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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.27245 of 2010

G.Chokkalingam

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department, Secretariat,
Chennai-9.

2.The Director of School Education,
College Road, Chennai-6.

3.The Accountant General,
O/o. The Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai-18.

4.The District Elementary Educational Officer,
Nagapattinam District.

5.The Secretary,
Aided Middle School, Melaiyur,
Karuvalakkarai,
Tharangampadi - 609 304.

.. Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records made on the file of the 4th respondent dated in Mu.Mu.No.5370/B2/99, dated 08.04.2005 insofar as the regularising the service of the petitioner w.e.f.12.09.1995 is concerned and quash the same and direct the respondents to regularize the service of the petitioner as a Full Time Craft Teacher w.e.f. 20.08.86 for the purpose of full pension and grant pension to the petitioner by considering 50% of 21 years from 1966-1986 of his service as part time Craft Teacher for the purpose of pension and retirement benefits to the petitioner.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.Raniselvam



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Addl. Government Pleader
for Respondents 1, 2 and 4

Mrs.T.S.Selvarani
for 3rd respondent

Mr.S.Sounthar
for 5th respondent

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records on the file of the fourth respondent dated in Mu.Mu.No.5370/B2/99, dated 08.04.2005, insofar as the regularizing the service of the petitioner with effect from 12.09.1995 is concerned, to quash the same and to direct the respondents to regularize the service of the petitioner as a Full Time Craft Teacher with effect from 20.08.1986 for the purpose of full pension and grant pension to the petitioner by considering 50% of 21 years from 1966-1986 of his service as Part-time Craft Teacher for the purpose of pension and retirement benefits to the petitioner.

2. The facts in a nutshell are as under: According to the petitioner, he joined as a Part-time Craft Teacher in the fifth respondent school on 12.09.1966. At the time of joining, the qualification stipulated for the post was VIII Standard pass. He passed Lower Grade Technical Examination in Agriculture in the month of May, 1985 and on 20.08.1986, he passed Technical Teachers Certificate. It is pleaded that as per G.O.Ms.No.1367, dated 05.09.1986, he is eligible to be considered for the post of Full-time Craft Teacher with effect from 04.08.1987. It is also pleaded that on 01.06.1989, the petitioner passed SSLC and is also eligible for the scale of pay applicable to the post of Secondary Grade Teacher as per G.O.Ms.No.1366, dated 05.09.1986.

3. It is stated that the petitioner was given three months training for the post of Secondary Grade Teacher only on 01.09.1995 and he was appointed as such, in which post he worked till 30.11.1995, which is the actual date of superannuation of the petitioner, after which he worked on extension till the end of academic year and retired on 30.05.1996 as Secondary Grade Teacher.

4. It is pleaded that way back on 08.03.1988, the petitioner had made representation to the fifth respondent requesting to take action for converting the Part-time post as Full-time post with effect from 01.04.1987 on the basis of his passing the Technical Teacher Certificate course. It is stated that after a long drawn legal battle, by letter dated 10.03.1997, the Additional Assistant Elementary Educational Officer recommended to convert the Part-time Craft Teacher as



Full-time teacher. Even thereafter, there was no progress in the matter.

5. It is stated that, subsequently, the petitioner sent another representation and ultimately the fourth respondent by proceedings dated 08.04.2005, regularized the service of the petitioner with effect from 12.09.1995 as Full-time Craft Teacher. Consequent to the same, the third respondent returned the pension proposal of the petitioner.

6. Challenging the aforesaid order dated 08.04.2005, the present writ petition is filed.

7. The learned counsel appearing for the petitioner submitted that the respondent department ought to have regularized the service of the petitioner as Full-time Craft Teacher on the basis of G.O.Ms.No.1366, Education Department, dated 05.09.1986, with effect from 20.08.1986, inasmuch as the petitioner was present throughout the day in the school because of distribution of periods.

8. He further submitted that the petitioner had rendered almost 30 years of service in the fifth respondent school and had the department regularized the petitioner at the appropriate time, he would have been eligible for promotion and even otherwise in similar cases, the authorities relaxed the condition and counted 50% of the Part-time service for reckoning the qualifying service for pension and the same yardstick is not adopted in the case of the petitioner and the same is arbitrary and unreasonable.

9. Per contra, the learned Additional Government Pleader appearing on behalf of the respondent authorities submitted that inasmuch as the petitioner had rendered service only in a Part-time capacity and there is no provision/rule to treat Part-time service as qualifying service for pension purposes, the request of the petitioner had been rightly rejected by the respondent authorities and the same does not warrant any interference.

10. I heard Mr.S.N.Ravichandran, learned counsel for the petitioner, Mrs.Raniselvam, learned Additional Government Pleader for the respondents 1, 2 and 4, Mrs.T.S.Selvarani, learned counsel for the 3rd respondent and Mr.S.Sounthar, learned counsel for the 5th respondent and perused the documents available on record.

