

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/11/2018

C O R A M

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

Writ Appeal No.2651 of 2018

1. The Secretary to Government
School Education Department
Fort St. George
Chennai 600 009.
2. The Director of School Education
DPI Complex
Chennai 600 006.
3. The Chief Educational Officer
Tiruvannamalai District.
4. The Head Master
Government Higher Secondary School
Kannamangalam
Arni Taluk
Tiruvannamalai District 606 753.

... Appellants/Respondent

Vs

Periaswamy

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 12/5/2007 made in W.P.No.15960 of 2008. Writ Petition filed under Article 226 of the Constitution of India issuance of Writ of Certiorarified mandamus to calling for the records of respondents in connection with the impugned order passed by the first respondent in letter No.16376/VE/08-1 dated 2.6.2008 and quash the same and further direct the respondents to count the part time services rendered by the petitioner from 9.8.1979 to 9.12.1999 for the purpose of pensionary benefits.

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

For Respondent : Mr.R.Saseetharan

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 12/5/2017 made in W.P.No.15960 of 2008, by which the writ Court set aside the recovery proceedings.

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

Respondent was employed as a Single part time Agricultural Instructor in Government Higher Secondary School, Kannamangalam, Arni Taluk, Tiruvannamalai District and was subsequently, regularised in the sanctioned post and now, the respondent has retired from the service. The grievance of the respondent is that though he was initially appointed as Single part time Agricultural Instructor, on temporary basis and by virtue of his lengthy and continuous service, he was absorbed in regular vacancy. Temporary service rendered by him, has not been taken into account, for the purpose of calculating the qualifying service, for pensionary benefits. The appellant has filed W.P.No.6948 of 2008 to dispose of the representation dated 28/1/2008.

3. Vide order, dated 20/3/2008, writ Court has directed the first respondent therein to pass orders on his representation, dated 28/1/2008, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the said order.

4. Vide letter, dated 2/6/2008, the first respondent therein rejected the claim of the respondent on the grounds that the service rendered as part time or double part time vocational Instructor cannot be taken into consideration for pensionary benefits since there was no rules and government orders.

5. Being aggrieved, the respondent has filed W.P.No.15960 of 2008, to quash the order in Letter

No.16376/VE/08-1, dated 2/6/2008, and prayed for a direction to count the part time services rendered by him, from 9/8/1979 to 9/12/1999, for the purpose of pensionary benefits.

6. After hearing the learned counsel for both parties and on perusal of the Government orders and the amended provisions of the Tamil Nadu Pension Rules, a learned Single Judge, allowed W.P.No.15960 of 2017, vide, order, dated 12/5/2017. Relevant portion of the said order is extracted hereunder.

"4. Pursuant to the line of Government Orders amended to the rule as stated supra had been issued by the Government of Tamil Nadu. In view of these, the writ petitioner is entitled for counting of 50% of his temporary services as qualifying service for the purpose of calculating the pensionary benefits.

5. The learned Additional Government Pleader, while not disputing the legal principles laid down in these two judgments of the Hon'ble Division Bench, raised objection that the case of the writ petitioner is to be verified with reference to the service records of the writ petitioner.

6. It is needless to state that it is the duty of the respondents to verify the service records of the writ petitioner and pass appropriate orders extending the benefits. Accordingly, the respondents have to take a decision after due verification of the service records of the writ petitioner. Thus, this Court is inclined to consider the ground raised in the writ petition and accordingly, the respondents are directed to count 50% of the temporary service rendered by the writ petitioner with reference to Rule 11 of the Tamil Nadu Pension Amended Rules and accordingly, pass appropriate orders as early as possible by granting the service benefits.

With the above direction, the writ petition stands disposed of. The said exercise shall be carried out by the respondents within a period of four weeks from the date of receipt of a copy of this order. No Cost. Consequently, connected Miscellaneous Petition is closed, if any."

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

8. 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.

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

10. 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.

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

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mvs.

To

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CP(CO)

GMV(27/12/2018)