

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-10-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21014 of 2014

And

M.P.Nos.1 and 2 of 2014

- 1.M.Muthumanickam
- 2.Francis Xavier
- 3.K.Arul
- 4.R.Kalaiselvan

.. Petitioners

vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Finance Department,
Fort St. George,
Chennai-600 009.

- 2.The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.

- 3.The Director of School Education,
DPI Compound,
College Road,
Chennai-600 006.

- 4.The Joint Director (Vocational),
Directorate of School Education,
DPI Compound, College Road,
Chennai-600 006.

.. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the letter of the second respondent having Ref.No.16280/VE/2011-4, dated 14.6.2012 to the third respondent, rejecting the request of the third respondent to take their services rendered by part time vocational instructors for the purpose of pension and quash the same and consequently direct the fourth respondent to send the proposal for computing the 50% service rendered by the petitioners as Part-Time Vocational Instructors drawing consolidated pay for calculating the qualifying service for pension and the quantum of pension under Rule 43(2) of the Tamil Nadu Pension Rules to the first and second respondents to enable the first

respondent to sanction the pension to the petitioners based on the said proposal from the date of retirement of the petitioners and to enable the concerned authorities to disburse the pension to the petitioners.

For Petitioners : Ms.C.Uma

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader.
O R D E R

The relief sought for in this Writ Petition is to quash the order of rejection passed by the second respondent dated 14.6.2012, and to direct respondents to count 50% of the services rendered by the writ petitioners as part time Vocational Instructors for the purpose of revision of pension and arrears.

2. The learned counsel appearing for the writ petitioners submitted that the writ petitioners are the Vocational Instructors. The writ petitioners were initially appointed as part-time Vocational Instructors on consolidated pay and subsequently their services were regularised in the permanent basis. However, the services rendered as part-time Vocational Instructors were not taken into account as qualifying service for the purpose of calculating the pension and other pensionary benefits. However, the claim for counting 50% of services were denied to the deceased employees on the ground that they were working as part-time Vocational Instructors and even as per Rule, the part-time Vocational Instructions are not entitled for counting of 50% of the services rendered on consolidated pay.

3. The learned counsel appearing for the writ petitioners cited the orders of the Hon'ble Division Bench of this Court dated 16th March 2015 passed in W.A.No.359 of 2015 and the order dated 21.04.2017 passed in W.A.(MD).No.392 of 2014. The Hon'ble Division Bench of this Court in Writ Appeal No.359 of 2015 dated 16.03.2015 passed the following orders, which is extracted hereunder:

"13.The learned Single Judge has rightly come to the conclusion as under and granted the afore stated benefits:

"4(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 and G.O.Ms.No.834 dated 23.9.1994, G.O.Ms.No.221 dated 15.7.1999 to regularise the service of the Vocational Instructor.

14. Thus, the impugned order does not suffer from infirmity, illegality of irregularity, warranting interference in this appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

4. This apart, another Hon'ble Division Bench of this Court in W.A.(MD).No.392 of 2014 dated 21.04.2017 passed the following orders which is extracted hereunder:

"11. Learned Additional Government Pleader after elaborately referring to the factual matrix placed reliance on the decision of the Division Bench in the case of The Principal Secretary Social Welfare and Nutritious Meal Programme Department and others Vs. M.Palanikani made in W.A.Nos.587 etc. batch dated 03.12.2014 and submitted that the Division Bench has allowed the appeals and set aside the order passed by the learned single Judge wherein relief was granted to count 50% of the services in the noon meal scheme.

12. Firstly, we may point out that the terms of employment of staff in the noon meal scheme are not in pari material with that of the terms of appointment of vocational instructors. This fact cannot be denied by the appellants. Furthermore, in paragraph 21 of the said judgment, the Court framed the question which has to be decided with a specific reference and a cut off date which had been fixed namely, on 01.04.2003. Admittedly, all the writ petitioners were appointed much prior to the said date and the decision of the Hon'ble Division Bench is factually distinguishable. Thus, we are of the considered view that the impugned order having been rendered by referring to and relying upon the decisions of the Hon'ble First Bench, we find no grounds to take a different view in the matter. Accordingly, the writ appeals are dismissed. No

costs. Consequently, connected miscellaneous petitions are closed."

5. In view of the above Judgment of two different Hon'ble Division Benches of this Court, the present writ petition deserves to be considered. Accordingly, the order impugned passed by the Director of School Education, Chennai, in proceedings in Ref.No.16280/VE/2011-4, dated 14.6.2012 is quashed and the respondents are directed to consider the case of the writ petitioners for counting of 50% of service rendered by them as part-time Vocational Instructors by verifying their service records and pass appropriate orders in this regard within a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Svn

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Finance Department,
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WP No.21014 of 2014

RJ (CO)