11. At the outset, it is apposite to refer to G.O.Ms.No.1366, Education Department, dated 05.09.1986, which reads as under:

"The One Man Committee constituted as per G.O. read above, has recommended that the minimum general educational qualification for the post of Craft teachers working in the Middle Schools may be raised as S.S.L.C. pass on par with their counter parts in High Schools and the scale of pay of Rs.610-20-730-25-955-30-1075 be given to the persons so qualified among them. The One Man



Committee has also recommended that the unqualified craft teachers may be allowed time for a minimum period of 3 years to qualify themselves in S.S.L.C. for obtaining the Secondary Grade Scale of pay.

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2. The Government after careful examination accept the above recommendations and accordingly direct that the General Educational qualification for the post of Craft teachers in the middle schools under all kinds of Managements be raised to S.S.L.C. as prescribed in the Tamilnadu Private Schools Regulation Act, 1973. The Craft Teachers with the S.S.L.C. qualification shall be allowed Secondary Grade Scale of pay of Rs.610-20-730-25-955-1075 irrespective of the fact whether they are working in middle/high schools. The unqualified craft teachers that is with the VIII Std., qualification shall be allowed time for a minimum period of 3 years to qualify themselves and after that they shall be allowed Secondary Grade Scale of pay of Rs.610-20-730-25-955-1075.

3. This order issued with the concurrence of the Finance Department vide its U.O.No.99567/PR.II/81."

12. A bare perusal of the above said government order makes it clear that it prescribes the general educational qualifications for the post of Craft Instructors and stipulates the revision of pay to Craft Teachers. It does not make any distinction between Part-time or Full-time Craft Teachers and conditions of service, qualification are indisputably one and the same. The above said Government order makes it emphatically clear that the Craft Teachers with the S.S.L.C. qualification shall be allowed Secondary Grade Scale of pay irrespective of the fact whether they are working in middle/high schools and the unqualified craft teachers, i.e., who possession qualification of VIII Standard, shall be allowed time for a minimum period of 3 years to qualify themselves and after that they shall be allowed Secondary Grade Scale of pay. It is not in dispute that the petitioner, in terms of the above said government order, passed SSLC examination on 01.06.1989. Moreover, by letter dated 10.03.1997, the Additional Assistant Elementary Educational Officer recommended to convert the Part-time Craft Teacher as Full-time teacher. Even the said recommendation did not find favour with the respondent authorities. However, there is no reason forthcoming by the respondent authorities as to why the case of the petitioner was not considered favourably in the light of the above said government order and the consequential letter of the Additional Assistant Elementary Educational Officer.



13. That apart, the government order in G.O.Ms.No.1367, Education Department, dated 05.09.1986, directed that the arrangement of conversion of Part-time Craft Teachers into that of Full-time Craft Teachers stage by stage every year, be continued until the Part-time Craft Teachers are fully converted within a reasonable time. However, the petitioner was not granted the benefit of the said government order.

14. In the case on hand, the service rendered by the petitioner right from the date of his appointment till the date of retirement, i.e., for over 30 years, is not in dispute. For a person who had rendered service for 30 years, the pension proposal is returned on the ground that he had only three months of qualifying service and is, therefore, ineligible for pension. The specific contention of the petitioner that even though the nomenclature of the job was Part-time Craft Teacher he was available in the fifth respondent school for the whole day on account of distribution of periods is not disputed by the respondent authorities either across the bar or by way of filing of counter affidavit.

15. Moreover, under identical circumstances, when writ petitions were filed seeking to consider 50% of the service rendered as Part-time Vocational Teacher along with the regular service for the purpose of calculating the pensionary benefits, this Court, by order dated 09.04.2014 passed in W.P.(MD) No.16771 of 2013, etc. batch., (V.Ramar v. The State of Tamil Nadu and others) held as under:

"24. On a careful perusal and consideration of Rule 11(4), I am unable to appreciate the contention of the learned counsel for the respondents that there is a bar for considering the claim of the petitioners for the following reasons.

25. A careful reading of sub-rule (i) of Rule 11(4) would show that 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, if such service rendered was in a job "involving whole time employment."

26. The phrase "job involving whole time employment" cannot be interpreted with a narrow meaning to the effect that such benefit is to be given only to a person appointed as full time employee or on regular employment. The word "involving" which finds a place in the above phrase makes one to understand the intention of the



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legislation. A job may be whole time or part time, but if nature of such job involves whole time employment, or if the nature of such job requires whole time employment, then such job has to be considered as a job involving whole time employment, even if it was rendered on part time basis. For instance, the post of pump operator, sometime, is called as a part time appointment. Considering the nature of the job involved to the said post, there cannot be any doubt to the fact that such job requires only a part time service and not for the whole day. Therefore, such post is filled up as a part time appointment as it involves part time service only. On the other hand, the post of a teacher, though termed as a part time, in effect, cannot be construed as involving a part time service not requiring the full time service for the whole day. Going by the facts and circumstances with which such part time teachers were appointed, it could be seen that though they were appointed as part time teachers, in effect, they need to be in the work place through out the day by signing the attendance register etc., as like any other regular teachers. They are termed as part time teachers only for the purpose of paying a consolidated salary of meager sum of Rs. 150/- or Rs.300/- as stated supra. In all other aspects, the work was extracted from them like any other regular teachers only.

