IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.05.2017
CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No.7878 of 2014
and
M.P. No.1 of 2014

P.Shanmugam .. Petitioner

Vs.

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,
   College Road,
   Chennai - 600 006.

3. The Joint Director (Higher Secondary),
   Vocational,
   College Road,
   Chennai - 600 006.

4. Accountant General (A & E),
   Office of the Principal Accountant General,
   Tamil Nadu,
   Chennai - 600 018. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to include the services rendered by the petitioner's wife P.Chandra from initial appointment till regularisation (i.e. 16.10.1980 to 11.11.1997) for the pension and other terminal benefits.

For Petitioner : Mr.R.Saravanakumar

For Respondent Nos.1 to 3 : Mr.R.Vijayakumar, Additional Government Pleader

O R D E R

It is tobe noted that in this writ petition, the employee, who is the wife of the petitioner, has passed away and the husband of the deceased has come forward by filing this writ petition seeking direction to include the services rendered by the petitioner's wife P.Chandra from initial appointment till regularisation (i.e. 16.10.1980 to 11.11.1997) for the pension and other terminal benefits.

2. The petitioner's wife was employed as Vocational Teacher and was subsequently, regularised in the sanctioned post. The grievance of the writ petitioner is that his wife was initially appointed as vocational teacher on temporary basis and by virtue of her lengthy and continuous service, she was absorbed in regular vacancy. While so, the temporary service rendered is to be taken into account for the purpose of calculating the qualifying service in order to fix the pensionery benefits.

3. Though a larger relief of calculating the entire period is sought for in this writ petition, the learned counsel appearing for the writ petitioner submitted that by virtue of subsequent amendment made out by the Government Rule 11 of the Tamil Nadu Pension Rules, 1978, the writ petitioner's wife is entitled for counting 50% of the total temporary service rendered by her. Accordingly, the learned counsel cited two Hon'ble Division Bench Judgments of this Court, in the same subject dated 13.06.2016 passed in W.A.No.658 of 2016 and dated 16.03.2015 passed in W.A.No.359 of 2015, wherein, the Division Bench of this Court had considered the line of Government Orders passed in this regard and upheld the judgment of the learned Single Judge and the relief sought for in those writ petitions were granted by the Hon'ble two Division Bench, more specifically, the judgment of the Division Bench dated 16.03.2015, the relief to single part time teachers and judgment dated 13.06.2016, the relief to double part time teachers. However, the legal principles laid down and the relief granted both for the single part time teachers and double part time teachers are one and the same and based upon the Government Orders issued therein. Pursuant to the Government Orders, the Government amended the Rule also. The amended Pension Rule 11 is extracted hereunder:

> "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.

(3) These orders shall take effect from the date of this Government Order. In respect of those who 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 upto the date of this order.)

NOTE - In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore - Cochin State consequent on the reorganisation of State temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore - Cochin State shall count in full for purposes of pension :

Provided that -

(a) in the case of a Government servant, service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity;

(b) in the case of a Government servant whose year and month of birth are known, but not the exact date the 16th of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1st July if the year shall be taken.

(c) In the case of a Government servant with no military service who gives on recruitment only his age, but not the year of his birth the year should be arrived at by deducting from the year of recruitment the given age and then the date of birth should be taken as the 1st July of that year:

Provided further that in the case of a Government servant with previous military service the date of birth is fixed as laid down below :

When a military employee is transferred to a civil department under the Government and assumes a civilian status, the date of birth to be entered in his service book should be the date stated by him at the time of attestation.

When the documents referring to the previous military service of an individual do not give the definite date of birth but only the age stated at the time of attestation, he should be assumed to have completed the stated age on the date of attestation e.g., if one ex-soldier was enrolled on 1st January 1910 and if, on that date, his age was stated to be 18, his date of birth should be taken as 1st January 1892. This procedure will apply to cases arising on or after 27th June 1938. Notwithstanding anything contained above in cases where S.S.L.C. Or any other school certificate is available, the date of birth, as entered therein should be taken into account.

[Explanation - For the purpose of date of birth, the word "attestation" refers only to the initial records kept by the Defence Department at the time of appointment of the individual and not in the discharge certificate on discharge from the Defence Department"

4. Pursuant to the line of Government Orders and the amended rule as stated supra had been issued by the Government of Tamil Nadu, the writ petitioner's wife is entitled for counting of 50% of her temporary services as qualifying service for the purpose of calculating the pensionery benefits.

5. The learned Additional Government Pleader, while not disputing the legal principles laid down in these two judgments of the Hon'ble Division Bench, raised objection that the case of the writ petitioner is to be verified with reference to the service records of the writ petitioner's wife.

6. It is needless to state that it is the duty of the respondents to verify the service records of the writ petitioner's wife and pass appropriate orders extending the benefit. Accordingly, the respondents have to take a decision after due verification of the service records of the writ petitioner's wife. Thus, this Court is inclined to consider the

ground raised in the writ petition and accordingly, the respondents are directed to count 50% of the temporary service rendered by the writ petitioner's wife with reference to Rule 11 of the Tamil Nadu pension amended Rules and accordingly, pass appropriate orders as early as possible by granting the service benefits to the writ petitioner.

With the above direction, the writ petition stands disposed of. The said exercise shall be carried out by the respondents within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

sms

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,
   College Road,
   Chennai - 600 006.

3. The Joint Director (Higher Secondary),
   Vocational,
   College Road,
   Chennai - 600 006.

4. Accountant General (A & E),
   Office of the Principal Accountant General,
   Tamil Nadu,
   Chennai - 600 018.

+1cc to R.Saravana Kumar, Advocate in sr.no.37466

W.P. No.7878 of 2014
and
M.P. No.1 of 2014

NR 23/08/2017