



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.05.2017

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.256 and 257 of 2015

P.Natarajan .. Petitioner in W.P.(MD) No.256 of 2015

M.Graceammal .. Petitioner in W.P.(MD) No.257 of 2015

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary,
School Education Department,
St. George Fort,
Chennai - 09.

2.The Accountant General,
(General and Entitlements),
Tamil Nadu, Chennai - 18.

3.The Director of School Education,
College Road,
Chennai - 06.

4.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

5.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District. ... Respondents in both writ petitions

Prayer in W.P.(MD) No.256 of 2015: Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus, directing the respondents to take the 50% of the part time service rendered by the petitioner i.e., from 01.06.1989 to 11.11.1997 along with the regular service for the pension benefits i.e., for the period of 20 years 3 months and 17 days.

Prayer in W.P.(MD) No.257 of 2015: Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus, directing the respondents to take the 50% of the part time service rendered by the petitioner i.e., from 26.07.1968 to 31.05.1979 along with the regular service for the pension benefits i.e., for the period of 29 years 1 month and 2 days.



For Petitioner in both petitions

... Mr.S.Chellapandian

For Respondents 1, 3 to 5
in both petitions

... Mrs.S.Bharathi
Government Advocate

For 2nd Respondent
in both petitions

... Mr.P.Gunasekaran

COMMON ORDER

The prayer in these writ petitions is for a Writ of Mandamus, directing the respondents to take 50% of the part time service rendered by the petitioner in W.P.(MD) No.256 of 2015 from 01.06.1989 to 11.11.1997 and by the petitioner in W.P.(MD) No.257 of 2015 from 26.07.1968 to 31.05.1979 along with the regular service for the pension benefits for the period of 20 years 3 months and 17 days in respect of the petitioner in W.P.(MD) No.256 of 2015 and 29 years 1 month and 2 days in respect of the petitioner in W.P.(MD) No.257 of 2015.

2.Since the facts are similar and the prayer sought for is also similar in both the writ petitions, these two writ petitions are disposed of by this common order with the consent of both sides.

3.These petitioners had been appointed as teachers in a school under the management of T.D.T.A. and the petitioner in W.P.(MD) No.256 of 2015 was appointed at Middle School, Parankundrapuram on 01.06.1989 and the petitioner in W.P.(MD) No.257 of 2015 was appointed at Middle School under the same Management at Subbulapuram on 26.07.1968 as part time Vocational Instructors. The petitioner in W.P.(MD) No.256 of 2015 worked in that capacity till 11.11.1997 and the petitioner in W.P.(MD) No.257 of 2015 worked till 31.05.1979. Thereafter, both the petitioners had been regularized as full time Vocational Instructors and after having served for several years, the petitioner in W.P.(MD) No.256 of 2015 retired on 31.10.2014 and the petitioner in W.P.(MD) No.257 of 2015 retired on 31.01.2003. After retirement, they are getting pension only for the period they worked as full time Vocational Instructors and the past service rendered by them as part time Vocational Instructors for several years was not taken into account for the purpose of calculating the pension. With the result, though they worked for several years, they are getting very lessor pension.

4.The further case of the petitioners is that, as per amended Rule i.e., 11(4) of the Tamil Nadu Pension Rules, 1978, those who rendered service in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment, their half of the service rendered under the State Government in those categories shall be counted for retirement with regular service. For better appreciation of the issue, the relevant Rule, namely, 11(4) of the Tamil Nadu Pension Rules, 1978 is reproduced hereunder:



"In the said Rules in Rule 11, after sub-rule (3), the following sub-rule shall be added namely;-

''(4) 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 alongwith regular service, subject to the following conditions, namely;-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break:

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincilised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003:

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break shall not count for the purpose of pensionary benefits."

5. After the said Rule has got amended, several persons like the petitioners approached the Government for getting higher pension by taking into account 50% of their past service as part time Vocational Instructors and since those requests were not considered by the Government, they have approached this Court. In a batch of cases in W.P.(MD) Nos.16771 to 16775 of 2013 etc., batch, this Court by order dated 09.04.2014 allowed the requests of those writ petitioners and directed that 50% of their past service as part time Vocational Instructors shall also be counted for the purpose of their pensionary benefits.

6. On the same analogy, the petitioners case also will fall under the said category. These petitioners had also approached the respondents and in this regard representations have been given by both the petitioners and lastly the first petitioner had given a representation on 10.12.2014 and the second petitioner had given representation on 05.01.2015. Though such representations were filed by the petitioners, the respondents have not considered the same and no orders were forth coming, calculating the 50% of their past service also for the purpose of pension. Therefore, these



petitioners have approached this Court with these Writ Petitions with the respective prayers.

