

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.359 of 2015
and
M.P.No.1 of 2015

1. Government of Tamilnadu,
rep by the Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.
 2. The Director of School Education,
College Road, Chennai-600 006.
 3. The Joint Director of School Education
(Vocational),
College Road,
Chennai-600 006.
 4. The Chief Educational Officer,
Vellore District,
Vellore.
- ...Appellants/Respondents

Vs. सत्यमेव जयते

B.Raghavendran

...Respondent/Petitioner

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 14.2.2014 made in W.P.No.4408 of 2014.

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the

respondents 1 to 4 to count the 50% of the petitioner's service for a period from 7.10.1978 to 31.3.1990 as Single and Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 1.4.1990 to 30.6.2010 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits.

For Appellants : Mr.K.Karthikeyan, GA

JUDGMENT

(Judgment of the court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 14.02.2014 passed in W.P.No.4408 of 2014, whereunder and whereby the writ petition filed by the respondent herein was allowed, directing the appellants herein/respondents therein to count 50 % of the writ petitioner's part time service as Vocational Instructor from 7.10.1978 to 31.3.1990 for the purpose of computing pension.

2. The facts in brief relevant for the purpose of adjudication are that the writ petitioner / respondent herein (hereinafter referred to as "respondent") was indisputably appointed as a single part time vocational instructor in Auditing and Accountancy on 17.10.1978 at Islamia Higher Secondary school, Pernambut, Gudiyatham, Vellore District. Thereafter, vide order dated 22.8.1979, he was appointed as Double Part Time Vocational Instructor in the same subject and also in the same school with approval of the Chief Educational Officer granted on 7.5.1993.

3. The State Government came up with a scheme by G.O.Ms.No.437, Finance (Pension) Department dated 23.06.1988, providing for counting of half of the service paid from contingencies to the employees in the whole time employment (and not part time for a part of the day) which was under regular employment. Thereafter, vide G.O.Ms.No.118, dated 14.2.1996, the scheme was modified to the extent that the half of the service rendered by the Government employees under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment, subject to certain conditions, namely the job involves whole time employment, service under non-pensionable establishment should have been on time scale of pay and the service should have been continuous and followed by absorption in pensionable establishment without a break.

4. Thereafter, one more G.O.Ms.No.408 dated 25.8.2009 was issued expanding the scope of the circular making applicable to the employees, who have worked on the basis of non-provincialised service, consolidated pay, honorarium and daily wages absorbed in permanent government service before 01.04.2003 subject to the condition that it should be full time governmental service and without a break in service.

5. The respondent while working as double part time Vocational Instructor since 22.8.1979, was absorbed in regular time scale of pay by order of the Chief Educational Officer dated 24.3.1991 with effect from 1.4.1990 and retired from service on 30.6.2010 on attaining the age of superannuation. But the respondent was not given the benefits under various G.Os, as aforestated. Being aggrieved, the respondent preferred the writ petition seeking a direction to the respondents therein to count 50% of his service for a period from 7.10.1978 to 31.3.1990 as Single and Double Part Time Vocational Instructor along with regular service as vocational instructor for the period from 01.04.1990 to 30.6.2010 as qualifying service for the purpose of pensionary benefits and consequently to grant pensionary benefits with arrears, in January, 2014. The learned Single Judge by the impugned order dated 14.2.2014 allowed the writ petition as aforestated. Thus, the question arises as to whether the respondent is entitled to benefit of 50% of his service rendered as double part time vocational instructor, for the purpose of calculation of qualifying service period for pensionary benefits.

6. Mr.K.Karthikeyan, learned Government Advocate submits that the 50% of the service spent by the respondent as single and double part time vocational instructor cannot be counted along with regular service as vocational instructor for the purpose of computation of pensionary benefits, as the aforestated G.Os clearly provide that the benefits under the said G.Os are available only to full time employees in regular establishment. Admittedly, the respondent was appointed as single part time Vocational Instructor with effect from 7.10.1978, not full time instructor to entitle him to get the benefit of counting 50% of his service for the purpose of computation of pensionary benefits.

7. We have heard the learned Government Advocate and perused the pleadings and documents appended thereto.

8. Before proceeding to consider the scope of the aforestated G.Os., it is beneficial to extract relevant part of the said G.Os. G.O.Ms.No.437 dated 23.6.1988 provides as under :

"2.The Government accordingly direct that half of the service paid from contingencies shall be allowed to count towards pension along with regular service subject to the following conditions:

a)Service paid from contingencies should have been in a job involving whole time employment (and not part-time for a part on of the day)

b)Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, eg. Malis, chowkidar, khalasis etc.

c)The service should have been are for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which though not an analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

d)The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

e)Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January 1961 for which authentic records of service may be available."

