

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 02.11.2018

CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.13726 of 2008

Seeni Chellappa

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanchipuram.

2.The District Educational Officer,
Chenglepet.

3.The Director of School Education,
DPI Complex, College Road,
Chennai - 6.

4.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of respondents in connection with the impugned order passed by the first respondent in Na.Ka.No.2044/B5/05 dated 15.04.2008 and quash the same and further direct the respondents to count the part time services rendered by the petitioner from 18/08/1983 to 05.10.1996 for the purpose of pensionary benefits.

For Petitioner : Mr.Purusothaman

For Respondents : Mr.K.Karthikeyan
Government Advocate

O R D E R

The relief sought for in this writ petition is to call for the records of respondents in connection with the impugned order passed by the first respondent in Na.Ka.No.2044/B5/05 dated 15.04.2008 and quash the same.

2. The petitioner was appointed as double part time instructor in the Government Higher Secondary School, Acharapakkam on 18.08.1983 and he was paid a sum of Rs.300/- as salary and directed to take class for more than 20 hours in a

week. The petitioner's appointment was made by the Headmaster of the Government Higher Secondary School, Acharapakkam, Kanchipuram District.

3. The learned counsel for the petitioner further submitted that the Government have issued various orders from time to time to regularize the services of the double part time vocational instructors working in the Higher Secondary Schools. In GO.Ms.No.712 Education Department dated 28.05.1990, the Government have issued an order regularizing 1837 double part time vocational instructors working in the Higher Secondary Schools and brought them into the scale of pay of Rs.1200-2040 etc. Even in that the name of the petitioner was not included. The petitioner further submitted that he has been working from the year 1983 as vocational instructor on agriculture. The prescribed qualification for the post is B.Sc. Agriculture, which is a professional course and no individual who possess B.Sc. Agriculture will come and join the school as Agriculture Instructor for a meager salary of Rs.300/-.

4. The learned counsel for the petitioner also submitted that after a prolonged Court litigation, the Tribunal issued a direction to regularize all the part time vocational instructors into service based on the seniority irrespective of the fact that whether he is serving as single part time or double part time instructors. The Government in GO.Ms.No.967 Education dated 16.10.1992 issued orders to bring 537 fully qualified double part time vocational instructors to be regularized in the BT scale of pay. But even then, the petitioner's service was not regularized by bringing him into regular time scale of pay and the petitioner was declared as unqualified person for regular appointment. Hence, the Government issued an order to bring the unqualified 400 double part time vocational instructors after they have been allowed to undergo the training for a period of 3 months conducted by the Teachers Educational Department and thereafter, directed to be absorbed in the regular time scale of pay. Even though the petitioner and other similarly situated persons were not fully qualified as per the qualification prescribed in G.O.Ms.No.1917 Education, their appointment was ratified by the Chief Educational Officer, in proceedings dated 11.07.1984.

5. The learned counsel for the petitioner also submitted that based on the proceedings of the Chief Educational Officer, Kanchipuram dated 12.02.1998, the petitioner was appointed as Vocational Instructor, Grade-II in the same school in the scale of pay of Rs.1200-2040 etc. from 05.10.1996, the date on which the petitioner appeared for the examination after undergoing a condense course for 3 months. The petitioner was fully qualified to hold the post even at the time of initial appointment. But unfortunately, the petitioner's service was

not regularized on the ground that he did not satisfy the educational qualification prescribed in G.O.Ms.No.1917 for appointment as Agriculture Instructor.

6. The Government order issued in GO (D) No.834 Education dated 23.09.1994 was challenged before the Tamil Nadu Administrative Tribunal. The Tribunal after upholding the Government order has observed that the teachers who have put in large number of years of service have not been considered for regularization and further directed that 50% of their earlier service may be taken for the purpose of calculating their service for pension only. The above said Government order dated 23.09.1994 was also challenged before this Court in W.P.No.9380 of 1995 etc. batch and this Court by an order dated 18.07.2004 has observed as follows:

"i) Unqualified vocational instructors who have been subsequently adjusted against secondary grade scale of pay on completion of their training, as envisaged in G.O.Ms.No.834 dated 23.09.1994 shall be deemed to have been regularized in B.T. Scale of pay with effect from the dates of their regularization in the secondary grade scale of pay and their seniority would be counted on the basis of such deemed date of regularization.

ii) Inter se seniority of the vocational instructors shall be depending upon their initial entry as vocational instructor, whether single or double.

iii) Increment shall be calculated notionally from the deemed dates of their regularization.

iv) However, arrears on account of difference in the scale of pay and on account of notional increments are not payable and such persons shall be paid salary in B.T.scale by taking into account the notional increments."

