

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.7689 of 2016

K.M.Lakshmanan

... Petitioner

vs.

1. Government of Tamil Nadu,
rep. by Secretary to Government,
School Education Department,
Fort St. George, Chennai-9.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Joint Director of School Education
(Vocational),
College Road, Chennai-600 006.
4. The Chief Educational Officer,
Pudukottai District, Pudukottai. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents to count 50% of petitioner's service for a period from 20.08.1979 to 31.03.1990 as Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 1.4.1990 to 31.12.2014 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

Heard Mr.R.Saseetharan, learned counsel appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader, who has taken notice on behalf of the respondents.

2. By consent, the main writ petition itself is taken up for final disposal.

3. The petitioner has come up with the present writ petition for a mandamus, directing the respondents to count the 50% of petitioner's service for a period from 20.08.1979 to 31.03.1990 as Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 1.4.1990 to 31.12.2014 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits.

4. The case of the petitioner, in nutshell, is set out hereunder:-

(a) The petitioner was initially appointed as Single Part Time Vocational Instructor on 20.08.1979 in Accountancy and Auditing at Government Higher Secondary School, Iluppur, Pudukkottai District. Thereafter, he was appointed as Double Part Time Vocational Instructor in the same subject in the same school on 01.06.1984. Subsequently, he was absorbed as Full Time Vocational Instructor with effect from 01.04.1990, as per order dated 04.03.1991, issued by the Chief Educational Officer, Pudukkottai District.

(b) The Government of Tamil Nadu introduced the Higher Secondary School system from July 1978 in the State of Tamil Nadu which consists of 10 classes viz., Secondary Education + 11th and 12th standards, which is the higher Secondary Classes. To teach vocational stream of education in Higher Secondary Schools, the posts of Vocational Instructors are introduced by the State of Tamil Nadu by G.O.Ms.No.1719 dated 14.9.1978. The Government of Tamil Nadu during the year 1978, fixed the remuneration for Single Part Time Vocational Instructor at Rs.150/- per month. The said G.O. also provides for two parts Part Time Vocational Instructors. The Government of Tamil Nadu felt that in number of schools, the period to teach vocational stream of study exceeds 20 periods per week, which could not be handled by Single Part Time Vocational Instructor. Therefore, the Government of Tamil Nadu by G.O. Ms.No.105 dated 21.01.1980, directed that for Double Part Time Vocational Instructors the work load shall not be less than 20 periods. Accordingly, in the State of Tamil Nadu, Double Part Time Vocational Instructors are appointed to work for not less than 20 periods.

(c) The workload not less than 20 periods in a week is a whole time employment for a day. In fact, such appointment is Full Time Appointment, but the Government of Tamil Nadu with a view to deny the benefits of Full Time employment, designated the Vocational Instructors as Double Part Time Vocational Instructor. The Government of Tamil Nadu, in order to deny

regular salary and permanent status to the Part Time Vocational Instructors, has introduced the system of Double Part time teacher. As per the said system, though Vocational Instructor has taken classes in the morning and evening, he will be treated as Double Part Time Vocational Instructor and not Full Time Vocational Instructor. The petitioner worked for a whole day i.e., forenoon as well as in afternoon. But, he was designated as Double Part Time Vocational Instructor instead of Full Time Employee. After prolonged correspondence, the Government of Tamil Nadu has issued G.O.Ms.No.712 dated 28.5.1990, G.O.Ms.No.834 dated 23.9.1994 and G.O.Ms.No.221 dated 15.7.1999 to regularise the service of the Vocational Instructors.

(d) Totally the petitioner rendered service for 35 years from 20.08.1979 to 31.12.2014. In the said spell, the period rendered after regularisation comes to 24 years and 9 months namely from 1.4.1990 to 31.12.2014 and the service rendered in consolidated pay comes to 10 years, 7 months and 10 days i.e., from 20.08.1979 to 31.3.1990. For pensionary benefits, the service rendered by the petitioner in the regular time scale of pay i.e., from 1.4.1990 to 31.12.2014 has also been taken as qualifying service and the service of 10 years, 7 months and 10 days in a consolidated pay for a period from 20.08.1979 to 31.3.1990 has not been taken as qualifying service for pensionary benefits.

(e) By G.O.Ms.No.437 dated 23.6.1988 and G.O.Ms.No.118 dated 14.2.1996, the Government provides for counting of 50% of service of temporary service paid on consolidated pay, on contingency fund, if the said service is followed by regular absorption. The said G.Os say that if the service involves for the whole time employment, then the 50% of service can be counted as qualifying service towards pension. As stated already, the petitioner was initially appointed as Single Part Time and Double Part Time Vocational Instructor and his employment as Double Part Time Vocational Instructor involved for whole time i.e., in forenoon and afternoon. Therefore, he is entitled to count 50% of service between 20.08.1979 and 31.03.1990 as qualifying service towards the pensionary benefits. Hence, the petitioner has come up with the present writ petition.

