

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5/12/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2653 of 2018

1. The Government of Tamil Nadu
rep. By it Secretary
School Education Department
Fort St. George
Chennai 600 009.
 2. The Director of School Education
Chennai 600 006.
 3. The Joint Director
(Higher Secondary)
Vocational
Chennai 600 006.
 4. The Chief Educational Officer
Udagamandalam
Nilgiris District. ...Appellants/Respondent
- Vs
- K.Vijayakumaran ...Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 17/11/2006 made in W.P.No.40292 of 2016.

W.P.No.40292/2016:

Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Mandamus directing the respondents to count 50% of petitioners service for a period from 14.8.1984 to 31.3.1990 as Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 1.4.1990 to 31.7.2015 the date of retirement as qualifying service for the purpose of pensionary benefits and send a revised pension proposal to the Accountant General for sanction and grant arrears of pensionary benefits.

For Appellants : Mr.C.Munusamy
Special Government Pleader
(Education)

J U D G M E N T
(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is directed against the order dated 17/11/2016, made in W.P.No.40292 of 2016.

2. Short facts leading to the filing of writ appeal are as follows:

Respondent was appointed as Double Part Time Vocational Instructor, in Auditing and Accountancy, at Government Higher Secondary School, Anikarai, The Nilgiris District, on 14/8/1984. His services were regularised in the post of Vocational Instructor, as per the order of the Joint Director of School Education, dated 10/7/2007. Thereafter, posted as P.G.Assistant in Commerce, on 25/6/2014 and retired, on 31/7/2015, on attaining the age of superannuation.

3. Vide, G.O.Ms.No.105, dated 21/1/1980, Government of Tamil Nadu, directed that for Double Part Time Vocational Instructors, work load shall not be less than 20 periods. Thereafter, Government of Tamil Nadu have issued G.O.Ms.Nos.712, 834, 221 dated 28/5/1990, 23/9/1994 and 15/7/1999,

respectively, to regularise the services of Vocational Instructors working in Government and Private Aided Schools. Since the petitioner had worked as Double Part Time Vocational Instructor which is a Full Time employment, he is entitled to count 50% of service rendered on consolidated pay as per G.O.Ms.No.130, dated 18/7/2013 and G.O.Ms.No.134, dated 22/7/2013. On the failure on the part of the appellants to count 50% service rendered by the respondent, on consolidated pay in Double Part Time Vocational Instructor, the respondent had filed W.P.No.40292 of 2016, directing the appellants to count 50% of the service of the respondent herein for a period from 14/8/1984 to 31/3/1990 as Double Part Time Vocational Instructor along with regular service as Vocational Instructor for a period from 1/4/1990 to 31/7/2015, the date of retirement as qualifying service for the purpose of pensionary benefits.

4. After hearing the learned counsel for both parties and on perusal of the line of Government orders and the amended provisions of the Tamil Nadu Pension Rule, a learned Single Judge, allowed W.P.No.16182 of 2008 vide order dated 12/5/2017. Relevant portion of the said order is extracted hereunder.

"6. It would be useful to extract the relevant passage from the judgment made in W.A.No.1702 of 2010 and the same is extracted hereunder:-

" 7. According to the petitioner, he had worked as Part-time Vocational Instructor between 23.10.1981 and 4.10.1996, on consolidated pay. He has also made a representation dated 10.4.2013, one month prior to his retirement, the copy of which is enclosed at page No.16 of the typed set of papers filed in support of the writ petition. Earlier, a learned Single Judge, after considering the issue as to whether Single / Double Part time teachers paid consolidated pay, are entitled to count 50% of the services, for the purpose of computing the qualified period of service, for grant of pension, in N.Rajendran v.The State of Tamil Nadu, represented by its Secretary to Government, School Education Department, Chennai, and 3 others in W.P.No.39177 of 2012 dated 16.4.2009, has set aside the order of rejection of the Accountant General (A&E), Chennai, the second respondent therein, and a further order of the Government and consequently, directed the respondents therein, to calculate the pension of the petitioner therein and also issued a further direction to pay the same within eight weeks. Being aggrieved by the above said order, the Government have preferred an appeal in W.A.No.1702 of 2010. While confirming the decision of the learned Single Judge, the Hon'ble First Bench of this Court, by order dated 20.9.2010, has ordered as follows:-

" Heard the learned counsel for the appellant and perused the impugned order passed by the learned single Judge, allowing the writ petition quashing the order passed by the appellants/respondents and further directing the appellants/respondents to calculate the pension of the

petitioner.

2. Admittedly, the writ petitioner was appointed as Double Part Time Teacher in the second respondent School on 07.09.1978. After the Government Order issued in 1990 for filling up 800 posts of Educational Instructors, the writ petitioner was appointed as Double Part Time Teacher in 1991 in regular time scale of pay. After putting about 11 years, 11 months and 24 days of service as consolidated Vocational Instructor and 10 years and 11 months service as regular time scale Agricultural Instructor, as the writ petitioner was superannuated, his claim for pension was refused by the impugned order passed by the second appellant/second respondent.

3. It is evident from the records that the writ petitioner was appointed on consolidated pay from 07.09.1978 to 31.03.1990. Thereafter, he was brought into regular time scale of pay from 1.4.1990 to 31.3.1994 and from 23.9.1994 to 31.5.2001. Therefore, the learned single Judge rightly held that 50% of the said service should be added for the purpose of calculating the length of service for pension purpose. We do not find any error in the impugned judgment. Hence, the writ appeal is dismissed. There will be no order as to costs. Consequently, M.P.No.1 of 2010 is also dismissed."

Since the present petitioners are also similarly placed person, I am of the opinion that the present writ petitions could be allowed.

7. In fine, all the writ petitions are allowed and the respondents are directed to count 50% of the petitioners' part time service as Vocational Instructor for the purpose of calculating pension. No costs."

5. Aggrieved by the abovesaid order, appellants have filed the instant writ appeal.

6. On this day, when the writ appeal came up for admission, Mr.C.Munusamy, learned Special Government Pleader (Education), submitted that the order made in WA No.882 of 2016 etc., batch, dated 6/4/2018, is squarely applicable to the case on hand and implementing the said order, Government have issued G.O.Ms.No.194, School Education (Pa.Ka.7-1) Department, dated 12.09.2018. Submission of the learned Special Government Pleader is placed on record.

7. Heard the learned Special Government Pleader (Education) and perused the materials available on record.

8. Perusal of the judgment in WA No.882 of 2016 etc. batch dated 06.04.2018, shows that the present appeal is squarely covered by the abovesaid judgment. The relevant portion of the 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 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."

Further, implementing the above order, Government have issued G.O.Ms.No.194, School Education (Pa.Ka.7-1) Department dated 12.09.2018.

9. In view of the above, the instant writ appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

To

1. The Government of Tamil Nadu
rep. By its Secretary
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Fort St. George
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2. The Director of School Education
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4. The Chief Educational Officer
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+1 CC to Govt. Pleader sr 84416.

W.A.No.2653 of 2018

KJ(CO)
SP(04/01/2019)

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