

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-11-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.29369 of 2016

N.Pavithran

... Petitioner

-vs-

- 1.The Secretary to Government (Education),
Union of Territory of Puducherry,
Chief Secretariat, Puducherry.
- 2.The Director of School Education,
Puducherry.
- 3.The Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, to call for the records relating to the impugned order of the third respondent in O.A.No.508 of 2013 dated 07.07.2015, confirming the order of the second respondent in No.24021/(DSE)/Dte.Estt./A6/2012 dated 12.02.2013 and quash the said orders and direct the respondents 1 and 2 to grant pension and other retirement benefits to the petitioner with effect from the date of his retirement.

For Petitioner : Mr.P.Rajendran

For respondents: Mr.R.Syed Mustafa
Special Govt. Pleader for R1 & R2

R3 : Tribunal

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order dated 07.07.2015 made in O.A.No.508 of 2013, by which, the Central Administrative Tribunal, Madras, declined to grant the relief sought for by the petitioner for grant of pension and other retirement benefits with effect from 31.12.2012, with all consequential benefits and thus, confirmed the order of the

Director of School Education, Puducherry (2nd respondent) in No.24021/(DSE)/Dte.Estt./A6/2012 dated 12.02.2013,

2. Facts leading to the writ petition are that the petitioner was appointed as a Part Time Instructor, in Vocal Music with Harmonium in Mini Bal Bhavan, Palloor, Union Territory of Puducherry by the Chief Educational Officer, Mahe by order dated 16.04.1987. He worked as such till 23.04.2001. It is the further submission of the petitioner that he was instructed to work for six days a week, on a consolidated pay of Rs. 2823/- per month, with effect from 24.04.2001 and lateron, brought to regular time scale of pay, with effect from 25.08.2003.

3. It is the further submission of the petitioner that he retired from service on 31.12.2012. As on the date of retirement, he had put in nine years, four months and 7 days of regular service. He has further submitted that in his representation, he has requested to count the period, from 24.04.2001 to 24.08.2003, he had worked on consolidated pay, for the purpose of pension. The 2nd respondent, namely the Director of School Education, Puducherry, by proceedings dated 12.02.2013, has rejected the representation of the petitioner for grant of pension. Aggrieved by the same, the petitioner has filed the original application.

4. Before the Tribunal, the respondents herein, contested the case by filing a reply statement. In the reply, they have contended that the petitioner was engaged on a consolidated pay of Rs.175/- per month, to work for 2 hours per day, for two days, in a week and thereafter, his consolidated pay was increased to Rs.2,823/- per month, with instructions to work 6 days, in a week, for 2 hours per day, in the evening. It is the further submission of the respondents that the petitioner was brought to the pay scale of Rs.4500-125-7000, in the the post of Music Teacher, by giving relaxation, to the educational qualification, w.e.f. 25.08.2003.

5. It is further submission of the respondents that the petitioner had put in less than 10 years of service on the date of his retirement and therefore, he was not eligible for pension. They further submitted that as such, all his engagement prior to 22.08.2003 was on part-time basis, and Part-time engagement is not a qualifying service for sanction of pension under CCS (Pension) Rules, 1972, and hence the petitioner's part-time engagement does not come within the purview of qualifying service. Therefore his request for counting his service rendered on part time basis for only 2 hours per day, need not be considered, as qualifying service for pension.

6. Before the Tribunal, it was the contention of the learned counsel for the petitioner that earlier, the

petitioner worked as a part time Instructor in music and part of his service ought to have been taken into consideration for pension. Further submission has been made that the petitioner had worked for 6 days in a week from 24.04.2001 to 24.08.2003, and that the said period ought to have been counted, for the purpose of pensionary benefits.

7. Per contra, before the Tribunal, it was the contention of the the learned Government counsel, appearing for respondents that the engagement of the petitioner on regular scale of pay, commenced only from 25.08.2003, and therefore, the period from 25.08.2003 alone to be counted for qualifying service.

8. Adverting to the above, at paragraph No.7 of the order in O.A.No.508/2013 dated 07.07.2015, the Tribunal held as follows:

"7. Indisputably the petitioner was a part time contingent employee on the date of his coming on regular scale of pay i.e. 22.08.2003. The recommendations of National Council do not provide for counting part time contingent service for the purpose of pension. The recommendations of the National Commission are reflected in Para 12 of the reply filed by the respondents. Under the provisions of CCS (Pension) Rules 1972, one must put in service of 10 years to get himself qualified for pension. Admittedly the petitioner has not put in 10 years of service on his being appointed on the scale of pay by the date of his retirement. Therefore the order impugned in the OA cannot be faulted. Accordingly this OA is dismissed. No order as to costs."

