

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.8214 of 2014

P.Manickam

... Petitioner

Vs.

1.The Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai-600 108.

2.The Collector,
Thanjavur District,
Thanjavur.

3.The Commissioner,
Orathanadu Panchayat Union,
Orathanadu Taluk,
Thanjavur District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records of the 1st respondent comprised in Letter No.Mu.Mu.No.59710/2010, dated 29.11.2010, and to quash the same as arbitrary, illegal, unconstitutional and consequently, to direct the respondents to calculate pension and other benefits by taking into account 50% of services of petitioner from 1.6.1968 to 1.10.1984 in accordance with G.O.Ms.No.408 (Finance) Pension Department, dated 25.08.2009 and to pay the same in a time bound manner.

For Petitioners : Mr.S.Ramesh

For Respondents : Mr.K.Dhananjayan, Spl GP (For R1 & R2)
Mr.S.V.Durai Solaimalai (For R3)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a writ of Certiorarified Mandamus, to call for the records of the 1st respondent comprised in Letter No.Mu.Mu.No.59710/2010, dated 29.11.2010, and to quash the same as arbitrary, illegal, unconstitutional and consequently, to direct the respondents to calculate pension and other benefits

by taking into account 50% of services of petitioner from 1.6.1968 to 1.10.1984 in accordance with G.O.Ms.No.408 (Finance) Pension Department, dated 25.08.2009 and to pay the same in a time bound manner.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows—

2-1. The petitioner was appointed as B-II Class Siddha Doctor in Pandayariruppu Village, Orathanadu Taluk on 01.06.1968. He retired from service upon attaining the age of superannuation on 31.01.1992 and thereafter, he was reemployed for a period commencing from 01.02.1992 to 31.01.1994. Upon superannuation, the petitioner has been paid terminal benefits. Thereafter, the petitioner came to know about the grant of benefits conferred under G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. The sum and substance of the said GO is that under the Tamil Nadu Pension Rule 11(2), in respect of the persons who are in Government service under non-provincial service, consolidated pay, honorarium and daily wages, their services cannot be taken for the purpose of calculating pension. The period prior to their regularisation is not being taken into account resulting in a serious anomaly. Therefore, on a humanitarian consideration, the Government has thought it fit to pass the said G.O. As per the said GO, persons who were employed after 01.01.1961 on a non-provincial service, consolidated pay, honorarium and daily wages and who were observed into regular service prior to 01.04.2003, half of their entire period of service prior to regularisation could be added for the purpose of calculating pension.

2-2. It is further stated by the petitioner that by virtue of the said GO, half of the service rendered by the petitioner and similarly placed persons, prior to regularisation would be included for the purpose of pension. Hence, after coming to know about the said GO, the petitioner made a representation dated 17.10.2010 to the respondents seeking to provide the benefits granted under the said GO. But, the 1st respondent passed the impugned order dated 29.11.2010 rejecting the request of the petitioner, stating that the services of the petitioner are part-time services and as such, concession accrued under G.O.Ms.No.408, dated 25.08.2009, would not be applicable to him. According to the petitioner, the rejection order passed by the 1st respondent is contrary to the law laid down in the decisions of the this Court, in number of writ petitions arising on the same issue, in W.P.No.863 of 1989, W.A.Nos.922 & 1036 of 1995, 95 of 1996 and W.P.No.11691 of 2002, dated 28.02.2004 as well as in a batch of writ petitions in W.P.No.30003 of 2000, delivered on 19.04.2006. Hence, the petitioner has come forward with the present writ petition before this Court.

3. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the issue as to whether the Rural Medical Practitioner is a part-time employee or full time employee, has already been settled by this Court. In this regard, the learned counsel for the petitioner has relied upon the decision of this Court in a batch of writ petitions in W.P.Nos.53 to 56 of 2011, dated 12.11.2011 (V.Subramaniam and others Vs. The Director, Local Fund Audit Department, Kuralagam, Chennai and others) and submitted that in the said writ petitions, in identical issue, this Court has allowed the prayer of the petitioners therein, who are similarly placed persons as that of the petitioner herein; that the issue involved in the present writ petition has already been settled; that following the above said decision, these writ petitions could also be allowed.

