

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2015

CORAM:

THE HON'BLE MR.JUSTICE D. HARIPARANTHAMAN

W.P.No.23241 of 2015
and M.P.No.1 of 2015

Tamil Nadu Secondary Grade Trained
Technical Teachers Association rep.
by its General Secretary P.Vellaichamy,
1548-A, South Street, Kuruvikarampai,
Thanjavur District .. Petitioner

vs.

The Government of Tamil Nadu
rep. by the Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009. .. Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 07.10.2014, passed by the respondent in Letter No.13588/Neva2(2)/14, and quash the same as illegal and unsustainable and direct the respondent to issue necessary Government Order for counting 50% of the service rendered as Part Time Vocational Instructor for pensionable purpose.

For Petitioner : Mr.R.Govindaraj

For Respondent : Mr.S.Gunasekaran,
Govt. Advocate

O R D E R

The petitioner is an association representing 500 of its members, who were absorbed as Full-time Vocational Instructors pursuant to G.O.Ms.No.224, Education, Science and Technology Department, dated 24.03.1994, and G.O.Ms.No.752, Education, Science and Technology Department, dated 18.10.1996.

2.1. During 1986, the Government decided to convert all the Part-Time Vocational Instructors into Full-time Vocational Instructors by way of G.O.Ms.NO.1367, Education Department, dated 05.09.1986, based on the One Man Committee

recommendations.

2.2. While so, the respondent issued an order dated 01.04.1992 stating that the qualified Part-Time Craft Techers would be appointed in the Secondary Grade vacancies in Elementary and Middle Schools, after completion of three months training.

2.3. On that basis, G.O.Ms.No.224, Education, Science and Technology Department, dated 24.03.1994 was issued for absorption of Vocational Instructors as Secondary Grade Teachers.

2.4. Subsequently, by way of another G.O.Ms.No.752, Education, Science and Technology Department, dated 18.10.1996, earlier G.O.Ms.No.224, dated 24.03.1994, was modified and it was decided to regularise the candidates, who have completed three months training in District Institute of Education and Training (for short "DIET") of various Districts, in the post of Full-Time Vocational Instructors and not in the post of Secondary Grade Teachers. Thereafter, they retired from service as Full-Time Vocational Instructors.

2.5. Their grievance is that if 50% of the service rendered as Part-Time Craft Instructors is counted along with regular service, they would get pension and the persons, who are getting pension, by counting regular service, would get enhanced pension. Hence, they made representations to the Government to count 50% of the service rendered as Part-Time Vocational Instructor along with regular service. Those teachers were admittedly regularised, after being sent for 3 months training during 1993-1995, much prior to 01.04.2003.

2.6. They relied on the judgments of this Court dated 16.04.2009 in W.P.No.39177 of 2002, dated 29.07.2011 in W.P.No.4556 of 2007 and dated 17.12.2014 in W.P(MD).No.2540 of 2012 in this regard.

2.7. They also relied on G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011, wherein 50% of the service rendered in the post of Part-Time Panchayat Assistants Grade I and Grade II, who had subsequently, absorbed in regular full-time post, was counted along with regular service for the purpose of pension.

2.8. They also relied on G.O.Ms.No.6, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2010 as well as G.O.Ms.No.34 of the same Department dated 14.03.2003.

2.9. But their representation was rejected by the respondent by the impugned order in Letter No.13588/Nee.Va.2(2)/

2014, dated 07.10.2014, stating that 50% of the service rendered by the members of the petitioner association as Part-Time Craft Teachers could not be counted along with regular service as Full-Time Craft Teachers, as the same is contrary to G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. It is stated that as per G.O.Ms.No.408, dated 25.08.2009, the Full-Time services rendered on consolidated pay, honourarium or on daily wages basis could be counted along with regular service and that Part-time service could not be counted. The impugned order also states that G.O.Ms.No.39 cannot be applied to Education Department, as the same is applicable only to Rural Welfare Department and Panchayat Raj Department.

