

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3580 of 2014

Illango

..Petitioner

vs

1.The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 9.

2.The Director of School Education,
Chennai.

(R2 amended as per order dt.09.10.2017 by SMSJ
in W.M.P.No.23825/17 in W.P.No.3580/14)

3.The Chief Educational Officer,
Tiruvavarur District.

4.Head Master,
Government Higher Secondary School,
Ammalaiyappan, Thiruvavarur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Director of School Education, Chennai - 6 in relation to the proceedings in Moo.M.No.31213/VI/E108 dated 14.05.2008 and quash the same and issue a consequential direction to the respondents to count 50% of service rendered by the petitioner in the post of single part time vocational instructor and double part time vocational instructor for a period from 20.06.1980 to 04.10.1996 along with the regular service for a period from 05.10.1996 to 31.03.2009 when the petitioner retire from service and issue a consequential direction to the respondents to send a revised pension proposal to the Accountant General, Chennai for sanction.(Prayer amended as per order dt.09.10.2017 by SMSJ in W.M.P.No.23826/17 in W.P.No.3580/14)

For Petitioner : Mr.R.Saseetharan
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 dated 14.05.2008 and for a consequential direction to count 50% service rendered by the writ petitioner in the post of Single Part-time Vocational Instructor and double part time Vocational Instructor for the period from 20th June 1980 to 4th October 1996 along with the regular service for the period from 5th October 1996 to 31st March 2009 when the petitioner retire from service and issue a consequential direction to the respondents to send a revised pension proposal to the Accountant General, Chennai for sanction.

2.The learned counsel for the writ petitioner made a submission that the writ petitioner was appointed as part-time Vocational instructor in the higher secondary school on 19th June 1980 and his appointment was approved by the Chief Educational Officer in his proceedings dated 28.08.1980. Initially, the petitioner was paid the consolidated pay and subsequently, brought under regular establishment as a regular employee with effect from 1986. Thus, the writ petitioner claims that as per amended Rule 11 of the Tamil Nadu Pension Rules 1978, 50% of the services rendered as part-time employee has to be taken into account for the purpose of calculating service. However, the claim of the writ petitioner was rejected on the ground that the part-time service is not stipulated in the Rule and therefore, the case of the writ petitioner cannot be considered.

3.The learned counsel appearing for the writ petitioner 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 Moo.M.No.31213/VI/E108 dated 14.05.2008 is quashed and the respondents are directed to consider the case of the writ petitioner for counting of 50% of service rendered by him as part-time single and double part-time vocational instructor by verifying his 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.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 9.

2. The Director of School Education,
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Tiruvavur District.

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KP(23/11/2017)