IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.658 of 2016
and CMP.No.8452 of 2016

1.The Government of Tamil Nadu
Rep. By its Secretary
School Education Department
Fort St.George, Chennai-600 009

2.The Director of School Education
Chennai-600 006

3.The Joint Director (Hr.Secondary)
Vocational, Chennai-600 006 ...Appellants/Respondents

Vs.

A.Lydia ...Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 19.02.2014 made in W.P.No.4511 of 2014.

WP.No.4511 of 2014 filed under Article 226 of :Constitution of India for the issuance of Writ of Mandamus directing the respondents to include the services rendered by the petitioner from initial appointment till regularisation (ie 1/7/1989 to 16.10.1992) for the pension purpose.

For Appellants : Mr.K.Karthikeyan,
Government Advocate
For respondent : Mr.R.Saravanakumar

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JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

Heard the learned counsel for the appellants and the learned counsel for the respondent.

2. In the writ petition filed by the respondent herein, the petitioner sought for a direction to the respondents to include the services rendered by the petitioner from initial

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appointment till regularisation (i.e., 01.07.1989 to 16.10.1992) for the pensionary benefits. The learned Single Judge, by following the order passed in W.P.30671 and 30672 of 2013 dated 14.11.2013 and W.P.No.32346 of 2013 dated 27.11.2013, by order dated 19.02.2014, directed the respondents/Government to count 50% of the service rendered by the petitioner from initial appointment till regularization i.e, 01.07.1989 to 16.10.1992 along with regular service for the purpose of pensionary benefits.

3. In the present Writ Appeal filed by the State as against the above order passed by the learned Single Judge, it is stated that as per Rule 43(2) of Tamil Nadu Pension Rules, 1978, a Government employee should have put in a minimum of 10 years of qualifying service to become eligible for grant of pensionary benefits; in the instant case, the respondent/writ petitioner was appointed as a Double Part Time Vocational Instructor at St.Mary's Girls Higher Secondary School, Coimbatore on 01.07.1989 on consolidated pay with effect from 01.07.1989 and her services were regularized with effect from 16.10.1992 and she will be reaching the age of superannuation on 28.02.2019 and so she had put in only 26 years 4 months and 13 days of qualifying service, hence, she is eligible to be granted pensionary benefits. Further, it is also stated that there was a period of break-in service in case of the respondent, and hence she could not be granted benefits as claimed.

4. 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.

5. 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.

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6. The respondent while working as double part time Vocational Instructor since 01.07.1989, was absorbed in regular time scale of pay vide G.O.No.712 dated 28.05.1990 and the services of the petitioner was regularized from 16.10.1992. 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 include the services rendered by the petitioner from initial appointment till regularization (i.e 01.07.1989 to 16.10.1992) for the pension purpose. The learned Single Judge by the impugned order dated 19.2.2014 allowed the writ petition by directing the respondents to count 50% of the service rendered by the petitioner from initial appointment till regularization i.e., 01.07.1989 to 16.10.1992 along with regular service for the purpose of pensionary benefits and pass appropriate orders. 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.

7. Mr.K.Karthikeyan, learned Government Advocate submits that the 50% of the service spent by the respondent as 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 double part time Vocational Instructor with effect from 01.07.1989, and 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.

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

9. 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,

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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."

10. 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

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upto the date of this order."

11. 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."

12. 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 01.07.1989. The employee should also work as full time employee. No doubt, the respondent was initially appointed on 01.07.1989 as double part time Vocational Teacher till 16.10.1992, the day he was absorbed in regular time scale.

13. The respondent has averred specifically in her writ petition affidavit that her 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 01.07.1989 till she was absorbed in regular service and retired. Accordingly, 50% of the respondent's period as double part time

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vocational instructor from 01.07.1989 till 16.10.1992 be counted for the purpose of computing pensionary benefits under the aforestated G.Os.

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.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Government of Tamil Nadu
Rep. By its Secretary
School Education Department
Fort St.George, Chennai-600 009

2.The Director of School Education
Chennai-600 006

3.The Joint Director (Hr.Secondary)
Vocational, Chennai-600 006

+1 cc to Mr.R.Saravanakumar Advocate sr.32775
+1 cc to the Government Pleader sr.32304

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