 2012 etc., batch, by Order dated 8.11.2012, was pleased to hold as follows:

""7. As we have noted, the State Government has issued orders granting re-employment to teachers who attain the age of superannuation in the middle of the academic year. The academic year has been understood as starting from 1st June of a calender year and ends with 31st May of the next calender year. The Government Order was introduced keeping in mind the interest of the students, so that during the middle of the academic year when a teacher retires it will not result in academic discontinuances. The Government has issued orders from time to time reviewing the earlier order with certain conditions imposed. But in no Government Order any minimum service has been provided with reference to the grant of re-employment. The Government Orders states that service extension to a teacher has been issued in public interest and for the academic welfare of the students. The artificial introduction of minimum service by the Director of School Education, the issue raised in these writ petitions is no longer res integra as V.Ramasubramaniam, J. in W.P.No. 12883 of 2010 (M.Rajendran Vs The Director of School Education, Chennai - 6) has allowed similar writ petition by an order dated 19.07.2010. In paragraph Nos. 5 to 8 it is observed as follows:

"5. Unfortunately, the respondents have not relied upon any Rule or Government Order for coming the the above conclusion. In G.O.Ms.No. 1643, Education Department dated 27.10.1988, the Government issued revised instructions with regard to re-employment of teachers. The earliest order, provided for re-employment till the end of the academic year, was passed way back in 1959 in G.O.Ms.No. 249, Education, Dated 09.02.1959. It was only after about 30 years that those instructions were revised and the revised instructions, found in G.O.Ms.No. 1643, Education Department, dated 27.10.1988, read as follows:

"The order first read above, while permitting the continuance of the teachers in service on employment terms on their attainment of the age of superannuation in the middle of the school, the following pre-requisite conditions have been prescribed.

(1) The character, and the conduct of the teacher should be satisfactory.

(2) They should be physically fit to continue in service.

2. Now it has been brought to the notice of the Government that in respect of school education department, more than 25% of the pension proposals are being sent to the Accountant General in a year. To avoid delay on the part of the teachers, who are due to retire in preferring claims and in view of the fact that almost all the teachers are interested in getting employment, the Director of School Education has suggested to incorporate another condition viz., the pension papers should be submitted at least one year before the date of their retirement be made as the third pre-requisite condition for re-employment."

6. There is nothing to suggest in the above Government Order that if a teacher had completed less than the qualifying service of 10 years for grant of pension, he would not be entitled to the benefit of re-employment. But, the Chief Educational Officer, Vellore, who is the second respondent herein, rejected the request of the petitioner for re-employment only on the basis that the petitioner had not completed the qualifying service.

7. The Director of School Education, Chennai also appears to have issued instructions on 13.08.2008, to the effect that if a teacher had rendered services for a period of less than 10 years, he would not be permitted for extension of service. But, this order of the Director of School Education, Chennai is also not based upon any Government Order. In such circumstances, the stand taken by the respondents appears to be wholly ill-founded.

8. More than anything else, the grant of re-employment to the teachers till the end of the academic year is not actually a right or benefit or privilege conferred upon the teachers. It is actually a privilege conferred upon the students, so that they have continuity of studies during the course of their academic year. The purpose for which, the teachers are granted re-employment, is to ensure that there is no interruption in the curriculum of the children. This purpose has nothing to do with the qualifying service put in by a teacher for the purpose of pension."

8. In the light of the above, all the writ petitions are allowed and the respondents are directed to grant re-employment forthwith to the petitioners from the date of their retirement till 31.05.2013. Consequently, the connected miscellaneous petitions are closed. No costs."'"

5. In the light of the above said pronouncement covering the very same issue, the order impugned passed by the 3rd respondent herein is set aside and consequently the respondents are directed to re-employ the petitioner till the end of the academic year 2014-2015 (31.5.2015) by passing appropriate orders within a period of two weeks from the date of receipt of copy of this order. However, it is made clear that the petitioner is entitled to salary only from the date of his re-employment.

6. The writ petition is disposed of accordingly. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.