



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) Nos. 16864 and 16926 and of 2018

W.P. (MD) No.16864 of 2018

S.Venkatachalam

... Petitioner

vs.

- 1.The Principal Secretary to the Government,
Department of School Education,
Fort St.George,
Chennai-9.
- 2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road,
Chennai-6.
- 3.The Joint Director of School Education (Vocational),
O/o.the Joint Director of School Education (Vocational)
DPI Campus, College Road,
Chennai-6.
- 4.The Chief Educational Officer,
O/o.the Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 5.The Principal Accountant General (A&E),
O/o.the Principal Accountant General (A&E),
361, Anna Salai,
Chennai-600 018.
- 6.The District Educational Officer,
O/o. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.
- 7.The Correspondent,
Walker Higher Secondary School,
Dohnavur-627 102,
Tirunelveli District.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direction, directing the respondents to re-fix the petitioner's pension by including the 50% of the service rendered by the petitioner as Part Time Vocational Instructor in consolidated pay along with regular service with all other consequential benefits in the light of the Judgment of this Court in W.P.(MD)No.795 to 797 of 2018 dated 12.02.2018 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
For R1 to R4 : Mrs.S.Srimathy
Special Government Pleader
For R5 : Mr.P.Gunasekaran

W.P. (MD)No.16926 of 2018

S.John Xavier Britto

... Petitioner

Vs.

1.The State of Tamilnadu,
represented by its Secretary School Education Department,
Fort St.George,
Chennai.

2.The Director of School Education,
College Road,
Chennai.

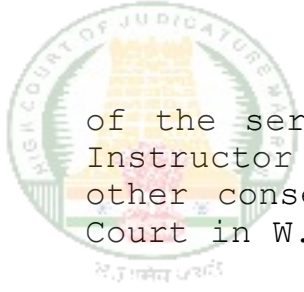
3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to dispose of the petitioner's representation dated 23.06.2017 submitted for taking 50% of my part time service rendered by the petitioner from 05.01.1987 to 15.10.1992 along with regular service for pension benefits in the light of the order dated 09.04.2014 passed in W.P.No.16771 of 2013 within a time frame.

For Petitioner : Mr.B.Prahalad Ravi
For Respondents : Mrs.S.Srimathy
Special Government Pleader

COMMON ORDER



of the service rendered by the petitioner as Part Time Vocational Instructor in consolidated pay along with regular service with all other consequential benefits in the light of the Judgment of this Court in W.P.(MD)No.795 to 797 of 2018 dated 12.02.2018.

W.P.(MD) No.16926 of 2018 has been filed for a direction to the respondents to dispose of the petitioner's representation dated 23.06.2017 submitted for taking 50% of my part time service rendered by the petitioner from 05.01.1987 to 15.10.1992 along with regular service for pension benefits in the light of the order dated 09.04.2014 passed in W.P.No.16771 of 2013.

2. In W.P.(MD) No.16926 of 2018, the petitioner is still working as Vocational Instructors. In W.P.(MD) No. 16864 of 2018, the petitioner has retired from service.

3. Since their services have been brought to time scale of pay after some years and from that date, their services have been calculated for the purpose of pensionary benefits. Their grievance appears to be in spite of the amendment having been brought under Rule 11(4) of the Tamil Nadu Pension Rules, the past services rendered by them, as either single time or part time Vocational Instructors had not been taken into account for the purpose of pensionary benefits.

4. The learned counsel for the petitioners would submit that the issue raised in these batch of cases have already been decided by a number of decisions of this Court and in this regard, the learned counsel for the petitioners have also relied upon a recent judgment of Mine dated 09.07.2018 in W.P.(MD) No.14365/2014 etc batch, in the matter of A.Ramalingam v. State of Tamil Nadu and three others.

5. I have heard the learned counsel for the petitioners and also the learned Special Government Pleader and I have also gone through the materials placed before this Court.