7. Mr. S. Chellapandian, the learned counsel appearing for the petitioners would straightaway take this Court to the judgment of this Court dated 09.04.2014, made in W.P.(MD) Nos.16771 to 16775 of 2013 etc., batch (cited supra) in the matter of V. Ramar v. The State of Tamil Nadu represented by School Education Department and others. The learned counsel for the petitioner would rely upon the following paragraphs of the said judgment which are usefully extracted hereunder:

"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 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 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.

31. Even otherwise, when this Court has already rejected the same contention as raised in G.O.Ms.No. 118 and G.O.Ms.No. 408, the respondents are not justified in relying on Rule 11(4) even assuming that Rule 11(4) prohibits such relief. In other words, even assuming that G.O.No.408, G.O.No.118 and Rule 11(4) contemplate one and the same objection, the respondents are estopped from raising such objection once again before this Court, when the said objection having been relied and got rejected by this Court in W.A.No. 1702 of 2010 dated 20.9.2010. I can even go to the extent of saying that Rule 11(4) is impliedly over-ruled by the decision of the Hon'ble Division Bench rendered in W.A.No. 1702 of 2010 dated 20.9.2010, even assuming that such rule prohibits the grant of relief claimed by the petitioners.

...

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. No costs."

By relying upon the amended Rule 11(4) of the Tamil Nadu Pension Rules and the judgment cited supra, the learned counsel for the petitioners would submit that the petitioners are also similarly placed and these petitioners are also entitled to claim pension by calculating 50% of the past service when they were working as part time vocational Instructors.

8. Per contra, Mrs.S.Bharathi, the learned Government Advocate for the respondents 1, 3 to 5 would rely upon paragraph 3 of the counter filed by the 5th respondent in W.P.(MD) No.257 of 2015, which reads thus:

"It is submitted that the petitioner was not a single part time vocational teacher employed in the T.D.T.A. Middle School, Subbalapuram as stated by her. She was only a part-time Prevocational Instructor employed in a Middle School. Her work was not a whole time job. It was only a part-time job confined from 2 PM to 5 PM as evidenced by the copy of appointment order placed in the typed set. Further, entries as to her date of appointment and period of appointment are found to be tampered with in her appointment order. Hence, the petitioner is first of all, bound to prove that she



worked as a part-time Prevocational Instructor for the period mentioned in the petition. It is true that the petitioner worked as a regular Prevocational Instructor in the T.D.T.A. Middle School, Subbalapuram from 01.06.1979 and retired from service on 31.01.2003. She was granted her legitimate pensionary benefits based on the regular service rendered by her from 01.06.1979 to 31.01.2003."

9.By relying upon the said averments made in the counter, the learned Government Advocate would submit that the job of the petitioners was only a part time job as the very time for the job itself is from 2.00 p.m. to 5.00 p.m. as evidenced from the copy of the appointment order. When a person worked only for part time, he cannot be construed as an employee within the meaning of the words 'shall be in a job involving whole time employment'. When these petitioners have worked only as a part time job only for a particular hours, they cannot be construed as a whole time employees. Therefore, the conditions appended to Rule 11(4) of the Tamil Nadu Pension Rules, especially condition No.1 has not been fulfilled by these petitioners, hence the prayer sought for herein cannot be granted as they cannot take any shelter under Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

10.The learned Government Advocate would also submit that insofar as the batch of cases cited on the petitioners side is concerned, in those cases after specifically finding the work nature and job of the respective writ petitioners concerned, this Court had given a direction that 50% of their past services rendered shall be taken into account for the purpose of pension. In some cases, though the Government accepted the verdict of the Court and in one such case, G.O.(4D) No.19 School Education Department dated 04.11.2014 was issued by the Government calculating the past 50% service of the employee for the purpose of pensionary benefits, such kind of isolated cases cannot be treated as precedent as there were no hard and fast Rule that 50% of the past service in part time should be taken into account for calculating the pension payable to the employees. Therefore, the learned Government Advocate would submit that since these two petitioners were working for some hours only for very longer period till they were brought into full-time employment, they are not entitled to claim counting of 50% of past service. Therefore, the prayer sought for cannot be granted.

11.This Court has considered those submissions made by the learned counsel for the respective parties.

12.The objections raised by the respondents side through the learned Government Advocate that the petitioners since had worked only for a few hours, for instance, from 2.00 p.m. to 5.00 p.m., the same cannot be treated as full-time or whole time employment and since the said job cannot be treated as a whole time employment, the petitioners are not entitled to claim counting of 50% of past service under Rule 11(4) of the Tamil Nadu Pension Rules had not been fulfilled by the petitioners are concerned, the answer is explicitly given in the said judgment (cited supra).