7. It is also contended by the learned counsel for the petitioner that the petitioner service as vocational instructor was regularized from 05.10.1996, the date on which he has completed the training as vocational instructor, Grade-II. The 3rd respondent by his proceedings dated 22.05.2007 has ordered upgrading the petitioner as vocational instructor Grade-I from 05.10.1996 but the petitioner was eligible for monetary benefit from 08.07.2004, the date on which the order of the Hon'ble High Court was issued following the order issued in G.O.Ms.No.69 School Education dated 20.03.2007. The petitioner joined double part time vocational instructor in the year 1983 for a consolidated pay and serving in the post continuously for the last 25 years. Even though the petitioner did not possess the educational qualification for appointment as Agriculture Vocational instructor as per the Government order, but the qualification has been relaxed and he was exempted from possessing the qualification. Subsequently, they were granted exemption from possessing the qualification by undergoing the

training conducted by the Director of Teachers Education Research and Training and they were ordered to be regularized from the date on which they completed the training. As the petitioner has been granted exemption from acquiring the qualification, it is submitted that they should be granted seniority from the date of his initial appointment for the purpose of special grade and selection grade and also for pensionary benefits. By the regularization order in the year 2007, retrospectively from 1996, the earlier services rendered by the petitioner from 1983-1996 have been totally wiped out. The petitioner was working on consolidated pay from 1983 for a sum of Rs.300/- p.m. and subsequently he was brought into regular time scale of pay from 1993 at Rs.1200-2040, etc and the BT scale of pay only from 1996 with all other benefits only from 2004.

8. The learned counsel for the petitioner further contended that even though the petitioner having served as full time vocational instructor for more than 20 hours in a week, he is deprived of the chance of getting the benefit of the scale of pay right from the year 1983 for want of regularization. The petitioner having served as part time vocational instructor from 1983 should be granted the benefits of the services rendered by him since it was a full time service rendered by him for the purpose of at least pensionary benefits, otherwise the petitioner will be put to irreparable loss and great hardship.

9. The petitioner was allowed to teach the students in the vocational studies, but his services have been regularized only from 05.10.1996. His earlier services rendered from 18.08.1983 to 05.10.1996 have been totally wiped out. The petitioner made a representation on 09.12.2007 mentioning the details of his services and requested that the services rendered by him from 1983 to 1996, till he was brought into regular time scale of pay, may be considered for the purpose of pensionary benefits. As there was no response, the petitioner approached this Court by filing a writ petition in W.P.No.4698/2008 seeking a direction to dispose of his representation dated 09.12.2007 within a reasonable time. This Hon'ble Court at the time of admission was pleased to issue a direction on 10.03.2008 directing the 1st respondent to pass orders on the representation within a period of 6 weeks from the date of receipt of copy of the order. However, the 1st respondent by his proceedings dated 15.04.2008 was pleased to reject the request of the petitioner on the ground that the services rendered by the petitioner from 18.08.1983 to 05.10.1996 cannot be taken for the purpose of pensionary benefits on the sole ground that as per Rule 11 of the Pension Rules, the petitioner has not rendered the services under regular time scale of pay and he rendered services only on consolidated pay.

10. It is further submitted that the impugned order passed by the 1st respondent is unjust, illegal, irregular and unsustainable in law. The 1st respondent has not taken into consideration the various decisions of the High Court and as well as the Supreme Court that the services rendered even in non-pensionary establishment or non-professionalized service can be taken into consideration for the purpose of pensionary benefits. The Government have issued various orders from time to time stating that 50% of the non-professionalized services can be taken into consideration for the purpose of pensionary benefits. It is also submitted that at least the petitioner is entitled to have 50% of his irregular service for the pensionary benefits. Moreover, when there is no prohibition order issued by the Division Bench of the Hon'ble High Court dated 08.07.2004 with regard to counting of the past services till they are regularized, the 1st respondent ought to have consulted the respondents 3 & 4 before taking a decision. Moreover, the petitioner who has rendered yeomen service from 1983-1996 has been discriminated in respect of regularization when compared to similarly situated persons. Hence the petitioner is before this Court.

11. The first respondent has filed a counter stating that the qualification prescribed for Agriculture Vocational Teacher is B.Sc. (Agri). The petitioner does not possess this qualification even now. Hence he could not be considered as fully qualified. The Honorable High Court has not given any specific order to reckon the part time service rendered by Vocational Teacher for pension calculation in their order in W.P.No.938 of 95 on 18.07.2004. The government have not issued any order to reckon the services rendered in part time post for pension calculation. The order granting relaxation from prescribed qualification will normally take effect only from the date of issue of the order unless the specific mentions is made. Hence the regularization of the service issued by the department in respect of the petitioner in the year 2007 is not in any way infirm. The Honourable Division Bench in order dated 08.07.2004 have not specifically given direction to reckon 50% of service rendered by Vocational Teacher in part time post. The petitioner has underwent the condensed course conducted by Teacher Education Research and Training in 1996. This does not make him eligible to hold time scale of pay. The petitioner has neither quoted the order in W.P.No.20717 of 2006 dated 02.02.2006 in the affidavit in W.P.No.4698 of 2008 or in his representation dated 09.12.2007. Hence the contention of the petitioner is an after thought. The contention of the petitioner is wholly not justified. The Government has not issued any order to reckon the service rendered in the part time capacity for the pension calculation either in full or in 50% to any Government Servant. The petitioner should have made a representation to the Chief Educational Officer, Kancheepuram

for reconsideration of his earlier decision dated 15.04.2008 or to the appellate authority. Instead he had approached the Honourable High Court without utilizing the official channel available to him. Hence, the respondents prayed this Court to dismiss the writ petition.