5. Learned counsel appearing for the petitioner, by relying upon the order passed by this Court in W.P.No.16416 of 2007 dated 9.4.2011, submitted that the learned Single Judge of this Court by relying upon the judgment rendered by the Division Bench of this Court in W.A.No.1702 of 2010, wherein the Division Bench directed the respondents to count 50% of the service rendered by the petitioners in that writ petition, who were working as Part-time Vocational Instructors, directed the

respondents to consider the request of the petitioners in that writ petition in the light of the judgment of the Division Bench made in W.A.No.1702 of 2010 and pass appropriate orders counting 50% of the service rendered as Part-time Vocational Instructors for the purpose of calculating pension. It would be useful to extract the relevant passage from the said judgment and the same is extracted hereunder:-

" 7. According to the petitioner, he had worked as Part-time Vocational Instructor between 23.10.1981 and 4.10.1996, on consolidated pay. He has also made a representation dated 10.4.2013, one month prior to his retirement, the copy of which is enclosed at page No.16 of the typed set of papers filed in support of the writ petition. Earlier, a learned Single Judge, after considering the issue as to whether Single / Double Part time teachers paid consolidated pay, are entitled to count 50% of the services, for the purpose of computing the qualified period of service, for grant of pension, in N.Rajendran v. The State of Tamil Nadu, represented by its Secretary to Government, School Education Department, Chennai, and 3 others in W.P.No.39177 of 2012 dated 16.4.2009, has set aside the order of rejection of the Accountant General (A&E), Chennai, the second respondent therein, and a further order of the Government and consequently, directed the respondents therein, to calculate the pension of the petitioner therein and also issued a further direction to pay the same within eight weeks. Being aggrieved by the above said order, the Government have preferred an appeal in W.A.No.1702 of 2010. While confirming the decision of the learned Single Judge, the Hon'ble First Bench of this Court, by order dated 20.9.2010, has ordered as follows:-

" Heard the learned counsel for the appellant and perused the impugned order passed by the learned single Judge, allowing the writ petition quashing the order passed by the appellants/respondents and further directing the appellants/respondents to calculate the pension of the petitioner.

2. Admittedly, the writ petitioner was appointed as Double Part Time Teacher in the second respondent School on 07.09.1978. After the Government Order issued in 1990 for filling up 800 posts of Educational Instructors, the writ petitioner was appointed as Double Part Time Teacher in 1991 in regular time scale of pay. After putting about 11 years, 11 months and 24 days of service as consolidated Vocational Instructor and 10 years and

11 months service as regular time scale Agricultural Instructor, as the writ petitioner was superannuated, his claim for pension was refused by the impugned order passed by the second appellant/second respondent.

3. It is evident from the records that the writ petitioner was appointed on consolidated pay from 07.09.1978 to 31.03.1990. Thereafter, he was brought into regular time scale of pay from 1.4.1990 to 31.3.1994 and from 23.9.1994 to 31.5.2001. Therefore, the learned single Judge rightly held that 50% of the said service should be added for the purpose of calculating the length of service for pension purpose. We do not find any error in the impugned judgment. Hence, the writ appeal is dismissed. There will be no order as to costs. Consequently, M.P.No.1 of 2010 is also dismissed."

Since the present petitioner is also similarly placed person, I am of the opinion that the present writ petition deserves to be allowed.

6. In fine, the writ petition is allowed and the respondents are directed to count 50% of the petitioner's part time service as Vocational Instructor between 20.08.1979 and 31.03.1990 for the purpose of calculating pension. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

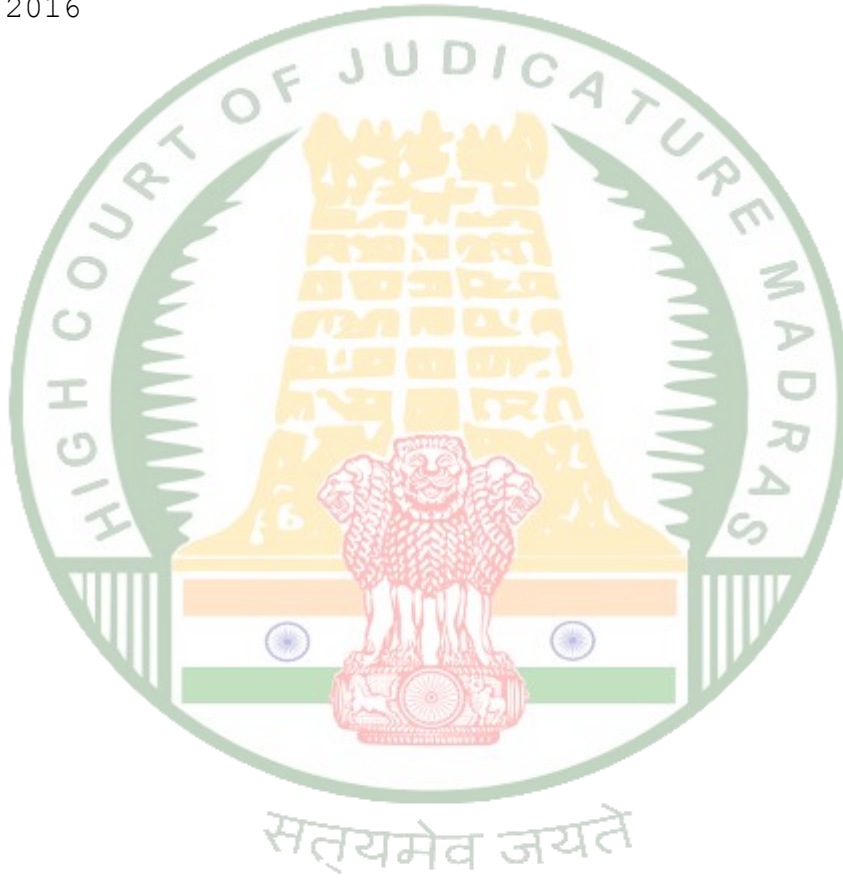
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+lcc to the Government Pleader Sr.13758

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