

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.7092 of 2012

V.Chandramohan

... Petitioner

Vs

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai-600 009.
 2. The Director of School Education,
College Road,
Chennai-600 006.
 - 3.The Joint Director of Secondary
School Education,
College Road,
Chennai-600 006.
 - 4.The Head Master,
The Government Higher Secondary School,
Palur, Panruti Taluk,
Cuddalore District.
 - 5.The Principal Accountant General,
No.361, Anna Salai,
Teynampet, Chennai-600 018.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to calculate half of the service rendered by the petitioner as Nutritious Meal Organizer from 07.02.1983 to 09.09.2004 as per G.O.Ms.No.6, dated 06.01.2010 together with the regular service by the petitioner as B.T.Assistant Tamil Teacher from 10.09.2004 to 29.02.2012 as qualifying service for the purpose of pension and send the pension proposals to the 4th respondent and to grant pension and other terminal benefits including cumulative pension with arrears of pension.

For Petitioner : Mr.J.Shanmugasundarababu

For Respondents: Ms.P.Kavitha

Govt. Advocate for R1 to R4

M/s.Hema Muralikrishnan for R5

O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, directing the respondents to calculate half of the service rendered by the petitioner as Nutritious Meal Organizer from 07.02.1983 to 09.09.2004 as per G.O.Ms.No.6, dated 06.01.2010 together with the regular service by the petitioner as B.T.Assistant Tamil Teacher from 10.09.2004 to 29.02.2012 as qualifying service for the purpose of pension and send the pension proposals to the 4th respondent and to grant pension and other terminal benefits including cumulative pension with arrears of pension."

2. The petitioner was originally appointed as a Nutritious Meal Organizer on 07.02.1983 on a consolidated pay. Subsequently, in 1996, the Government passed an order on 03.01.1996, by directing the Nutritious Meal Organisers into regular scale of pay with effect from 01.01.1996 and the petitioner was thus brought to regular scale of pay with effect from 01.01.1996.

3. While working as Nutritious Meal Organizer, the petitioner completed his Bachelor Degree of Literature in Tamil in the year 1993 and also subsequently qualified in Bachelor of Education in 1995 and also obtained Master of Arts in Tamil in 2008. In view of acquisition of qualification by the petitioner, he was selected by the Teacher Recruitment Board and was appointed as B.T. Assistant Tamil Teacher on 10.09.2004 and posted him at Government High School, Palur, Panruti Taluk, Cuddalore District. After serving for many years, the petitioner retired from service as B.T. Assistant on 29.02.2012.

4. The qualifying service for entitlement of pension was minimum 10 years of service. But the petitioner had put in about 8 years service as B.T.Assistant and his services as Nutritious Meal Organizer from 1983 to 2004, had not been counted for the purpose of pensionary benefits. Therefore, the petitioner was denied pension.

5. While the matter stood thus, the Government has passed an order in G.O.Ms.No.6, dated 06.01.2010, providing for counting of service rendered as Nutritious Meal Organizer for those who have been appointed as B.T. Assistant subsequently. As per such Government Order, half of the service of the petitioner has to be counted along with the service rendered by the petitioner as B.T. Assistant for the purpose of grant of pensionary benefits. In this regard, the petitioner

submitted a representation to the respondents on 13.01.2012, however, no action was forthcoming from the respondents. Therefore, the petitioner is before this Court seeking issuance of Writ of Mandamus.

6. Upon notice, Ms.P.Kavitha, the learned Government Advocate entered appearance on behalf of the respondents 1 to 4 and filed counter affidavit and also the learned counsel for 5th respondent has also filed counter affidavit.

7. As regards the contesting respondents, the only point in issue which was raised for resisting the claim of the petitioner is that the petitioner having brought to time scale of pay only from 01.06.2006, is not entitled to the benefits provided under G.O.Ms.No.41, Finance (Pension) Department, dated 09.02.2010 and therefore, he is not eligible for any pensionary benefits.

8. According to the counter affidavit, G.O.Ms.No.6, Finance (Pension) Department, dated 06.01.2010 can be applied only in respect of Government employees absorbed in regular service before 01.04.2003 and in the present case, admittedly, the petitioner was appointed as regular B.T. Assistant in Government service only on 10.09.2004 and granted scale of pay only from 01.06.2006. The petitioner is not entitled to any benefits of pension either G.O.Ms.No.6 dated 06.01.2010 or G.O.Ms.No.41 dated 09.02.2010.

