

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.882, 808 of 2017, 1224, 1395, 1471, 1283 and 1323 of
2016 and

C.M.P.Nos.12269, 11319 of 2017, 15744, 15745, 17938, 17939,
18318, 18319, 17906, 17919 and 17159 of 2016

- 1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Joint Director of School Education (Vocational),
College Road, Chennai-600 006. ... Appellants 1 to 3 in
all the appeals

The Chief Educational Officer,
Villupuram District,
Villupuram. ... 4th respondent in W.A.
Nos.882 of 2017 and
1323 of 2016

The Chief Educational Officer,
Nagapattinam District,
Nagapattinam. ... 4th respondent in W.A.
No.808 of 2017

The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai. ... 4th respondent in
W.A.

Nos.1224, 1395 and
1283 of 2016

The Chief Educational Officer,
Vellore District,
Vellore.

... 4th respondent in W.A.
No.1471 of 2016

-vs-

K.Pachaiyappan

... Respondent in W.A.
No.882 of 2017

S.Murugaiyan

... Respondent in W.A.
No.808 of 2017

M.Thirupathiyan

... Respondent in W.A.
No.1224 of 2016

C.Selvaraj

... Respondent in W.A.
No.1395 of 2016

L.Mani

... Respondent in W.A.
No.1471 of 2016

M.Annamalai

... Respondent in W.A.
No.1283 of 2016

E.Deenathayalan

... Respondent in W.A.
No.1323 of 2016

W.A.No.882 of 2017 filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.5832 of 2014
dated 26.02.2014.

WP.NO.5832/2014:

Writ Petition filed under article 226 of the Constitution of India, praying this court for the issuance of Writ of Mandamus Directing the respondents to count 50% of petitioners service for a period from 24.7.1979 to 11.11.1997 as Single and Double Part Time Vocational Instructor along with regular service for a period from 12.11.1997 to 31.8.2004 as qualifying service for the purpose of pensionary benefits and to send the fresh pension proposal to the Accountant General for sanction of pensionary benefits and to grant arrears of pension and other pensionary benefits.

W.A.No.808 of 2017 filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.25236 of 2014
dated 17.09.2014.

WP.25236/2014:

Writ Petition filed under article 226 of the Constitution of India, praying this court for the issuance of Writ of Mandamus Directing the respondents to count 50% of petitioners service for a period from 1.8.1979 to 9.6.2002 as Single and Double Part Time Vocational Instructor along with the regular service as Vocational Instructor for a period from 10.6.2002 to 31.5.2004 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits

W.A.No.1224 of 2016 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.3264 of 2014 dated 04.02.2014.

WP.NO.3264/2014:

Writ Petition filed under article 226 of the Constitution of India, praying this court for the issuance of Writ of Mandamus directing the respondents to count 50% of petitioners service for a period from 4.11.1978 to 4.10.1996 as Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 5.10.1996 to 30.4.2012 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits

W.A.No.1395 of 2016 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.5830 of 2014 dated 26.02.2014.

WP.5830/2014:

Writ Petition filed under article 226 of the Constitution of India, praying this court for the issuance of Writ of Mandamus Directing the respondents to count 50% of petitioners service for a period from 3.7.1984 to 31.3.1990 as Single and Double Part Time Vocational Instructor along with regular service for a period from 1.4.1990 to 31.5.2013 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits

W.A.No.1471 of 2016 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.3503 of 2014 dated 10.02.2014.

Writ Petition filed under article 226 of the Constitution of India, praying this court for the issuance of Writ of Mandamus directing the respondents to count 50% of petitioners service for a period from 12.8.1981 to 31.3.1990 as Single and Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 1.4.1990 to 31.1.2012 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits.

WP.NO.5214/2014:

W.A.No.1323 of 2016 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.23545 of 2014 dated 01.09.2014.

Writ Petition filed under article 226 of the Constitution of India, praying this court for the issuance of Writ of Mandamus Directing the respondents to count 50% of petitioner service for a period from 05.02.1979 to 25.11.1982 as Single and Double Part Time Vocational Instructor along with regular service for a period from 26.11.1982 to 30.06.2010 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits

For Respondent in all the appeals :: Mr.R.Saseetharan

COMMON JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The issue involved in all these writ appeals relates to counting 50% of the services rendered by the respondents herein either as Single Part Time Vocational Instructor or Double Part Time Vocational Instructor, along with regular service as Vocational Instructor, for the purpose of pensionary and other retiral benefits.

2.The case of the respondent in W.A.No.882 of 2017 are as follows:

(i)The respondent in W.A.No.882 of 2017 was initially appointed as Single Part Time Vocational Instructor in Electric Motor Rewinding on 24.07.1979 in the Government Higher Secondary School, Marakkanam, Villupuram District and thereafter appointed as Double Part Time Vocational Instructor in the same school on 29.12.1979 for a monthly consolidated payment of Rs.300/-. His appointment was duly approved by the Chief Educational Officer by proceedings dated 06.02.1980. He retired from service on 31.08.2004. The period from 24.07.1979 to 11.11.1997, which comes to 18 years, 3 months and 18 days, has not been counted to arrive at the qualifying service for pensionary service.

