



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.22203 of 2016

- 1.C.Chidambararaj
- 2.R.Balasubramanian
- 3.T.Manickam
- 4.S.Clarance Irudayaraj
- 5.R.Valliammai
- 6.A.A.Margret
- 7.M.Arunachalam
- 8.N.K.Sivakumar
- 9.S.Bharathan
- 10.M.Nasarkhan
- 11.K.Kumaran
- 12.E.Sanjeevi
- 13.M.Nahal Singh Thapa
- 14.K.Kanagarasu
- 15.N.Thiruppathi

: Petitioners

Vs.

- 1.The State of Tamil Nadu rep. by its
Secretary to the Government,
Higher Education Department,
Secretariat, Chennai.
- 2.The Secretary to Government,
Finance and Pay Cell Department,
Secretariat, Chennai.
- 3.The Bharathidasan University,
rep. by its Registrar,
Palkalaiperur,
Tiruchirappalli - 620 024.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to implement the resolution of the syndicate bearing No.2015.119.2 dated 24.07.2015 and to include the name of the petitioners in the old pension scheme and to grant all benefits in pursuance to the same by considering the representation of the petitioner dated 20.06.2014.



For Petitioners
For Respondents

: Mr.S.C.Herold Singh
: Mr.V.R.Shanmuganathan,
Special Government Pleader.

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ORDER

This writ petition has been filed for the issuance of a Writ of Mandamus, seeking direction to the respondents to implement the resolution of the syndicate (bearing No.2015.119.2), dated 24.07.2015, and to include the name of the petitioners in the old pension scheme and to grant all benefits, in pursuant to the same, by considering the representation of the petitioners, dated 20.06.2014.

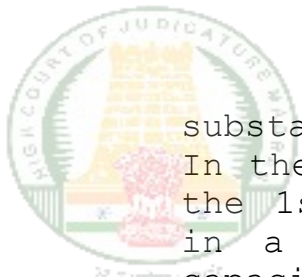
2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3.The facts leading to the filing of this writ petition are as follows:

The petitioners were originally engaged by the third respondent University on daily wage basis. The wages would be calculated daily and would be paid monthly. Considering the long-standing service put on by the petitioners, the third respondent University, by extending the benefits of G.O.Ms.No.22, P&AR(F) Department, dated 28.02.2006, had regularized their services on various dates, i.e., during the years 2007 and 2008 and not from the date of appointment of the petitioners. Though the petitioners were engaged by the third respondent on various dates and though they had put in more than 10 years of service at various Departments in the University, they were not regularized and brought into time scale of pay from the date of appointment to the date of regularization.

3.1. Rule 11(2) of the Tamil Nadu Pension Rules categorically stipulated that half of the services rendered as daily wage employees, shall be counted along with regular service for the purpose of pension with certain conditions and the introduction of Rule 11(4) of the Rules is that one should have been absorbed in regular service before 01.04.2003 for counting half of the service rendered on consolidated pay, etc. Rules 11(2) and 11(4) read as follows:

"11.Commencement of qualifying service – (1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either



substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.

(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be 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 shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June 1988.

[Half of the service rendered by State Government employee 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.

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break.



... ..

(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January, 1961 in respect of Government employees absorbed in regular service before 1st April, 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break:

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003:

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits".

3.2. When the Government introduced Contributory Pension Scheme, it was stated that the persons, who joined the services after 01.04.2003 are not entitled for Old Pension Scheme and they are eligible only for Contributory Pension Scheme. Though the petitioners were appointed long prior to the cut off date, their services from dates of appointment were not counted.

4. Based on Rules 11 (2) and 11 (4) of the said Rules, it is contended that as the petitioners are working in the third respondent University long prior to 01.04.2003, the Old Pension Scheme is the applicable one and not the Contributory Pension Scheme. The third respondent also passed a resolution as early as on 24.07.2015 and the essential terms read as under:-



"Resolved that the request of the Non-teaching staff, who earlier worked on daily wage basis / consolidated payment and appointed on time scale of pay on or after 01.04.2003, be accepted and approval be granted to bring them under Old Pension Scheme from Contributory Pension Scheme (CPS) in accordance with the judgments passed by the Hon'ble Madras High Court in similar cases.

Resolved further that the CPS Contributions hitherto deducted from these employees be credited to the account of Pension Contribution Fund as their subscription towards Old Pension Fund Scheme.

Resolved further that half of the service put in by these employees before the date of their appointment on time scale of pay be taken into account for the purpose of calculation of their pension, DCRG, etc."

4.1. However, no steps were taken to implement the same. So contending, the petitioners submitted a representation, dated 20.06.2014. As the same is not considered, this writ petition has been filed.

5.The learned counsel appearing for the third respondent University would submit that the University has no different view than that of the petitioners and the University has already sent a proposal as claimed by the petitioners herein, but it is only the Local Fund Audit Department to consider the claim of the petitioners, which is raising objection, with regard to applicability of those provisions in the case of the petitioners.

6.The learned Special Government Pleader would submit that it is agreeable for the second respondent to consider the claim of the petitioners and to pass appropriate orders within a period of four weeks.

7.Under such circumstances, the second respondent is directed to consider the claim of the petitioners and pass orders on merits and in accordance with law, in the light of Rules 11 (2) and 11 (4) of the said Rules, as well as the resolution of the third respondent, 24.07.2015, within a period of four weeks, from the date of receipt of a copy of this order.

8.With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar



To

1.The Secretary to the Government,
Higher Education Department,
Government of Tamil nadu,
Secretariat, Chennai.

2.The Secretary to Government,
Finance and Pay Cell Department,
Secretariat, Chennai.

3.The Registrar,
Bharathidasan University,
Palkalaiperur,
Tiruchirappalli - 620 024.

+1 cc to MR.VR.SHANMUGANATHAN, Advocate SR.No.70697

+1 cc to MR.S.C.HEROLD SINGH, Advocate SR.No.70771

ORDER MADE IN
W.P(MD)No.22203 of 2016
21.11.2016

SMA/CM-MSA/15.02.2017:6P/6C