4. The learned Special Government Pleader, by filing a detailed counsel would contend that the petitioner was receiving only subsidy from the 3rd respondent-panchayat from 01.06.1968 to 30.09.1984 and his service was regularised only from 01.10.1984; therefore, the petitioner herein cannot be said to be a similarly placed person as that of the petitioners in the above cited decisions of this Court relied upon by the learned counsel for the petitioner. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

5. Heard both sides and perused the materials available on record.

6. As contended by the learned counsel for the petitioner, the issue involved in this writ petition has been dealt with by this Court in a batch of writ petitions in W.P.Nos.53 to 56 of 2011, dated 12.11.2011 (V.Subramaniam and others Vs. The Director, Local Fund Audit Department, Kuralagam, Chennai and others). The relevant portion in the said decision reads as follows_

"5..... When the Honourable Division Bench of this Court has given a clear and specific finding on facts that the Rural Medical Practitioners are to be treated as employees on regular service working in the rural dispensaries, the earlier services rendered by them cannot be refused to be taken into account for the purpose of computing their pension, in accordance with the Government Order passed in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. When the petitions were directed to be treated on par with the other regular

employees, they are entitled for all the benefits and they cannot be treated differently. The ratio laid down by the Honourable Division Bench of this Court on the earlier two occasions has become final as against the respondents and in fact, the same was accepted and implemented by the respondents. Therefore, when the nature of work is the same and the petitioners were treated as regular employees with a specific finding that they have been doing the work of regular employees right from the very date of appointment, they cannot be differentiated on the sole ground that prior to the regularization they were working in a part time capacity and therefore they are not entitled for the benefits as against the erstwhile daily rated employees who were subsequently regularised. Such a classification being an artificial classification, is impermissible under Article 14 of the Constitution of India.

6. When a party gets a right under a judgment, the said accrued right cannot be denied based upon an artificial classification. There is absolutely no basis for treating the petitioners differently than that of the other employees in spite of the ratio laid down by the Honourable Division Bench of this Court on the earlier occasions. When the petitioners have been given all other benefits treating them on par with the regular employees, for the purpose of computing the pension alone they cannot be treated differently, even after the judgment of the Honourable Division Bench of this Court, directing the Government to give them the benefits on par with the other employees. It is to be seen that the Government Orders give the benefit to the erstwhile consolidated and daily rated employees who are not in a better position than the petitioners.

7. In other words, this Court on the earlier occasions found that since a classification cannot be sustained in the eye of law. The denial of computation of pension to the petitioners in accordance with the Government Order passed in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, is nothing but an attempt to interfere with the orders passed by this

Court. What has to be seen is the ratio laid down by the Court of law and on a mere technical ground the petitioners cannot be non-suited. The very object of the Government Order passed in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 is to given benefits to the employees, who were working earlier on consolidated as well as daily rated wages. Therefore, the petitioners without any basis cannot be denied the said benefits as such a benefit will have to be extended to the petitioners as well. "

The above said decision of the learned Single Judge was also confirmed by the Division Bench of this Court in writ appeal in W.A.No.1618 of 2012 dated 08.10.2012. The said decision has also been followed by the learned Single of this Court in W.32378 of 2013, dated 08.07.2014, in which the similar contention raised by the learned Special Government Pleader was rejected by the learned Single Judge. The decision cited supra is squarely applicable to the present facts of the case also. Hence, following the same, I am of the opinion that similar orders could be passed in this writ petition also.

7. Accordingly, the writ petition is allowed and the impugned order is quashed. The respondents are directed to calculate pension and other benefits of the petitioner, by taking into account 50% of services of petitioner from 1.6.1968 to 1.10.1984 in accordance with G.O.Ms.No.408 (Finance) Pension Department, dated 25.08.2009 and to pay the same to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ssv

To

1.The Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai-600 108.

2.The Collector,
Thanjavur District,
Thanjavur.

3.The Commissioner,
Orathanadu Panchayat Union,
Orathanadu Taluk,
Thanjavur District.

1 cc to Mr.S. Ramesh, Advocate, Sr. 60488
1 cc to Government Pleader, Sr. 60570

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