(ii)The Government of Tamil Nadu introduced the Higher Secondary School system from July 1978. The Government introduced vocational stream of study at Higher Secondary Level and introduced the post of Part Time and Double Part Time Vocational Instructors as per G.O.Ms.No.1719 dated 14.09.1978 and as per G.O.Ms.No.105 dated 21.01.1980. The Government of Tamil Nadu, styled the Vocational Instructors as Single and Double Part Time Vocational Instructors and for those persons, the regular benefits were denied. After prolonged correspondence, the Government of Tamil Nadu has issued G.O.Ms.No.712 dated 28.05.1990, G.O.Ms.No.834 dated 23.09.1994 and G.O.Ms.No.221 dated 15.07.1999 to regularise the service of the Vocational Instructors. Accordingly the service of the respondent in W.A.No.882 of 2017 has been regularised from 12.11.1997, but he has not been paid pension.

(iii)In compliance of the judgment of a Division Bench of this Court in W.A.No.1702 of 2010 dated 20.09.2010 in which it has been held that the Vocational Instructor like that of the respondent herein, is entitled for counting 50% of the Part Time Service towards pensionary benefits, the Government of Tamil Nadu has passed G.O.Ms.No.130 dated 18.07.2013 and G.O.Ms.No.134 dated 22.07.2013, which provides for counting of 50% of service in Part Time Vocational Instructor post as qualifying service towards the pensionary benefits along with regular service. The respondent herein made a representation to the authorities

contending that he is also similarly placed like that of the Vocational Instructors who have been granted relief as per G.O.Ms.No.130 dated 18.07.2013 and G.O.Ms.No.134 dated 22.07.2013, and hence he should be granted the same relief. Since the said representation has not been considered, he approached this Court. Relying upon the judgment of this Court in W.A.No.1702 of 2010 dated 20.09.2010 and also the Government Orders stated as above, the learned single Judge of this Court has allowed the writ petition in W.P.No.5832 of 2014 on 26.02.2014 directing the authorities to count 50% of the respondent's part time service as Vocational Instructor from 24.07.1979 to 11.11.1997 for the purpose of calculating pension.

3.Challenging the said order passed by the learned single Judge of this Court, the present writ appeal in W.A.No.882 of 2017 has been preferred by the State.

4.The respondent in W.A.No.808 of 2017 was initially appointed as Single Part Time Vocational Instructor on 01.08.1979 and thereafter appointed as Double Part Time Vocational Instructor on 01.03.1986. The respondent in W.A.No.1224 of 2016 was appointed as Double Part Time Vocational Instructor on 04.11.1978. The respondent in W.A.No.1395 of 2016 was initially appointed as Single Part Time Vocational Instructor on 03.07.1984 and thereafter appointed as Double Part Time Vocational Instructor on 04.06.1985. The respondent in W.A.No.1471 of 2016 was initially appointed as Single Part Time Vocational Instructor on 12.08.1981 and thereafter appointed as Double Part Time Vocational Instructor on 15.07.1982. The respondent in W.A.No.1283 of 2016 was initially appointed as Single Part Time Vocational Instructor on 03.07.1984 and thereafter absorbed as Grade II Vocational Instructor from 05.10.1996. The respondent in W.A.No.1323 of 2016 was initially appointed as Single Part Time Vocational Instructor on 05.02.1979 and thereafter appointed as Double Part Time Vocational Instructor with effect from 25.06.1979.

5.The respondents in the above appeals who had worked either as Single Part Time Vocational Instructor or Double Part Time Vocational Instructor, the services of which were not considered to be a regular one, filed writ petitions for counting the said period along with regular service as Vocational Instructor, for the purpose of calculating pensionary benefits and to grant arrears of pension and other pensionary benefits. Relying upon the judgments passed by this Court in the case of similarly situated persons, the learned single Judges of this Court allowed those writ petitions, and challenging the same, other appeals have been filed by the Government.

6.Amongst many grounds raised in these appeals, the main point emphasised by the learned Additional Advocate General appearing for the appellants / State, is that as per Rules 2 and 11 of the Tamil Nadu Pension Rules, 1978, the periods of service paid from contingencies / part time service, cannot be taken as qualifying service for the purpose of calculating the pension. She further submitted that if the prayers sought for by the respondents herein are allowed, it will amount to opening a flood gate to those who are similarly placed like that of the respondents herein.

7.Per contra, the learned counsel for the respondents in these appeals, has submitted that the impugned orders have been passed by the learned single Judges of this Court after taking into consideration all the aspects in proper perspective, and hence the same do not require any interference by this Court.

8.Heard the learned counsel on either side and perused the materials available on record.

9.The question that arises before us is as to whether the respondents herein are entitled to the benefit of 50% of their services rendered as Single Part Time Vocational Instructor / Double Part Time Vocational Instructor, for the purpose of calculating qualifying service period for pensionary benefits.

