



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)No.844 of 2018
and
C.M.P(MD)No.5104 of 2018

01. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George, Chennai.
 02. The Joint Director(Vocational) of
School Education, College Road,
Chennai.
 03. The District Educational Officer,
Thoothukudi Educational District,
Thoothukudi District. ... Appellants / Respondents
- Vs.
C.Jayarani Gnanadevi ... respondent / writ petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order dated 07.09.2017 passed in W.P(MD)No.16432 of 2017 on the file of this Court.

Prayer in WP(MD).No. 16432/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the respondents to take the 50% of the part time service rendered by the petitioner i.e. from 16.08.1985 to 04.10.1996 along with the regularise the service for the pension benefits i.e. for the period of 23 years 8 months 21 days based on the judgment dated 09.04.2014 passed in W.P.No.16771 of 2013.

For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader
For Respondent : Mr.R.Saravanan

JUDGMENT

(Judgment of the Court was made by M.DURAI SWAMY, J.)

Challenging the order passed in W.P(MD)No.16432 of 2017, the respondents in the writ petition have filed the above writ appeal.

2. The respondent / writ petitioner filed the writ petition in W.P(MD)No.16432 of 2017, to issue a writ of Mandamus, directing the respondents to take 50% of the part time service rendered by the



writ petitioner ie., from 16.08.1985 to 04.10.1996 and regularise the service for the pensionary benefits ie., for the period of 23 years 08 months 21 days based on the judgment dated 09.04.2014 passed in W.P.No.16771 of 2013.

3. The learned single Judge after taking into consideration the case of both sides, disposed of the writ petition by directing the respondents to count the part time service of the petitioner from 16.08.1985 to 04.10.1996 along with regular service for the pensionary benefits. Challenging this order, the appellants have filed the above writ appeal.

4. When the matter is taken up for hearing, the learned counsel appearing for the respondent submitted that the issue involved in the present writ appeal is covered by the decision of a Division Bench of this Court dated 21.04.2017 made in W.A(MD) Nos.392, 393 and 389 of 2017 etc., batch, wherein the Division Bench held as follows:

"10. The Writ Court further observed that in the light of the decision of the Hon'ble First Bench, the Rule itself stands impliedly overruled. That apart, it was held that if the benefit is not granted, it would amount to discriminating the similarly placed persons. Further, the Writ Court noted that the Government has chosen to extend certain benefits in respect of part time workers as found in G.O.Ms.No.39, 13.06.2011 and therefore, the benefit cannot be denied to part time vocational instructors by stating that the said Government Order is applicable to panchayat clerks and not to vocational instructors.

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 materia 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. Mr.Baskarapandian, learned Special Government Pleader appearing for the appellants also fairly submitted that the issue involved in the present writ appeal is covered by the decision relied on by the learned counsel for the respondent.

6. In view of the submissions made by the learned counsel on either side, following the judgment made in W.A(MD)Nos.392, 393 and 389 of 2017 etc., batch dated 21.04.2017, the writ appeal is liable to be dismissed and accordingly, the same is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George, Chennai.
2. The Joint Director(Vocational) of
School Education, College Road,
Chennai.
3. The District Educational Officer,
Thoothukudi Educational District,
Thoothukudi District.

+1CC to Mr.R.Saravanan, Advocate, SR.No. 70938

+1CC to the Special Government Pleader SR.No. 70987

W.A(MD)No.844 of 2018

03.07.2018