6. As has been rightly pointed out by the learned counsel for the parties, the issue raised in these batch of cases is no more res integra, as these issues have already been considered and decided by this Court. After having considered all those aspects, I have passed the order in the aforementioned judgment in A.Ramalingam's case on 09.07.2018.

7. For the sake of better understanding and clarity, the relevant portion of my order is extracted hereunder:

"11.I have heard the said submissions made by the learned counsel for the parties.

12.As has been rightly submitted by the learned counsel for the petitioners, the issue raised in this batch of writ petitions has already been decided in number of cases by this Court. In this regard, one of



the earliest decision of the learned Judge of this Court was made in W.P.(MD)No.16771 of 2013 in the matter of **V.Ragavan Vs. State of Tamil Nadu represented by its Secretary, School Education Department and others.** In the said decision, the learned Judge has dealt with the similar issue and has given his verdict after exhaustively discussed the various grounds raised by both sides. In this regard, the following paragraph of the said decision can be usefully referred to:-

"3.The petitioner was appointed as a single part time Vocational teacher on 08.10.1980 and he was regularised on 01.04.1990 in such capacity. Thereafter, he was promoted as P.G.Assistant (Commerce) and retired from service on 30.03.2013 on attaining the age of superannuation. The Government as well as the private schools were engaging number of qualified persons as Teachers for the Vocational subjects either as Double part time or Single part time Teachers according to their needs. All of them were employed indefinitely for years together. After repeated representations and agitations, the Government, in order to bring them under time scale of pay in a phased manner, directed to fill up 800 posts for the Vocational Instructors in G.O.Ms.No.712 Education Department dated 28.05.1990 by appointing them as Double part time Teachers. Further, G.O.No.68 dated 20.03.2007 was passed stating that the Vocational Teachers can be appointed on par with B.T.Assistants. After the retirement of the petitioner, the service rendered by him as part time Vocational Teacher from 08.10.1980 to 31.03.1990 was not taken into account while calculating the pension. Under similar circumstances, this Court in W.P.No.39177 of 2002 dated 16.04.2009 directed the respondents to count 50% of the part time service rendered by the petitioner therein for the purpose of calculating the pension. A writ appeal filed challenging the said order, in W.A.No.1702 of 2010 was dismissed on 20.09.2010. Further appeal preferred before the Hon'ble Supreme Court also came to be dismissed. Therefore, the petitioner is also entitled to similar relief."

13.The learned Judge, after having taken into account the earlier decision rendered in this regard, which had been taken on appeal by way of intra Court appeal, wherein also, the view of the learned Single Judge was confirmed and the same was also taken to the Hon'ble Apex Court by filing SLP, the Hon'ble Apex Court



also dismissed the said SLP, confirming the view taken by the High Court, has allowed the said writ petition.

14. When I had an occasion to consider the similar issue in W.P. (MD) Nos. 256 and 257 of 2015 in the case of **P. Natarajan and another Vs. the State of Tamil Nadu represented by its Secretary, School Education Department and others**, I have considered the said decision of the learned Judge referred to above, in the teeth of the amended Rule 11(4) of the Rules, 1978, which reads thus:-

"In the said Rules in Rule 11, after sub-rule (3), the following sub-rule shall be added namely:-

"(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits, along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break:

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003:

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break shall not count for the purpose of pensionary benefits."

15. In the said judgment in W.P. (MD) Nos. 256 and 257 of 2015 cited supra, after having considered the submissions made on behalf of the Government that, the



cases decided in favour of the employees and also the order complied with by the respondents cannot be taken as precedent, I passed the following order:-

"12. The learned Judge in the said decision dated 09.04.2014, made in W.P. (MD) Nos. 16771 to 16775 of 2013 etc., batch has in fact discussed this issue exhaustively and has given a detailed interpretation as to how the very word 'whole time employment' as employed in Rule 11(4) of the Tamil Nadu Pension Rules has to be interpreted. The learned Judge has given a complete answer to the objections raised by the respondents herein in paragraphs 26 to 29 of the said judgment, which have already been extracted herein above. The learned Judge has also made a reference that Rule 11(4) of the Tamil Nadu Pension Rules itself was impliedly overruled by the Division Bench of this Court in W.A.No. 1702 of 2010 dated 20.09.2010.