10.In the judgment passed by a Division Bench of this Court in W.A.No.359 of 2015 dated 16.03.2015, this Court perused the Government Order in G.O.Ms.No.408 dated 25.08.2009, in which it is stated that for those employees who worked on the basis of non-provincialised service, consolidated pay, honorarium and daily wages and absorbed in permanent Government service before 01.04.2003, half of their total service period under non-provincialised service, consolidated pay, honorarium and daily wages after 01.01.1961 could be calculated in addition to their eligible service period for pensionary benefits subject to the following conditions:

I.The service period under non-provincialised service, consolidated pay, Honorarium and daily wages should be full time Government service.

II.The beneficiary should have been absorbed into permanent Government service following their service periods under Non-Provincialised service, consolidated pay, Honorarium and daily wages.

III.The beneficiary should have been absorbed into permanent Government post before 01.04.2003 without break in service.

11.This Court, in the judgment made in W.A.No.359 of 2015 has also perused G.O.Ms.No.437 dated 23.06.1988 and

G.O.Ms.No.118 dated 14.02.1996, apart from G.O.Ms.No.408 dated 25.08.2009 and held that there is no dispute that if an employee works for not less than 20 periods in a week, he is a full time employee and thus, for all practical purposes, the incumbent therein ought to have been treated as full time employee from 22.08.1979 till he was absorbed in regular service and retired. In the above background, this Court directed the authorities to count 50% of the period worked as Double Part Time Vocational Instructor for the purpose of computing pensionary benefits. This is with regard to Double Part Time Vocational Instructor.

12.Further, in the judgment passed by the Madurai Bench of this Court in W.A.(MD)Nos.392 of 2017, etc.batch dated 21.04.2017, relating to the issue in question, it has been clearly held that this Court need not labour much to test the correctness of the order impugned in those writ appeals for the simple reason that the learned single Judge, while allowing the writ petitions impugned therein, has followed various Division Bench judgments on the identical issue. In that decision, the Division Bench has relied upon the judgment of this Court in the case of W.P.No.11389 of 2003 etc., dated 08.07.2004 wherein the Hon'ble Division Bench held that the Single Part Time teachers should be treated equally with Double Part Time teachers and all benefits that were given to the Double Part Time teachers should be extended to the Single Part Time teachers as well. It has been observed that the said decision had attained finality and the petitioners therein were granted relief. It has also been observed that during the pendency of the writ appeal in W.A.No.1702 of 2010, sub-rule (4) of Rule 11 was introduced by the Tamil Nadu Pension Rules, 1978 by way of amendment; the Division Bench has dismissed the said writ appeal in W.A.No.1702 of 2010 filed by the State on 20.09.2010 and the Special Leave Petition filed against the said judgment also ended in dismissal on 15.04.2011. It has also been observed that taking into consideration the said decision of the Division Bench, the writ Court made an elaborate exercise to consider all the facts and circumstances and various orders passed and took note of the fact that the very same contentions which were raised before the writ Court were already rejected and hence the State is not justified in relying upon Rule 11(4) of the Tamil Nadu Pension Rules, 1978. Thus the benefit that has been extended to the Single Part Time Vocational Instructors, which has been challenged in the batch of writ appeals in W.A.(MD)Nos.392 of 2017, etc.batch, was not interfered with by the Division Bench.

13.Thus, in respect of Double Part Time Vocational Instructor, in the judgment made in W.A.No.359 of 2015 dated 16.03.2015, this Court made a threadbare analysis of the relevant Government Orders and arrived at the conclusion that the Double Part Time Vocational Instructor therein is entitled for the relief. Hence, this Court is not inclined to interfere

with the said finding.

14. In respect of Single Part Time Vocational Instructor, as already discussed above, in the judgment made in W.A.(MD)Nos.392 of 2017, etc. batch dated 21.04.2017, this Court relied upon the judgment of this Court in the case of W.P.No.11389 of 2003 etc., dated 08.07.2004 wherein the Hon'ble Division Bench held that the Single Part Time teachers should be treated equally with Double Part Time teachers and all benefits that were given to the Double Part Time teachers should be extended to the Single Part Time teachers as well. The said decision had attained finality. Having taken into consideration all the relevant facts, Government Orders and the judgments of this Court, the said decision has been taken rejecting the plea against extension of the said benefit to the Single Part Time Vocational Instructor, which in the considered opinion of this Court, does not require any interference.

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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Joint Director of School Education (Vocational),
College Road, Chennai-600 006.
- 4.The Chief Educational Officer,
Villupuram District,
Villupuram.
- 5.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.
- 6.The Chief Educational Officer,
Tiruvannamalai District,
Ti/ruvannamalai.
- 7.The Chief Educational Officer,
Vellore District,
Vellore.

+7cc to Mr.R.Saseetharan, Advocate sr.no.26364
+1cc to Government Pleader in sr.no.26282

W.A.Nos.882, 808 of 2017, 1224,
1395, 1471, 1283 and
1323 of 2016 and
C.M.P.Nos.12269, 11319 of 2017,
15744, 15745, 17938, 17939,
18318, 18319, 17906,
17919 and 17159 of 2016

ad(co)
nr 15/05/2018

WEB COPY