

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.05.2017

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.40888 of 2015

And

M.P.No.1 of 2015

V.Rajendran

... Petitioner

Vs.

1. The Government of Tamilnadu,
Represented by its Secretary,
Education, Science and Technology
(H.S.II) Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.
4. The Headmaster,
Government Boys Higher Secondary School,
Chrompet, Chennai - 600 044.
5. The Accountant General (A&E),
Teynampet, Chennai - 600 018.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to count the entire services of the petitioner worked in the cadre of Vocational Instructor from 23.10.1986 for pension purpose and accordingly direct the respondents to grant pension and Pensionary benefits to the petitioner and further to pay the consequential arrears with in a stipulated time may be fixed by this Hon'ble Court.

For Petitioners
For Respondents

: Mr.M.Saravanakumar
: Mr.P.Sanjay Gandhi for R1 to R4
Additional Government Pleader
No Appearance for R5

O R D E R

This writ petition has been filed seeking issuance of writ of mandamus to direct the respondents to count the entire services of the petitioner who had worked in the cadre of Vocational Instructor from 23.10.1986 for pension purpose and accordingly, direct the respondents to grant pension and pensionary benefits to the petitioner and further to pay the consequential arrears within a stipulated time.

2.The petitioner was appointed as Vocational Instructor in the year 1986, in the Government Higher Secondary School, Anakaputhur. By G.O.Ms.No.834, Education, Science and Technology (HS.II) Department, dated 23.09.1994, the Government decided to impart training to 1059 un-qualified Vocational Instructors through the District Institute of Education and Training, in order to observe them as B.T.Assistants. Since the petitioner was not given training, he had filed writ petition in W.P.No.6821 of 2011, which was allowed by this Court on 31.03.2011, directing the respondents to send the petitioner for training and to observe him in the regular post. The said judgment was challenged by the Government in W.A.No.158 of 2012 and the same came to be dismissed on 07.02.2012. The review as sought for by the Government in Review Application No.SR8021 of 2014 was also rejected by this Court on 13.06.2014. The State took it up on appeal before the Hon'ble Supreme Court. It was also dismissed.

3.Thereafter, the Government issued G.O.(2D) No.50, School Education (Nee.Va 3(2)) Department, dated 27.08.2014, regularizing the services of the petitioner, after having sent him for training between 01.04.2013 and 30.06.2013. The petitioner has attained superannuation on 09.01.2012 and was permitted to retire on 31.05.2012 since he was re-employed till the end of the academic year. The petitioner was denied pension on the ground that he has not put in the required regular service and therefore, he was not qualified for getting pension. Challenging the denial of pension, the petitioner is before this Court.

4.Rule 11 (1) of the Tamil Nadu Pension Rules, which provides for qualifying service reads 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."

5. Rule 11(4) provided that half of the service rendered in the State Government on consolidated pay, honorarium or daily wages on or after 01.01.1961 in respect of Government employee shall be counted for pension along with regular service. The said Sub Rule namely Sub Rule (4) of Rule 11 was challenged and the Madurai Bench of this Court has struck down the same as unconstitutional, in V. Ganapathy Vs. State of Tamil Nadu Represented by its Principal Secretary to Government, Revenue Department, Chennai and others ((2013) 2 MLJ 399). The said judgment has also been followed by a Single Judge of this Court in W.P.(Md) No.11807 of 2014 dated 14.06.2016. Similar view was also taken by another Single Judge of this Court in the case of K. Raman Nair Vs. The District Collector, Nagercoil and another in W.P.(Md) No.1716 of 2005 dated 24.08.2007. The appeal preferred against the judgment in K. Raman Nair Vs. The District Collector in W.A.(Md) No.16 of 2009 was also dismissed by the Division Bench on 16.02.2009. It is therefore clear that the respondents are bound to take into account the temporary service of the petitioner as Vocational Instructor also while calculating his service for the purpose of entitlement of pension.

6. In the light of the above pronouncements of this Court, there will be a direction to the respondents to calculate the services of the petitioner from the date of his initial appointment in the year 1986, for the purpose of pension and grant him pension as per the Tamil Nadu Pension Rules. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Asst. Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Government of Tamilnadu,
Represented by its Secretary,
Education, Science and Technology
(H.S.II) Department,
Fort St.George, Chennai - 600 009.
 2. The Director of School Education,
College Road, Chennai - 600 006.
 3. The Chief Educational Officer,
Kancheepuram District,
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 4. The Headmaster,
Government Boys Higher Secondary School,
Chrompet, Chennai - 600 044.
 5. The Accountant General (A&E),
Teynampet, Chennai - 600 018.
- +2cc to M/S.M.Saravanakumar, Advocate Sr. 37772
- +1cc to the Government Pleader Sr. 37829

W.P.No.40888 of 2015
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M.P.No.1 of 2015

NR II (CO)
VR(05/06/2017)

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