

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.11.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.A. NO. 1466 OF 2014

1. The Government of Tamil Nadu
rep. By its Secretary
Finance (Pension) Department
Fort St. George, Chennai - 9.
 2. The Secretary
Government of Tamil Nadu
School Education Department
Fort St. George, Chennai - 9.
 3. The Director of Elementary Education
Lalkudi, Trichy District.
 4. The Chief Educational Officer
Lalkudi, Trichy District.
 5. The District Educational Officer
Lalkudi, Trichy District.
 6. The Headmaster
Government Hr. Sec. School
Thiruvellarai,
Trichy District.
- ...Appellants/Respondents 1 to 6

- Vs -
सत्यमेव जयते

1. A.Kodai Pillai
2. The Accountant General of Tamilnadu,
Teynampet, Chennai - 18. ...Respondents

Writ Appeal filed against the order dated 13.12.2013 passed by the learned single Judge in W.P. No.19685 of 2012 filed under Article 226 of the Constitution of India, praying the respondents 1 to 6 to count half of the part time service of the petitioner from 16.6.1991 to 15.6.2001 with the regular service

of the petitioner service from 16.6.2001 to 31.01.2011 based on G.O.39 Rural Development and Panchayat Raj (E5) Dept. dt 13.06.2011 and direct the 7th respondent to sanction and pay monthly pension and other benefits to the petitioner from 01.04.2011 based on the petitioners representation on 14.07.2011

For Appellants : Mr. K.Venkataramani, AAG
assisted by Mr. R.Prathapkumar, AGP

For Respondents : Mr. R.Sureshkumar for R-1
Mr. V.Vijayakumar for R-2

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

This writ appeal is directed against the order passed by the learned single Judge whereunder the learned single Judge, based on Rule 43 (3) of the Tamil Nadu Pension Rules as also the order of the Division Bench of this Court in W.P. No.22833 of 2010 dated 10.11.2010, had directed the respondents/appellants herein to process the pension proposal of the petitioner by mentioning 10 years as the qualifying service from the date of retirement of the petitioner for the payment of pension.

2. The facts, as narrated in the writ petition is not in dispute. The main ground on which the impugned order is sought to be assailed is that the petitioner/1st respondent herein, not having completed 10 years of qualifying service as mandated under Rule 43 (2) of the Tamil Nadu Pension Rules, is not entitled for pension and, therefore, the order passed by the learned single Judge is liable to be set aside.

3. Per contra, learned counsel appearing for the 1st respondent placed reliance on the order of the Division Bench of this Court in W.P. No.22833 of 2010 dated 10.11.2010, on which reliance was placed by the learned single Judge to grant the relief. Therefore, it is submitted no interference is called for with the well considered order passed by the learned single Judge.

4. Heard the learned Addl. Advocate General appearing for the appellants and the learned counsel appearing for the respondents and perused the materials placed in the typed set of documents.

5. It is not in dispute that Rule 43 (3) of the Tamil Nadu Pension Rules provides that while calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned

as qualifying service. Similar is the provision under Section 49 (3) of the Central Civil Services (Pension) Rules. While considering the said provision, a Division Bench of this Court, in W.P. No.45465 of 2002, by order dated 4.10.2007, in similar circumstances, granted relief of counting the broken period of service beyond 9 years to count as 10 years of service for the purpose of pensionary benefits. Appeal against the said order before the Supreme Court was also dismissed. The said decision has been followed by this Court in W.P. No.22833 of 2010 as also in many other matters. Such being the position of law, similar order having been passed by the learned single Judge, in view of the order passed by the Division Bench in W.P. No.45465 of 2002, as confirmed by the Supreme Court in S.L.P. No.13829 of 2008, this Court is of the considered view that no interference is called for with the order of the learned single Judge.

6. Accordingly, this writ appeal is disposed of in terms of the order passed by the Division Bench of this Court in W.P. No.45465 of 2002 as followed in W.P. No.22833 of 2010 by allowing the prayer as made by the petitioner/1st respondent herein for grant of the benefit of pension by confirming the order passed by the learned single Judge. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

The Accountant General of Tamilnadu,
Teynampet, Chennai - 18.

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MSM (CO)
PSI (29/12/2016)