2.10. Likewise, the impugned order states that G.O.Ms.No.6, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2010 and G.O.Ms.No.34 of the same Department, dated 14.03.2013 are applicable only to the employees employed in Noon Meal Centers and were later absorbed as Teachers or Supervisor Grade II and multipurpose Health Workers and those Government Orders cannot be applied to Education Department.

2.11. Challenging the aforesaid order dated 07.10.2014, this writ petition is filed by the petitioner association.

3. Heard both sides.

4.1. The learned counsel for the petitioner relied on (i) G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011, (ii) G.O.Ms.No.6, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2010 and (iii) G.O.Ms.No.34, Social Welfare and Nutritious Meal Programme Department, dated 14.03.2003.

4.2. The learned counsel for the petitioner relied on the following judgments of this Court :

- (i) dated 16.04.2009 in W.P.No.39177 of 2002,
- (ii) dated 29.07.2011 in W.P.No.4556 of 2007,
- (iii) R.Ragupathy V. State of Tamil Nadu, rep. by its Secretary to Government, School Education Department, reported in (2012) 3 MLJ 12 ; and
- (iii) dated 17.12.2014 in W.P(MD).No.2540 of 2012 ;

5. On the other hand, the learned Government Advocate sought to sustain the impugned order based on the reasons assigned in the impugned order. He submitted that the Government Orders of other Departments could not be relied on by the petitioner association, as its members are employed in Education Department. Further, he submitted that as per G.O.Ms.No.408, Finance Department, dated 25.08.2009 and Rule 11(2) of the Tamil

Nadu Pension Rules, a Full-Time Employee employed temporarily could seek to count 50% of the service rendered as temporary employee before regularization, along with regular service for pension and no Part-Time Teacher, who was regularised subsequently, could seek to count 50 % of Part-Time service for the purpose of pension.

6. I have considered the submissions made by either side.

7.1. The members of the petitioner association were employed in the Government Schools as Part-Time Vocational Teachers and they also possessed qualification to hold the post of Full-Time Vocational Teachers. The Government took a policy decision to absorb 500 Part-Time Vocational Instructors, who are the members of the petitioner association, into Full-Time Vocational Instructors, by imparting three months training in DIETs of various Districts, as has been done previously for promoting Higher Grade Teachers as Secondary Grade Teachers in Education Department.

7.2. Thus, Part-Time Vocational Instructors, numbering 500, were absorbed after imparting 3 months training during 1993-1995 period, as per G.O.Ms.No.224 and 752, Education, Science and Technology Department, dated 24.03.1994 and 18.10.1996 respectively. Those Full-Time Vocational Instructors, who were absorbed from Part-Time Vocational Instructors, retired from service on reaching the age of superannuation, as Full-Time Vocational Instructors.

7.3. As stated above, the grievance of the Full-Time Vocational Instructors is that the Part-time service rendered by them as Part-Time Vocational Instructors was totally not taken note of for the purpose of pension. They requested the Government to count 50% of service as Part-Time Vocational Instructors along with their regular service as Full-Time Vocational Instructors.

8. In fact, the issue has a chequered history. Some of the Vocational Instructors approached the Tamil Nadu Administrative Tribunal by filing original applications seeking to count 50% of their Part-Time service along with regular service for the purpose pension. The Tribunal passed an order on 29.11.2002 in a batch of cases to count 50% of service of Part-Time Vocational Instructors along with regular service. The said judgment attained finality. The same is not disputed by the learned Government Advocate.

9. Thereafter, some similarly situated teachers approached this Court by filing W.P.No.27017 of 2005 seeking a similar relief as was given by the Tamil Nadu Administrative

Tribunal in the order dated 29.11.2002, in a batch of Original Application. This Court allowed the writ petition in W.P.No.27017 of 2005 by an order dated 02.02.2006, based on the aforesaid order of the Tribunal dated 29.11.2002.