14. Yet another factor in the said batch of cases cited supra is that, all those petitioners were worked as part-time Vocational Instructors. For the said part-time Vocational Instructors, though the timing was restricted either to have 2.00 p.m. to 5.00 p.m. or 10.00 a.m. to 1.00 p.m. or like that cannot be construed that those people had worked only in that time and for the remaining time, they left the institution. This issue has been exhaustively discussed by the learned Judge in the said decision (cited supra). The word 'whole time employment' was also to be considered in a particular manner, has also been discussed and decided by the learned Judge in the said decision. In this regard it was specifically held that even though the job is only for a few hours the teacher had to wait in the school and present for the whole day signing attendance for both sessions. This factor has been specifically discussed and decided by the learned Judge.

15. Across the Bar, it was also informed that the said judgment was also implemented. It is also informed across the bar that as against some similar decisions made by this Court, the State had gone upto Supreme Court and the S.L.P. filed by the State Government has been dismissed. Though specific reference was not given by the petitioners side, the said submissions made by them are not disputed from the respondents side.

16. Moreover, in one such case, this Court in W.P.No. 4556 of 2007 by order dated 29.07.2011, a direction was given to the respondents that 50%



of the past service should be taken into account for the pensionary benefits. The said order of this Court dated 29.07.2011 has been implemented by the Government through G.O.(4D) No.19 School Education Department dated 04.11.2014.

17.The defence now taken by the learned Government Advocate that this kind of isolated cases cannot be accepted. When similarly placed persons are not treated equally, that also would amount discrimination. Therefore, the provisions of Article 14 of the Constitution of India can very well be invoked in this case. Therefore, such kind of discrimination that too from the State Government cannot be accepted and permitted.

18.It is an admitted fact that these two petitioners were working as part-time Vocational Instructors for longer years. Only after several years they were brought under full-time Vocational Instructors by regularising their services. Though both the petitioners are getting pensions, since their past 50% service has not been taken into account they are getting a very meagre pension. Considering these aspects, legislators themselves though it fit to make amendment in the Rule. That is why amendment in Rule 11(4) came into the statutory book. The normal rule of interpretation of statutory Rule is to be given effect when specific Rule was brought in by way of beneficial rule. Rule 11(4) of the Tamil Nadu Pension Rules has been brought in by way of beneficial rule for the benefit of those who have rendered unblemished service for several years and going without getting any pensionary benefits. Therefore, the said Rule cannot be subjected to a different interpretation as has been sought for by the respondents side. Therefore, this Court is of the view that Rule 11 (4) of the Tamil Nadu Pension Rules certainly would give leverage to the petitioners i.e., 50% of their past service, when they were working as part-time Vocational Instructors, shall be taken into account for the purpose of pensionary benefits.

19.For all the reasons and discussions made above, this Court is of the firm view that the petitioners succeed in these Writ Petitions and they are entitled to the mandamus as sought for in these Writ Petitions.

20.In the result, these Writ Petitions are



allowed and the respondents are directed to take into consideration 50% of the past services of the petitioners when they were working as part-time Vocational Instructors. Based on such service, the pensionary benefits of the petitioner shall be recalculated and the recalculated pension shall be continued to be paid to the petitioners. It is needless to state that when the pension is recalculated from their date of retirement till payment, arrears shall also be paid to them. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

21. With these directions, these two Writ Petitions are allowed. No costs."

16. In the recent judgment of the Hon'ble Division Bench of this Court in W.A.No.882 of 2017 etc., batch, in the case of **The Government of Tamil Nadu, represented by its Secretary to Government, - School Education Department and others Vs. K.Pachaiyappan and others**, the Division Bench, after having gone through the issue once again, has passed the following order:-

"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 Instructorss (either as Single Part Time or Double Part Time Vocational Instructors), 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."