9. Per contra, the learned counsel for the petitioner would submit that the cut off date in G.O.Ms.No.41, dated 09.02.2010, namely the 1st April, 2003 was subject matter of challenge before this Court in W.P.No.12656 of 2013 dated 18.06.2014 and the decision rendered in the said writ petition was also in case of P.Chinniyan vs. State of Tamil Nadu, rep. by its Secretary to Government reported in 2014 (6) MLJ 316. The learned Judge of this Court while dealing with the issue of cut off date, has found the same as arbitrary and has to be ignored. The order of the learned Judge in this connection, as found in paragraph 25, which is extracted below:

"25. It is a different matter if a person joined the service after 01.04.2003 on daily wages basis and he was absorbed thereafter. But in my view, the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption has no rationale basis and the same is arbitrary and violative of Article 14 of the Constitution. In fact Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant, in view of Rule 11(2) of the Tamil Nadu Pension Rules. Rule 11(2) does

not prescribe any cut off date as to absorption into regular service. The benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4). Thus, the cut off date of absorption as 01.04.2003 prescribed in Rule 11(4) shall be ignored. Otherwise, it will lead to grave injustice."

10. Therefore, the learned counsel for the petitioner would submit that the cut off date, viz., 1st April, 2003 has been held to be arbitrary by this Court. There is absolutely no legal impediment for the respondents to count half of the service of the petitioner rendered by him as Nutritious Meal Organizer from 1983 to till 2004 and thereafter, the pension has to be calculated taking into account the entire service rendered by the petitioner both as Nutritious Meal Organizer as well as B.T. Assistant till the date of superannuation, viz., 29.02.2012.

11. This Court has considered the submissions of the learned counsel for the parties, perused the materials and pleadings placed on record.

12. As rightly contended by the learned counsel for the petitioner that the petitioner having rendered service nearly for more than 20 years as Nutritious Meal Organizer from 1983 to 2004 and he is entitled to count half of the service rendered in the said post in terms of G.O.Ms.No.6 dated 06.01.2016 and also G.O.Ms.No.41 dated 19.02.2010. But the cut off date viz., 1st April, 2003, which was stipulated in the amended notification through G.O.Ms.No.41 has been found to be arbitrary and the learned Judge of this Court has stated that the cut off date need not be relied upon for the purpose of calculation of pensionary benefits to the employees of the Government. In such view of the matter, this Court does not see any legal impediment to count half of the service rendered by the petitioner in the post of Nutritious Meal Organizer, from the date of his appointment as Nutritious Meal Organizer and till the date of his appointment as B.T. Assistant under the Government service. The entire period during which the petitioner rendered service as Nutritious Meal Organizer has to be counted. In the said circumstances, half of the service as Noon Meal Organiser for the purpose of calculation for pension including the entire service of B.T.Assistant till the date of his superannuation viz., 29.02.2012 has to be counted.

13. Therefore, for the above said reasons, this Court directs the respondents to calculate the service of the petitioner from 07.02.1983 till 09.09.2004 in terms of G.O.Ms.No.6 dated 06.01.2010 together with regular service rendered by the petitioner as B.T.Assistant from 10.09.2004 till 29.02.2006 and calculate the pension benefits as admissible and forward the proposal to the competent authority

and to pay arrears of pension to the petitioner and as such directed to pay regular pension as admissible. The direction of this Court shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, this Writ Petition stands allowed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
College Road,
Chennai-600 006.
3. The Joint Director of Secondary
School Education,
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4. The Head Master,
The Government Higher Secondary School,
Palur, Panruti Taluk,
Cuddalore District.
5. The Principal Accountant General,
No.361, Anna Salai,
Teynampet, Chennai-600 018.

- + 1 cc to Mr. Hema Muralikrishnan, Advocate Sr.21059
+ 1 cc to MR. J. Shanmugasundarababu, Advocate Sr.20874
+ 1 cc to Government Pleader Sr.21445

W.P.No.7092 of 2012

(CS-DR)
EU(10/04/2018)