9. G.O.Ms.No.118 dated 14.2.1996 provides as under :

"2.The Government have examined the question of extending the concession ordered in the G.O first read above to the case of Government employee who were borne on non-pensionable establishment and subsequently brought into pensionable establishment and have decided to count half of the service rendered under non-pensionable establishment along with service under pensionable establishment for pensionary benefits. They accordingly direct that half of the service rendered by State Government employees under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

i.Service under non-pensionable establishment should have been in a job involving whole time employment.

ii.The service under non-pensionable establishment should have been on time scale of pay.

Iii.The service under Non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break.

3.These orders shall take effect from the date of this G.O. In respect of those retired prior to the date of this order, eligible pension or revised pension, as the case may be, shall be paid from the date of this order and that there can be no claim for arrears in any case for the period upto the date of this order."

10. G.O.Ms.No.408 dated 25.8.2009 reads as under :

"2.In tandem with the above, for those who worked on the basis of Non-provincialised service, Consolidated pay, Honorarium and Daily Wages absorbed in permanent Government service before 01.04.2003, half of their total service period under Non-provincialised service, Consolidated pay, Honorarium and Daily Wages after 01.01.1961 could be calculated in addition to their eligible service period for pension benefits could be considered for the grant of pensionary benefits subject to the following conditions by way of a Government Order.

I.The Service Period under Non-provincialised service, Consolidated Pay, Honorarium and Daily Wages should be full-time governmental service.

II.The beneficiary should have been absorbed into permanent Government Service following their service periods under Non-Provincialised service, consolidated pay, Honorarium and Daily Wages.

III.The beneficiary should have been absorbed into permanent Government post before 01.04.2003 without break-in service."

11. On bare perusal of the aforestated G.Os, it emerges that employees must be under non-provincialised service, consolidated pay, honorarium and daily wages and absorbed in permanent government service before 1.4.2003. The respondent was absorbed in permanent service on 1.4.1990. The employee should also work as full time employee. No doubt, the respondent had worked as Single Part Time

vocational instructor from 17.10.1978 to 21.8.1979 and doubt part time vocational instructor from 22.8.1979 till 31.3.1990, the day he was absorbed in regular time scale.

12. The respondent has averred specifically in his writ petition affidavit that his workload was not less than 20 periods in a week and as such, double part time means full time as there is no concept of double part time, when the employee is required to work in the morning and also in the afternoon. In fact, the employment of the respondent was full time, not part time. There is no denial on the part of the authorities either before the writ court or in the appeal memo filed before us. Thus, the working of the respondent for not less than 20 periods in a week has been established. It is also not disputed that if an employee works for not less than 20 periods in a week, he is a full time employee. Thus, for all practical purpose, the respondent ought to have been treated as full time employee from 22.8.1979 till he was absorbed in regular service and retired. Accordingly, 50% of the respondent's period as double part time vocational instructor from 22.8.1979 till 31.3.1990 be counted for the purpose of computing pensionary benefits under the aforesaid G.Os.

13. The learned Single Judge has rightly come to the conclusion as under and granted the aforesaid benefits :

"4(c), The workload not less than 20 periods in a week is a whole time employment for a day. In fact, such appointment is Full Time Appointment, but the Government of Tamil Nadu with a view to deny the benefits of Full Time employment, designated the Vocational Instructors as Double Part Time Vocational Instructor. The Government of Tamil Nadu, in order to deny regular salary and permanent status to the Part Time Vocational Instructors, has introduced the system of Double part time teacher. As per the said system, though Vocational Instructor has taken classes in the morning and evening, he will be treated as Double Part Time Vocational Instructor and not Full Time Vocational Instructor. The petitioner worked for a whole day i.e., forenoon as well as in afternoon. But, he was designated as Double part Time Vocational Instructor instead of Full Time employee. After prolonged correspondence, the Government of Tamil Nadu has issued G.O.Ms.No.712 dated 28.5.1990 and G.O.Ms.No.834 dated 23.9.1994, G.O.Ms.No.221 dated 15.7.1999 to regularise the service of the Vocational Instructor."

14. Thus, the impugned order does not suffer from any infirmity, illegality or irregularity, warranting interference in this appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamilnadu,
School Education Department,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Joint Director of School Education
(Vocational),
College Road,
Chennai-600 006.
4. The Chief Educational Officer,
Vellore District,
Vellore.

1 CC to the Government Pleader, SR.No. 14651

KM (CO)
PSI (27.03.2015)

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and M.P.No.1 of 2015

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