10.1. Thereafter, one Thiru.N.Rajendran, who was also a Part-Time Vocational Instructor governed by G.O.Ms.No.224 and 752, Education, Science and Technology Department, dated 24.03.1994 and 18.10.1996 respectively, approached this Court by filing W.P.No.39177 of 2002 to quash the order of the Government dated 29.07.2012 refusing to count 50% of Part-Time Service along with regular service. The Government passed the impugned order therein dated 29.07.2012 confirming the order of the Accountant General (A & E), Tamil Nadu, dated 11.12.2001 refusing to count 50% of past Part-Time Service along with regular service.

10.2. This Court considered the entire issue in detail and allowed W.P.No.39177 of 2002 on 16.04.2009. It is useful to extract paragraphs 4, 7 and 8 of the said order dated 16.04.2009 in W.P.No.39177 of 2002 as hereunder :

"4. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Education) for the respondents 1 to 3. The learned counsel appearing for the petitioner has drawn the attention of this Court to an unreported judgment dated 2.2.2006 in W.P.No.27017 of 2005. The prayer made in the said writ petition is for a direction to the first respondent therein namely the Director of School Education, Chennai, to count half service of the petitioner in the post of Part Time Vocational Instructor for the period from 08.11.1984 to 11.11.1997, for the purpose of pension by considering his representation dated 16.04.2003. This Court while disposing of the said writ petition, has taken into consideration of the order dated 29.11.2002 passed by the Tamil nadu Administrative Tribunal, Chennai, in a batch of cases, and directed the Government to count 50% of service of all the Part Time employees for pension purpose. The operative portion of the said order is extracted hereunder :

"15. The teachers who have put in large number of years of service have to be protected with regard to their length of service for the purpose of pension. So no that the regularization will be done with reference to seniority these (sic) need not be any genuine grievance or apprehension. The Government have made it very clear that their earlier services n Part Time basis

shall be only taken into consideration for the purpose of deciding length of service at the time of granting pension. There is no question of these applicants getting any arrears. The Government shall take notice of earlier G.Os. wherein people who were paid from contingent funds and who have been subsequently regularised have been given benefit of their earlier irregular service adding 50% of the same for the purpose of calculating length of service for pension purpose only. Therefore I find absolutely nothing illegal or improper about the impugne G.O. and this is only a stop gap arrangement and there are enough indication in this G.O. as to how actual regularization will be ordered."

7. The court after carefully considering the submissions made by the learned counsel appearing on either side, is of the view that as per the orders dated 2.2.2006 passed in W.P.No.27017 of 2005, the period in which the petitioner was on consolidated pay i.e. from 7.9.2008 to 31.3.1990 and from 1.4.1994 to 22.9.1994 can be taken into consideration by adding 50% of the said service for the purpose of calculating the length of service for pension purpose along with the qualifying service rendered by him from 1.4.1990 to 31.3.1994 and from 23.9.1994 to 31.5.2001.

8. In the result the writ petition is allowed and the impugned order is quashed and the respondents are directed to calculate the pension of the petitioner in the light of the above said observation and pay the same to him within a period of eight weeks from the date of receipt of a copy of this order...."

11. The order of the Tribunal dated 29.11.2002 in a batch of Original Applications, the order dated 02.02.2006 in W.P.No.27017 of 2005 and the order dated 16.04.2009 in W.P.No.39177 of 2002 attained finality and the petitioners therein in those petitions were also given the benefit of counting 50% of Part-Time service along with regular service for the purpose of pension.

12.1. A person, who served as a Part-Time Vocational Instructor from 1972-1997 and was brought as regular Vocational Instructor on 07.01.19997 and retired from service on 31.05.2000 was denied pension by not counting 50% of Part-Time Service

rendered from 1972-1997. She was also one among the persons governed by G.O.Ms.Nos.224 and 752, Education, Science and Technology Department, dated 24.03.1994 and 18.10.1996 respectively.

12.2. She filed O.A.No.2667 of 2001, which was subsequently, on transfer to this Court, renumbered as W.P.No.4556 of 2007 seeking direction to the Government to counter half of the service rendered as Part-Time Pre-Vocational Instructor for Pension.