17. The learned Special Government Pleader heavily relied upon the aforesaid observation made by the Division Bench of this Court that, the benefit extended in the said batch of cases shall be applicable only to those parties and the similar benefit shall not be extended to any other future case that may be filed



before this Court, on the ground of delay and laches. Since the said observation of the Division Bench has been heavily relied upon by the learned Special Government Pleader, this Court wants to deal with this issue also.

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18. First of all, number of cases in this batch, have already been filed, prior to the said decision rendered by the Division Bench on 06.04.2018 and were pending before this Court.

19. Further, it is a settled proposition of law that, in service matters, if the similarly placed persons, who are entitled to get the benefit under law, having been denied the benefit, even though in this regard already a decision has been rendered by the Court of law and the same is implemented, the very same relief shall also be extended to all similarly placed persons irrespective of the fact, whether they approached the Court or not, if the law declared by the Court is *judgement in rem*.

20. Insofar as the declaration made by this Court in number of decisions, as has been referred to above, which were confirmed by the Division Bench of this Court and subsequently, by the Hon'ble Apex Court and also with regard to the entitlement of pensionary benefits of the Teachers / employees, who had rendered continuous / unblemished services for several years, either as part time or full time or temporary or adhoc basis, by taking note of the 50% of the said services they rendered, prior to they brought in under regular time scale of pay or absorption, such entitlement was declared by the Court of law, which shall be the *judgment in rem*. If the law is declared by the Courts and similar pensionary benefits, having been declared by the Court of law and having been conferred to several such similarly placed persons by employer / Government, then, certainly this Court can extend those benefits for similarly placed, who seek such remedy by approaching this Court.

21. Moreover, the cause of action arose in these kind of cases are continuous cause of action as each of the petitioners, who are the erstwhile employees of the respective employer / State, would be entitled to get the pensionary benefits till their life time. Thereafter, the legal heirs would be entitled to get the family pension benefits.

22. Therefore, the benefits accrued on them, which have been claimed before this Court, by way of this litigations, are continuous in nature. Therefore, once the continuous cause of action is available for litigant, he / she can approach the Court of law at any point of time.

23. If the judgment is in rem, the benefit of the judgment to other similarly placed or situated persons



can be extended and in this regard, the plea of delay/laches or expiry of limitation can be condoned.

24. Emphasizing the said principle, the Hon'ble Apex Court in **1997 (6) SCC 721** in the matter of **K.C. Sharma and others v. Union of India and others** held as follows:

"3. This appeal is directed against the judgment of the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') dated July 25, 1994 in O.A. No. 774 of 1994. The appellants were employed as guards in the Northern Railway and they retired as guards during the period between 1980 and 1988. They felt aggrieved by the notifications dated December 5, 1988 whereby Rule 2544 of the Indian Railways Establishment Code was amended and for the purpose of calculation of average emoluments the maximum limit in respect of Running Allowances was reduced from 75% to 45% in respect of period from January 1, 1973 to March 31, 1979 and to 55% for the period from April 1, 1979 onwards.

4. The validity of the retrospective amendments introduced by the impugned notifications dated December 5, 1988 had been considered by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. No. 395-403 of 1993 and connected matters and the said notifications in so far as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (O.A. NO. 774 of 1994) seeking relief before the Tribunal in April 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications.

5. The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in Chairman, Railway Board & Ors. V. C.R. Rangadhamaiah & Ors., Civil Appeals Nos. 4174-4182 of 1995 and connected matters decided today.

6. Having regard to the facts and circumstances of the case, we are of the view



that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 199 is condoned and the said application is allowed. The appellants would be entitled to the same relief in matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs."

