

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.302 of 2009

T.R.Ganesan

... Petitioner

Vs.

1. The Government of Tamil Nadu
rep.by its Secretary,
School Education Department,
Fort, St. George,
Chennai - 600 009.

2. The Director of School Education,
Higher Secondary Education,
College Road,
Chennai - 600 006.

3. The Chief Educational Officer,
Thanjavur.

4. The Head Master,
Native Higher Secondary School,
Kumbakonam.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to include the services rendered by the petitioner from initial appointment till regularization (i.e., 04.07.1979 to 31.03.1990) for the purpose of retirement benefits pursuant to G.O.Ms.Nos.131 dated 18.07.2013 and 134 dated 22.07.2013.

(Prayer amended as per the order of this Court made in M.P.No.1 of 2014 dated 14.06.2018)

For Petitioner : Mr.R.Saravana Kumar

For Respondents 1 to 3 : Mr.K.Karthikeyan
Government Advocate

O R D E R

The petitioner, was appointed as Vocational Teacher on 04.07.1979 as per G.O.Ms.No.1719 dated 14.09.1978 when the higher secondary system of education in the State of Tamil Nadu was introduced in the year 1978. The qualification prescribed for the vocational group (Commerce and Business) is B.com. Even on the date of appointment, the petitioner possessed requisite qualification and now possesses M.com., M.A., M.Ed.

2. The petitioner further submitted that 40 periods per week was prescribed for vocational subjects and 4 part time vocational teachers were to be appointed. As per G.O.No.105 dated 21.01.1980, the Government clarified that those teachers who worked for 10 to 16 periods per week were to be styled as single part time teachers and those who worked for more than 20 periods per week were to be styled as "double part time teachers". The petitioner was handling not less than 28 periods per week which is the workload prescribed for all category of teachers. The Government by letter dated 16.11.1988 had stated that the vocational teachers do not have other works and that they take classes for equal number of hours like P.G.Assistant. But, all the works done by the other category of teachers namely teaching work, supervision and valuation of periodical exams, conducting practicals, maintenance of practical records, supervision of Government exam works, valuation of Government exam papers etc., are done by the vocational instructors also. That apart, initially single part time teachers were paid a consolidated sum of Rs.150/- per month and double part time teachers were paid a consolidated sum of Rs.300/- per month. Since there was disparity between the vocational teachers regarding the salary and service benefits from the year 1978, the Government had decided to grant time scale of pay to 800 vocational teachers by issuing G.O.712 dated 28.05.1990, to 587 teachers vide G.O.967 dated 16.10.1992, to 603 teachers vide G.O.834 dated 23.09.1994, to 636 teachers vide G.O.358 dated 18.08.1997, to 123 teachers vide G.O.39 dated 12.02.1999, and to 361 teachers vide G.O.74 dated 10.06.2002 and they were all brought on time scale of pay.

3. The petitioner was brought on time scale of pay vide G.O.712, dated 28.05.1990. However, vide G.O.834, dated 23.09.1994, the Government sought to regularise the service of the petitioner only from 23.09.1994 by revoking the earlier G.O. The G.O.No.834 dated 23.09.1994 was challenged in a batch of writ petitions and the Division Bench of this Hon'ble High Court by its order dated 24.06.2004 in W.P.No.11389/2003 and batch etc., quashed the said G.O.No.834, insofar it takes away the vested right of regularisation already conferred on the vocational instructors and also held that vocational instructors

shall be entitled to notional increment with effect from the date on which they were brought on time scale of pay.

4. The petitioner further contended that in the meanwhile, the petitioner was promoted as P.G.Assistant(Commerce) with effect from 03.06.1993 and has been working as such in the fourth respondent school. The grievance of petitioner sought to be redressed in this writ petition is that prior to the regularisation, the continuous service rendered by the petitioner from the date of initial appointment in the sanctioned post, with necessary qualification, was ignored by the respondents. The petitioner was deprived of the benefits for the valuable service rendered by him prior to the date of regularisation, merely because he was regularised belatedly, which was not in his hands. He would also submit that 3,110 vocational teachers are working in Higher Secondary Education and the Government has not taken their service prior to the regularisation into account. Aggrieved by the non consideration of the petitioners since before 01.04.1990 for the purpose of retirement benefits, the petitioner moved this Court by filing this writ petition praying to include the services rendered by him from the date of initial appointment till regularisation, for the purpose of retirement benefits.

5. The Government has filed a counter stating that the petitioner's initial appointment was only on consolidated pay and he was a part time vocational instructor and therefore, he cannot claim for inclusion of his services as part time vocational instructor. Even though the 3rd respondent agrees that the petitioner was working as single and double part time vocational instructors prior to 01.04.1990, but submits that at the time of issue of G.O.834 dated 23.09.1994, the petitioner was not in service either as single or double part time vocational instructor and therefore, inclusion of his service as a single and double part time vocational instructor for pensionary benefits cannot be considered.

6. 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 double part time vocational instructor till 31.03.1990 i.e., prior to 01.04.1990 for the pension purpose.

7. 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 aforestated 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.

8. 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 into 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 pensionary benefits.

9. Insofar as the counting of service of the petitioner as single part-time vocational instructor is concerned, it is relevant to rely on the decision of the Hon'ble Division Bench of this Court dated 06.04.2018 made in a batch of Writ Appeals in W.A.Nos.882, 808 of 2017, 1224 of 2016 etc., batch (The Government of Tamil Nadu represented by its Secretary to Government, School Education Department .vs. K.Pachaiyappan and others) wherein this Hon'ble Court, after relying on the decision of this Hon'ble Court in Writ Appeal No.359/2015 (cited supra) and other decisions, has held that 50% of the services rendered by the respondents therein, as part-time vocational instructors (either as Single Part-time or Double Part-time vocational instructors), shall be counted for the purpose of computing pension and other retiral benefits. The relevants portions are extracted hereunder:-

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 nonprovincialised 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. 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.
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10. 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 as Part Time Vocational Instructor (either as Single Part time or 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.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AT/MRA

To

1. The Secretary
Government of Tamil Nadu
School Education Department,
Fort, St. George,
Chennai - 600 009.
2. The Director of School Education,
Higher Secondary Education,
College Road,
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3. The Chief Educational Officer,
Thanjavur.

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BR(CO)

rrs 09/10/2018