12.3. I followed the aforesaid judgments of this Court dated 16.04.2009 in W.P.No.39177 of 2002 and allowed the writ petition in W.P.No.4556 of 2007 (O.A.No.2667 of 2001) on 29.07.2011. I issued a direction to the respondents therein to count 50% of Part-Time service rendered from 1972 to 1997 along with regular service for the purpose of pension.

12.4. The Government filed appeal in W.A.No.1182 of 2014 against the aforesaid order dated 29.07.2011 in W.P.No.4556 of 2007. A Division Bench of this Court rejected the W.A.No.1182 of 2014 on 10.09.2014 relying on the earlier judgment of the Division Bench of this Court in W.A.No.1702 of 2010 and the same was also confirmed by the Apex Court in SLP No.6253 of 2011. It is useful to extract paragraphs 3 and 4 of the judgment dated 10.09.2014 in W.A.No.1182 of 2014 in this regard :

"3. The learned Special Government Pleader appearing for the appellants submitted that the respondent, being the part time Instructor and not being a daily wage employee, is not covered by the relevant Government Order passed in G.O.Ms.No.408 Finance (Pension) Department, dated 25.08.2009, and therefore, the order passed by the learned Single Judge requires interference.

4. It is not in dispute that the facts involved before the Division Bench of this Court in W.A.No.1702 of 2010 are similar to the one before us. As against the decision rendered by the Division Bench, the appellant preferred a Special Leave Petition No.6253 of 2011, which was also dismissed. Thereafter, the same was given effect to by passing separate order to the effect that 50% of the service should be added for the purpose of calculating the length of service for pension. Therefore, the learned Single Judge has corrected upheld the said ration while granting the relief. In such view of the matter, we do not find any error in the order passed by the learned Single Judge warranting interference."

12.5. In fact, the Government, relied on G.O.Ms.No.408,

Finance (Pension) Department, dated 25.08.2009, to deny the benefit to the Part-Time Vocational Instructors, in the said case and the same was rejected by the Division Bench relying on the judgment of the another Division Bench and also the judgment of the Apex Court, as stated above.

12.6. Furthermore, the order dated 29.07.2011 W.P.No.4556 of 2007 (O.A.No.2667 of 2001) that was confirmed in W.A.No.1182 of 2014 was ultimately implemented by the Government by issuing G.O.Ms.No.19, School Education Department, dated 04.11.2014.

13.1. Likewise, another teacher, who is also the beneficiary of G.O.Ms.No.224 and 752 and who got absorbed as Full-Time Vocational Instructor, sought to count 50% of her Part-Time Vocational Instructor service along with regular service in W.P.(MD)No.2540 of 2012. The same was allowed by this Court on 17.12.2014. It is useful to extract paragraphs 7, 8 and 9 of the said judgment :

"7. In both the cases learned Brother Judge has, by relying upon G.O.Ms.No.38, Rural Development Department, dated 13.06.2011, held that when 50% of the service rendered by the part-time employees in the Rural Development Department shall be counted for the purpose of pension, the denial of the same benefit to the part-time employees in the other department amounts to violation of Article 14 of the Constitution of India.

8. The learned counsel for the petitioner has also brought to the notice of this Court to the order passed by this Court in favour of one R.Meenakshi in W.P.(MD) No.4556 of 2007 which was challenged by the Government by way of W.A.(MD) No.1182 of 2014 and the Division Bench of this Court has by order dated 10.09.2014 upheld the order of the learned single Judge and dismissed the appeal on the basis of the order of the earlier Division Bench of this Court in W.A.No.1702 of 2010 which was confirmed by the Hon'ble Apex Court in Special Leave Petition No.6253 of 2011.

9. That being the factual and legal position involved in the present case, this Court is of the view that the claim of the petitioner for the benefits granted to the similarly placed individual cannot be denied to the petitioner. Further, as there is no dispute with regard to the total period of service of the petitioner as part time and full time teacher, the petitioner having possessed 10 years of net qualifying service, is entitled to

pensionary benefits."