25. The Hon'ble Supreme Court in **(2006) 2 SCC 747** in the matter of **State of Karnataka and others v. C.Lalitha**, has made the following observations:

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.

26. Insofar as the principle that, seeking redressal against the denial of service benefits, for which, the employee is entitled to, and if it is the continuing cause of action, the question of limitation/delay does not arise in those cases, where the employee seek for such benefit, which has already been given to similarly placed persons, Courts have taken the view in favour of the employees.

27. To emphasize the said principle, the Hon'ble Supreme Court in **(2010) 12 SCC 538** in the matter of **State of Madhya Pradesh and others v. Yogendra Srivatsava** has held as follows:

"16. The Tribunal directed payment of the difference in NPA to respondents from their respective dates of appointment. The respondents were appointed from 1982 onwards. The respondents had approached the Tribunal long after their appointment, that is, in 1998 or thereafter.

17. The appellants contended that the claims were therefore barred by limitation. It was pointed out that the respondents were paid NPA at a fixed rate as stipulated in the appointment orders and NPA was increased only when it was revised by Government orders from time to time; that respondents accepted such NPA without protest; and that therefore, they cannot, after periods varying from 5 to 15 years, challenge the fixation of NPA or contend that they are entitled to NPA at a higher rate, that is 25% of their



pay.

18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: M.R. Gupta vs. Union of India - 1995 (5) SCC 628, and Union of India vs. Tarsem Singh 2008.]

28. More than one Division Bench of this Court considered the issue raised in these batch of cases, as to whether the single or double part time Vocational Instructors were entitled to seek the benefit of reckoning the 50% of the past services rendered by them till they brought under time scale of pay and absorption, in view of Rule 11, especially, Rule 11(4) of the Tamil Nadu Pension Rules, 1978. Having considered and decided in favour of the employees and against those decisions, though State preferred Special Leave Petitions, the Hon'ble Apex Court by dismissing the said S.L.Ps. affirmed the decisions of this Court and following which, the said decision rendered by the Writ Court as affirmed by the Division Bench of this Court as well as the Hon'ble Apex Court has been implemented. When that being so, whether diagonally opposite view can be taken by a subsequent decision to deny such benefits to those, who had not immediately come and approached this Court subsequently and in this regard, whether a cut off date can be fixed to prevent the aggrieved persons/employees/litigant to approach the Court, can no longer be an issue without any resolvment.

29. In this regard, the Hon'ble Apex Court has given a strong observation in **2015 (8) SCC 129** in **P. Suseela and others v. University Grants Commission and others**, where the Hon'ble Apex Court has made the following



observations:

"25. In SLPs (C) Nos.3054-55 of 2014, a judgment of the same High Court dated 06.01.2014 again by a Division Bench arrived at the opposite conclusion. This is also a matter which causes us some distress. A Division Bench judgment of the same High Court is binding on a subsequent Division Bench. The subsequent Division Bench can either follow it or refer such judgment to the Chief Justice to constitute a Full Bench if it differs with it. We do not appreciate the manner in which this subsequent judgment (even though it has reached the right result), has dealt with an earlier binding Division Bench judgment of the same High Court."

30. That apart, it has been brought to the notice of this Court by the learned members of the Bar, who supported the case of the petitioners herein that, at least in two Division Benches of this Court, in recent decisions, the view taken by this Court in a number of decisions on the issue, raised in this batch of cases, have been reaffirmed and amplified.

31. The first decision is by a Division Bench of this Court made in ***W.A.No.51 of 2018 etc batch dated 27.03.2018*** in the matter of ***Government of Tamil Nadu represented by its Principal Secretary to Government, Forest and Environment Department and others v. K.Sakthivel and others***.

32. In the said Division Bench judgment, the issue of calculating the 50% of past services rendered by temporary employees (in that case, it was Plot Watcher), was considered in detail, where the earlier judgments of this Court had been taken note of and ultimately, the Division Bench concluded that the said benefits conferred to the private respondents, who were the petitioners before the Writ Court were affirmed/confirmed.