27. In this case, the vocational teachers were appointed to take classes in various vocational subjects such as Agriculture, Home Science, Commerce, Science, Engineering, Technology, Health and miscellaneous course at Higher Secondary stage. I have already discussed about the scope and the idea behind the creation of such posts of vocational instructors. I have also pointed out that vocational instructors were appointed as single part time as well as double part time teachers taking note of the requirement and they were taking 20 or more periods and that the Hon'ble Division Bench of this Court in W.P.Nos. 11389 of 2003 etc., dated 8.7.2004 has held that both the single part time teachers and double part time teachers should be treated equally and the benefit conferred on the double part time teachers shall be extended to the single part time teachers also. When that being the undisputed factual position, it cannot be said that these petitioners were not



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doing a job "involving whole time employment", even though they were called as part time teachers. In fact, Rule 11(4) of the said Rules was carefully worded by saying that "a job involving whole time employment" instead of saying that "a job with full time employment".

28. At this juncture, it is also relevant to refer and compare Rule 11(4) with Rule 11 (2) (i) and (ii) of the said Rules for the purpose of understanding the intention of the legislation. Rule 11 (4) deals with non- provincialised service, consolidated pay, honorarium or daily wages basis services, while Rule 11(2)(i) deals with contingency service. Rule 11(2)(i) reads as follows.

(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.

29. Rule 11(2)(i) excluded the part time job "for a portion of a day" whereas such phrase is specifically absent under Rule 11(4). Therefore, in my considered view, it appears that the Government, by making distinction between this contingencies service and non-provincialised service etc., as contemplated under Rule 11(4), has specifically omitted to include the phrase "not part time for a portion of the day" in Rule 11(4) though it is found in Rule 11(2)(i). Considering all these aspects, I am of the view that Rule 11(4), in fact, supports the claim of the petitioners rather than denying the same as contended by the respondents."

16. After observing as above, the learned Single Judge, in the decision referred supra, taking note of the fact that benefit of 50% of services rendered on Part-time basis as Panchayat Clerks were considered for pensionary benefits vide G.O.(Rt) No.39, Rural Development and Panchayat (E5) Department, dated 13.6.2011, directed as under:

"7. When the Government has chosen to extend the benefit in respect of part time Panchayat Clerks as



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found in G.O.39, the respondents herein cannot deny the same benefit to the Part time vocational instructors by saying that the said G.O is applicable only to the Panchayat Clerks and not to the vocational instructors. Needles to say that the Government having taken a decision to extend certain benefit to its employees, it cannot discriminate between similarly situated persons, though they are rendering their service in different departments. What is to be seen is as to whether the part time services is to be counted or not. Such consideration cannot be made by pick and choose and extended only to a particular department by excluding all other similarly situated persons of other departments of the same Government. If it is done, certainly it amounts to discrimination, thus violating Article 14 of the Constitution of India.

38. Considering all these aspects, I am of the view that all the petitioners are entitled to succeed in these writ petitions. Accordingly, the writ petitions are allowed and the respondents are directed to take into account 50% of the part time service rendered by the petitioners, as sought for in the prayer in the individual writ petition, along with their regular service for pensionary benefits and pass suitable orders within a period of 12 weeks from the date of receipt of copy of this order"

(emphasis supplied)

17. When part-time employees working in other departments had been extended such benefit, this Court finds no justification in denying such benefit to the petitioner, who had indisputably rendered 30 years of service and non granting of similar benefit would tantamount to violation of Article 14 of the Constitution of India.

18. For the foregoing reasons, the writ petition is allowed with the following directions:

(i) the order dated 08.04.2005 passed by the fourth respondent is quashed insofar as regularizing the service of the petitioner with effect from 12.09.1995 is concerned;

(ii) the respondent authorities are directed to regularize the petitioner's service as Full-time Craft Teacher with effect from



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20.08.1986 only for the purpose of full pension and grant pension to the petitioner by considering 50% of 21 years of service from 1966 to 1986 as part time craft teacher for the purpose of pension and retirement benefits to the petitioner; and

(iii) such orders shall be passed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary to Government,
Education Department, Secretariat,
Chennai-9.
- 2.The Director of School Education,
College Road, Chennai-6.
- 3.The Accountant General,
O/o. The Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai-18.
- 4.The District Elementary Educational Officer,
Nagapattinam District.

+1cc to Mr.S.Sounthar, Advocate SR.No.88277

+2cc to Mr.S.N.Ravichandran, Advocate SR.No.88027

W.P.No.27245 of 2010

GMV (05/10/2018)