9. Inviting the attention of this Court to the Office Order, dated 16.04.1987 of the Chief Educational Officer, Government of Pondicherry, Mahe, Mr.P.Rajendran, learned counsel for the petitioner submitted that as per the recommendation of the selection committee, the petitioner was appointed as part-time instructor in vocal with harmanium, with effect from 01.04.1987, on a fixed pay of Rs.175/- per month. He further submitted that subsequently, on 17.05.1995, the Chief Educational Officer, Mahe, appointed him as part-time instructor to work for two and half hours, per day and two days in a week, on a consolidated pay of Rs.350/- per month per centre. Thereafter, orders were issued by the Chief Educational Officer, Mahe, on 24.04.2001, instructing the petitioner to work for six days in a week in Jawahar Mini Bal Bhavan, on a consolidated pay of Rs.2,823/- per month.

10. According to the learned counsel for the petitioner, unlike the earlier orders, dated 16.04.1987 and 17.05.1995,

wherein, the petitioner was appointed as part-time instructor, to take classes, mentioning the hours, in the order, dated 24.04.2001, there was nothing to indicate that it was a part-time work and whereas, the petitioner was instructed to work for six days in a week and that it was a full-time engagement. He further submitted that the petitioner retired on 31.12.2012 from service and if the engagement between 24.04.2001 and 29.08.2003, the date on which, he was absorbed on regular basis, is taken into consideration, as qualifying service, then the petitioner would be entitled for pension.

11. However, Mr.R.Syed Mustafa, learned counsel for the respondents submitted that inasmuch as petitioner was engaged as part-time instructor in Mini Bal Bhavan, Mahe, from 01.04.1987 to 24.08.2003 and paid from contingencies, as distinctly specified under Rule 2(a)(b) and (c) of the CCS (Pension) Rules, 1972, he is not eligible to count the services rendered during the abovesaid period for pension and he was short of eight months' service.

12. Placing reliance on a decision of Government of India, under Rule 14 of the CCS (Pension) Rules, 1972, communicated vide O.M.No.F.12(1)-E.V/68, dated 14.05.1968, of the Ministry of Finance, Government of India, learned counsel for the respondent submitted that weightage in qualifying service is allowed to an extent of 50% of service, paid from contingencies, subject to certain conditions. For the abovesaid reasons, he prayed to sustain the order of the Tribunal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

13. As per the extant guidelines, half of the service paid from contingencies would be allowed to count towards pension, at the time of absorption in regular employment, subject to the following conditions,

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

(ii) Service paid from contingencies should be in a type of work or job, for which, regular posts could have been sanctioned, e.g., malis, chowkidars, khalasis, etc.

(iii) The service should have been done one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not 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

staffs in regular establishments.

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

(v) 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."

14. From the above, it could be seen that the service paid from contingencies, should have been the job, involving the whole time employment and not part-time basis for a portion of the day. Though the respondents have contended that from 24.04.2001, the petitioner was instructed to work for six days in a week, without any change in the hours of work, the order, dated 24.04.2001, does not indicate that the working hours, as specifically mentioned in the earlier order, dated 17.05.1995.

15. In the year 1995, for two and half hours per day and two days in a week, the petitioner has been paid a sum of Rs.350/- per month. Rough calculation shows that the petitioner has been paid a sum of Rs.17.50 per hour. On 24.04.2001, the petitioner was not paid on hourly basis, as stated in the order, dated 17.05.1995, but on consolidated wages of Rs.2,823/- per month, with instructions to work for six days in a week. The total number of working days in a month is 24 days. Therefore, the petitioner would have been paid Rs.117.65 per day. Had it been hourly part-time work, the wages would have been fixed on hourly basis and days in a week. No contrary material document has been produced, to prove that the writ petitioner was engaged on hourly basis from 24.04.2001 to 24.08.2003, till he was absorbed in the Department, as Arts Teacher in Kasthuriba Gandhi Government Girls High School, Palloor, Mahe.

16. In the light of the above discussion, this Court is of the view that the period between 24.04.2001 and 24.08.2003, has to be treated as qualifying service for sanction of pension, under CCS (Pension) Rules. Therefore, the order, dated 12.12.2013, of the Director of School Education, Puducherry, impugned before the Central Administrative Tribunal, is liable to be set aside.

17. Hence, while setting aside the order made in O.A.No.508 of 2013 dated 07.07.2015, of the Central Administrative Tribunal, Madras Bench, Chennai and quashing the order, dated 12.12.2013, of the Director of School Education, Puducherry, 2nd respondent herein, there shall be a direction to respondents 1 and 2 to count the period of service, between 24.04.2001 and 24.08.2003, as per the extant

guidelines and grant pension and other retiral benefits, from the date of his retirement. The said exercise shall be completed, within a period of four weeks, from the date of receipt of a copy of this order.

18. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Asr/skm

To

- 1.The Secretary to Government (Education),
Union of Territory of Puducherry,
Chief Secretariat, Puducherry.
- 2.The Director of School Education,
Puducherry.
- 3.The Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104.

+1cc to M/S P.Rajendran, Advocate Sr.64049

+1cc to Government Pleader (Puducherry) Sr.63888

W.P.No.29369 of 2016

RSY (CO)
RVR 09/01/2017

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