33. The Division Bench in the said judgment has made the following decision:

"24. The validity of fixing such a cut-off date was the subject matter of consideration in the case of P.Chinniyar v. State of Tamil Nadu rep. by its Secretary to Government, Forest and Environment (FR-2) Department, Chennai ? 600 009 and Others reported in (2014)6 MLJ 316 and the Court held that the prescription of cut-off date as 01.04.2003 for absorption into regular service under Rule 11(4) to count half of the service rendered prior to absorption has no rational basis and the same is arbitrary and violative of Article 14 of the Constitution of



India.

25. It was further held that Rule 11(4) is totally redundant in view of Rule 11(2), which does not prescribe any cut-off date as to absorption into regular service. Therefore, it was held that the benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4) and thus the cut-off date of absorption as 01.04.2003 prescribed in Rule 11(4) should be ignored, otherwise it will lead to grave injustice. The Court took note of the facts of the said case, where the petitioner therein was working on daily wages from 1967 till 2003 and when he was absorbed as a Mali, he has served for more than 36 years before his absorption in regular service. The said decision in the case of B.Chinnaiyan was followed in the cases of W.P.Nos.21355 and 21356 of 2017, dated 08.09.2017. In the said decision, reference was made to the decision of the Hon'ble Division Bench in the case of Union of India v. K.Punniyakottai reported in 2014 (2) CTC 777, where more or less an identical case was considered arising under the CCS (Pension) Rules, 1972 in respect of the employees of the Central Government. Therefore, the Court concluded that 50% of the services rendered by the employee on daily wages should be considered for computing total length of service.

26. The two Division Benches in the cases of the State of Tamil Nadu rep. by its Secretary to Government, (FR-2) Forest and Environment Department, Fort St. George, Chennai ? 600 009 v. S.Jayaraman [W.A.No.1482 of 2016, dated 22.01.2018] and Government of Tamil Nadu rep. by its Secretary, Environment and Forest Department, Fort St. George, Chennai ? 600 009 v. S.Thillai Govindan [W.A.No.1733 of 2017, dated 13.02.2018] took note of the decision in the case of B.Chinnaiyan, wherein the cut-off date was quashed, dismissing the appeals filed by the Government. Thus, the decision in the case of B.Chinnaiyan has received the seal of approval of the Hon'ble Division Benches. Thus, in the present factual position, whether the appellants are justified in contending that the earlier Judgments are not binding upon them, despite most of them having been implemented by the appellants.

<https://hcservices.ecourts.gov.in/hcservices/>. In our considered view, the stand taken by the appellants is wholly unsustainable as the Special Leave Petitions filed against some of the



decisions of the Hon'ble Division Bench was not dismissed in limini, but were dismissed on the ground that there were no merits in the appeal. Therefore, the order passed by the Hon'ble Supreme Court has assigned reasons and it is not a dismissal of a Special Leave Petition simpliciter. Therefore, the decisions bind the Government and consequently, the decisions relied on by the learned Special Government Pleader in the cases of Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions, Punjab and Another reported in 1995 Supp (4) SCC 706 and Col.B.J.Akkara (Retd.) v. Government of India and Others reported in (2006)11 SCC 709 are distinguishable on facts.

28.The Judgment of the Division Bench in the case of Principal Secretary, Social Welfare and Nutritious Meal Programme Department, Fort. St. George, Chennai and Others v. M.Palanikani [W.A (MD)No.587 of 2014, etc. batch, dated 03.12.2014] does not render any support to the case of the appellants, as the said case arose out of an appointment to the posts of Teachers/Supervisor Grade II and Rural Welfare Officers from those who were functioning as Noon Meal Organisers in Schools as well as Child Welfare Organizers in Integrated Child Development Scheme (ICDS). Thus, the appointment in those cases, were fresh appointment to a different department, unlike the case on hand. Further, the cases on hand are not cases seeking retrospective regularisation, as sought for in the case of the State of Tamil Nadu, rep. by the Secretary, Department of Health and Family Welfare, Fort St. George, Chennai and Others v. T.Gopal and Others reported in 2016 Writ L.R. 1160.