13.2. In fact, this Court went into the details and also as to how the absorption was made pursuant to G.O.Ms.No.224, while issuing direction to count 50% of service rendered as Part-Time Vocational Instructors. Furthermore, the above extract from W.P.(MD)No.2540 of 2012 makes it clear that the learned Single Judge of this Court relied on G.O.Ms.No.39, to allow the claim of the petitioner therein on the ground that if a Part-Time employee of one Department is given the benefit of counting 50% of such service along with regular service for the purpose of pension, the same shall be extended to the Part-Time Employees of other Departments also, otherwise, the same would be violative of Article 14 of the Constitution.

14.1. In fact, I also had an occasion to consider a similar case, wherein, the petitioner therein, who was also a beneficiary of getting absorbed as Full-Time Vocational Instructor, pursuant to G.O.Ms.No.224 and 752, in R.Ragupathy V. State of Tamil nadu rep. by its Secretary to Government, School Education Department, reported in (2012) 3 MLJ 12. The petitioner therein joined as Part-Time Vocational Instructor on 25.10.1963 and he was absorbed as Full-Time Vocational Instructor with effect from 16.12.1996. He reached superannuation on 30.04.1998, after rendering 34 years of service, but he was denied pension by not counting 50% of service from 1963-1996.

14.2. I traced the history of absorption of Full-Time Vocational Instructor by considering G.O.Ms.No.224 and 752, Education, Science and Technology Department, dated 24.03.1994 and 18.10.1996 respectively, and also G.O.Ms.No.39, Rural Welfare Department, dated 13.06.2011, wherein, 50% of service of Part-Time employees in the said department was directed to be counted along with regular service for pension.

14.3. I held that the benefit as given to the employees of Rural Welfare and Panchayat Raj Department in G.O.Ms.No.39 shall be given to those in Education Department also, otherwise, the same would be violative of Article 14 of the Constitution. Paragraph 16 of my order in Regupathy's case (cited supra) is extracted in this regard :

"16. Admittedly, in this case, the petitioner rendered 34 years of unblemished service, therefore, he cannot be denied the benefit of pension, in the light of G.O.Ms.No.39, referred to above. When 50% service of part-time employees in Rural Development Department is calculated for the purpose of payment of pension, the same yardstick shall be applied to part time employees in the third respondent

department also, as required by Article 14 of the Constitution. Therefore, in my view, the first respondent shall also issue an appropriate order like G.O.Ms.No.39, dated 13.6.2011."

15. In fact, the learned Single Judge in the order dated 17.12.2014 in W.P.(MD)No.2540 of 2012, independently also, held that if G.O.Ms.No.39, granting the benefit of counting 50% of Part-Time Service along with regular service for pension, is not extended to the part-time Craft Teachers, who were subsequently absorbed as Full-Time Craft Teachers, by counting 50% of past service along with regular service, the same would be violative of Article 14 of the Constitution.

16. On the same reasoning, I am of the view that the contention of the first respondent that the G.Os. of other Departments, relied on by the petitioners, can be applied to the employees of those departments, but the same cannot be extended to School Education Department is devoid of merits. The Government cannot say that they would count 50% of Part-Time service in one Department along with regular service for the purpose of pension, and would not extend the benefit to other Departments and the same is, in my view, violative of Article 14 of the Constitution.

17. In view of the aforesaid reasons, I am of the view that the impugned order is liable to be quashed and the Full Time Vocational Instructors who were absorbed pursuant to G.O.Ms.Nos.224 and 752, Education, Science and Technology Department, dated 24.03.1994 and 18.10.1996 respectively, much prior to 01.04.2003 and retired on various dates, shall be given the benefit of counting half of service rendered as Part-Time Vocational Instructors along with regular service of Full-Time Vocational Instructors for the purpose of pension. Accordingly, the impugned order is quashed and the respondent is directed to complete the aforesaid exercise of granting the benefit pension, as indicated above, to the members of the petitioner association, who have retired as Full-Time Vocational Instructors, within a period of sixteen weeks from the date of receipt of a copy of this order.

This writ petition is allowed in the above terms. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gg

To

The Principal Secretary,
School Education Department,
Government of Tamil Nadu
Fort St. George,
Chennai - 600 009.

+1 cc to Government Pleader, sr.39562

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