

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.04.2018

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

W.P.No.8949 of 2018

V.Subramanian

..Petitioner

vs

1. The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
 2. The Joint Director of School
Education(Vocational Education)
College Road,
Chennai - 600 006.
 3. The Chief Educational Officer,
Salem District. Salem.
 4. The Accountant General of Tamilnadu (A&E)
Chennai - 18.
- .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to count 50% of petitioner's service for a period from 10.12.1982 to 31.03.1990 as Part Time Vocational Instructor along with regular service as Vocational Instructor from 01.04.1990 to 30.04.2016 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits and thus render justice.

For Petitioner : Mr.S.Kamadevan
For Respondents : M/s.P.Kavitha, GA for R1 to R3
Mr.V.Vijayshankar for R4

O R D E R

The relief sought for in this writ petition is for a direction to the respondents to count 50% of petitioners service for a period from 10.12.1982 to 31.03.1990 as Part Time Vocational Instructor along with regular service as Vocational

Instructor from 01.04.1990 to 30.04.2016 as qualifying service for the purpose of pensionary benefits and to grant arrears of pension and other pensionary benefits.

2.The learned counsel for the petitioner made a submission that the writ petitioner was initially appointed as single Part-time Vocational Instructor on 10.12.1982 and thereafter appointed as Double Part-time Vocational Instructor on 01.04.1990 and his appointment was approved by the Joint Director of School Education(Vocational Education)/2nd respondent in his proceedings dated 10.07.2007. 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 respondents are directed to consider the case of the writ petitioner for counting of 50% of service rendered by him as single Part-time Vocational Instructor 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(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Joint Director of School
Education (Vocational Education)
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Salem District. Salem.
4. The Accountant General of Tamilnadu (A&E)
Chennai - 18.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.27120
+1cc to the Government Pleader, S.R.No.28141

W.P.No.8949 of 2018

NM(CO)
CS/16/05/18

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