13.The learned Judge in the said decision dated 09.04.2014, made in W.P.(MD) Nos.16771 to 16775 of 2013 etc., batch has in fact discussed this issue exhaustively and has given a detailed interpretation as to how the very word 'whole time employment' as employed in Rule 11(4) of the Tamil Nadu Pension Rules has to be interpreted. The learned Judge has given a complete answer to the objections raised by the respondents herein in paragraphs 26 to 29 of the said judgment, which have already been extracted herein above. The learned Judge has also made a reference that Rule 11(4) of the Tamil Nadu Pension Rules itself was impliedly overruled by the Division Bench of this Court in W.A.No.1702 of 2010 dated 20.09.2010.

14.Yet another factor in the said batch of cases cited supra is that, all those petitioners were worked as part-time Vocational Instructors. For the said part-time Vocational Instructors, though the timing was restricted either to have 2.00 p.m. to 5.00 p.m. or 10.00 a.m. to 1.00 p.m. or like that cannot be construed that those people had worked only in that time and for the remaining time, they left the institution. This issue has been exhaustively discussed by the learned Judge in the said decision (cited supra). The word 'whole time employment' was also to be considered in a particular manner, has also been discussed and decided by the learned Judge in the said decision. In this regard it was specifically held that even though the job is only for a few hours the teacher had to wait in the school and present for the whole day signing attendance for both sessions. This factor has been specifically discussed and decided by the learned Judge.

15.Across the Bar, it was also informed that the said judgment was also implemented. It is also informed across the bar that as against some similar decisions made by this Court, the State had gone upto Supreme Court and the S.L.P. filed by the State Government has been dismissed. Though specific reference was not given by the petitioners side, the said submissions made by them are not disputed from the respondents side.

16.Moreover, in one such case, this Court in W.P.No.4556 of 2007 by order dated 29.07.2011, a direction was given to the respondents that 50% of the past service should be taken into account for the pensionary benefits. The said order of this Court dated 29.07.2011 has been implemented by the Government through G.O. (4D) No.19 School Education Department dated 04.11.2014.

17.The defence now taken by the learned Government Advocate that this kind of isolated cases cannot be accepted. When similarly placed persons are not treated equally, that also would amount discrimination. Therefore, the provisions of Article 14 of the Constitution of India can very well be invoked in this case. Therefore, such kind of discrimination that too from the State Government cannot be accepted and permitted.



18. It is an admitted fact that these two petitioners were working as part-time Vocational Instructors for longer years. Only after several years they were brought under full-time Vocational Instructors by regularising their services. Though both the petitioners are getting pensions, since their past 50% service has not been taken into account they are getting a very meagre pension. Considering these aspects, legislators themselves thought it fit to make amendment in the Rule. That is why amendment in Rule 11(4) came into the statutory book. The normal rule of interpretation of statutory Rule is to be given effect when specific Rule was brought in by way of beneficial rule. Rule 11(4) of the Tamil Nadu Pension Rules has been brought in by way of beneficial rule for the benefit of those who have rendered unblemished service for several years and going without getting any pensionary benefits. Therefore, the said Rule cannot be subjected to a different interpretation as has been sought for by the respondents side. Therefore, this Court is of the view that Rule 11(4) of the Tamil Nadu Pension Rules certainly would give leverage to the petitioners i.e., 50% of their past service, when they were working as part-time Vocational Instructors, shall be taken into account for the purpose of pensionary benefits.

19. For all the reasons and discussions made above, this Court is of the firm view that the petitioners succeed in these Writ Petitions and they are entitled to the mandamus as sought for in these Writ Petitions.

20. In the result, these Writ Petitions are allowed and the respondents are directed to take into consideration 50% of the past services of the petitioners when they were working as part-time Vocational Instructors. Based on such service, the pensionary benefits of the petitioner shall be recalculated and the recalculated pension shall be continued to be paid to the petitioners. It is needless to state that when the pension is recalculated from their date of retirement till payment, arrears shall also be paid to them. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

21. With these directions, these two Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,

<https://hcsen.gov.in/> Pension Department,

St. George Fort,

Chennai - 09.



2.The Accountant General,
(General and Entitlements),
Tamil Nadu, Chennai - 18.

3.The Director of School Education,
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4.The Chief Educational Officer,
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5.The District Elementary Educational,
Tirunelveli,
Tirunelveli District.

+1cc to Special Government Pleader, SR.No. 56519

W.P. (MD) Nos.256 and 257 of 2015
11.05.2017

SJ
JM/SV MMS/SAR 4/21.11.2017/10P/7C