12.The learned counsel for the petitioner submitted that similary placed persons filed a batch of writ petitions and the same were allowed by this Court and the writ appeals filed by the Department were also dismissed. The learned counsel for the petitioner produced a copy of the judgment dated 27.01.2016 made in W.A.No.34 of 2016 (The Government of Tamilnadu and others Vs. K.Banumathy. It could be seen from the said judgment that against the order dated 19.02.2014 passed in W.P.No.4485/2014, the said writ appeal No.34/2016 came to be filed by the Department. This Hon'ble Court while dismissing the writ appeal, on 27.01.2016 upheld the decision of the learned Single Judge to count 50% of the services rendered by the petitioner therein as bouble part time vocational instructor till 31.03.1990 i.e., prior to 01.04.1990 for the pension purpose.

13.Similarly, in a Writ Appeal No.359/2015 Secretary to Government, School Education Department, Fort St. George, Chennai - 9 and 3 others Vs. B.Raghavendran the Hon'ble Division Bench of this Court has upheld the order of the learned single Judge, wherein it has been stated as hereunder:

" 11. On bare perusal of the aforestated G.Os, it emerges that employees must be under non-provincialised service, consolidated pay, honorarium and daily wages and absorbed in permanent government service before 1.4.2003. The respondent was absorbed in permanent service on 1.4.1990. The employee should also work as full time employee. No doubt, the respondent had worked as Single Part Time vocational instructor from 17.10.1978 to 21.8.1979 and double part time vocational instructor from 22.08.1979 till 31.3.1990, the day he was absorbed in regular time scale.

12. The respondent has averred specifically in his writ petition affidavit that his workload was not less than 20 periods in a week and as such, double part time means full time as there is no concept of double part time, when the employee is required to work in the morning and also in the afternoon. In fact, the employment of the respondent was full time, not part time. There is no denial on the part of the authorities either before the writ court or in the appeal memo filed before us. Thus, the working of the respondent for not less than 20 periods in a week has

been established. It is also not disputed that if an employee works for not less than 20 periods in a week, he is a full time employee. Thus, for all practical purpose, the respondent ought to have been treated as full time employee from 22.8.1979 till he was absorbed in regular service and retired. Accordingly, 50% of the respondent's period as double part time vocational instructor from 22.08.1979 till 31.03.1990 be counted for the purpose of computing pensionary benefits under the aforesaid G.Os."

When the Hon'ble Division Bench has upheld the order of the learned Single Judge holding that the petitioner therein, who is working as double part time vocational instructor from 22.08.1979 till he was absorbed into regular service should be treated as full time employee.

14. It is not in dispute that if the petitioner has worked for not less than 20 periods in a week, he is construed as a full time employee and all the benefits have to be given to them. Hence, for all practical purposes, the petitioner should be treated as full time employee from the date on which he was absorbed to regular service and also 50% of the period as double part time vocational instructor from the date of his joining as double part time vocational instructor till 31.03.1990 has to be counted for the purpose of computing pension benefits.

15. The above decision rendered in W.A.No.359 of 2015 (cited supra) was relied on by the Hon'ble Division Bench of this Court in W.A.Nos.882, 808 of 2017, 1224 of 2016 etc., batch and the said benefit was extended to single part time vocational instructors also. The result portion of the said judgment is extracted hereunder:-

15. In terms of the above discussions, we dispose of the writ appeals as under:

(i) 50% of the services rendered by the respondents herein, as Part Time Vocational Instructor (either as Single Part time or Double Part Time Vocational Instructor), shall be counted for the purpose of computing pension and other retiral benefits.

(ii) The above said benefit shall be extended only to the respondents in these writ appeals and for the persons similarly situated like that of the respondents herein, whose cases are pending before this Court. Thus it is made clear that the above said benefit shall not be extended to any other future cases that may be filed on this account, on the ground of delay and laches, since all along they have not come up before

this Court and remained as fence-sitters. It is also needless to point out that allowing such cases would amount to opening the pandora's box, touching upon the financial implications of the State.

16.The writ appeals are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

16.In view of the above judgment rendered by this Hon'ble Court, this Court also takes a similar view and similar order has to be passed in this writ petition also. The respondents are directed to compute 50% of the petitioner's service period either as single or as double part time vocational instructor from the date he joined the service as part time vocational instructor till he was regularised, for the purpose of retirement benefits.

16. With the above observations, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1. The Chief Educational Officer,
Kanchipuram.
2. The District Educational Officer,
Chenglepet.
3. The Director of School Education,
DPI Complex, College Road,
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4. The Secretary to Government,
School Education Department,
Fort St. George,
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+1cc to the Government Pleader, S.R.No.76750

W.P.No.13726 of 2008

SAI (CO)

rrs 26/02/2019