29.As noticed above, the decision to bring the writ petitioners into regular time scale of pay, was taken in the year 1999 and the writ petitioners were extended the benefits in the year 2009. By then, several of them, had completed more than 30 years of service, as daily wagers. The past service was reckoned for the purpose of justifying their absorption into regular time scale of pay. Therefore, it will be a misnomer to state that the appointments made to the post of Forest Watchers is a fresh appointment. The stand taken by the appellants in this regard is to be rejected by merely referring to the preamble portion of G.O.(Ms)No.64, dated 08.03.1999 and G.O.(Ms)No.95, dated 07.08.2009.



Therefore, the said contention raised by the appellants required to be outrightly rejected.

30. There can be no denying the fact that the appellants themselves have implemented various decisions of the Division Benches, in some of which, no appeals were preferred to the Hon'ble Supreme Court. Therefore, now to take a different stand in the present appeals as well as writ petitions would be impermissible and a situation cannot be allowed to prevail causing discrimination between similarly placed persons. Thus, in the facts and circumstances of the case and in the light of the above discussion, we find that the State has not made any grounds to interfere with the orders passed in the writ petitions and therefore, the writ appeals are liable to be dismissed and the similar writ petitions are liable to be allowed.

31. In the result,

(i) W.A(MD) Nos. 51 of 2018, 1431 and 1432 of 2017 are dismissed, confirming the orders passed in W.P(MD) Nos. 22833 of 2016, 15903 of 2012 and 22832 of 2016. No costs. Consequently, connected C.M.P(MD) No. 262 of 2018, 10923 and 10927 of 2017 are dismissed.

(ii) All other writ petitions filed by the Plot Watchers are allowed, as prayed for. No costs. Consequently, connected W.M.P(MD) Nos. 4753 and 4754 of 2018 are closed.

(iii) The appellants/respondents are directed to verify the service particulars of all the writ petitioners and count 50% of the services rendered by them on temporary basis and consequently re-fix their pension within a period of four months from the date of receipt of a copy of this Judgment/ order.

(iv) In case, where the petitioners/employees had died, the benefit shall accrue to their legal heirs and the payment shall be effected in the name of one of the legal heirs after obtaining proper authorisation from the other legal heirs.

(v) So far as W.P(MD) No. 6878 of 2017 is concerned, though the petitioner seeks for promotion to the post of Plot Watcher, the same is a misnomer as it is not a promotion, but absorption in the post of Forest Watcher. Therefore, whatever the relief granted to the other petitioners, shall enure in favour of this



petitioner also and the writ petition stands disposed of accordingly. No costs.

(vi) In W.P(MD) No.22510 of 2015, apart from seeking for regularisation of the services by counting 50% of the services rendered as Plot Watcher, the petitioner seeks for pensionary benefits also. This Court has directed that the benefit of 50% of the services should be reckoned, while calculating the length of service. Thus, if the petitioner has attained the age of superannuation, it goes without saying that consequential revision in pensionary benefits are required to be settled and the writ petition stands disposed of accordingly. No costs."

34. Yet another decision of another Division Bench of this Court, which is latest in this regard is the decision made in **WA(MD) No.844 of 2018 dated 03.07.2018** in the matter of **State of Tamil Nadu represented by Secretary, School Education Department and others v. C.Jeya Rani Gnana Devi**.

35. In the said judgment, dated 03.07.2018, the Division Bench of this Court has passed the following order:

"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 cutt 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."

36. From the reading of the aforesaid judgments, especially, the later decisions rendered by two Division Benches of this Court, it become clear that, the view taken by this Court insofar as the confirmation of benefit of calculating 50% of the past services rendered by the employees, who worked as Vocational Instructors or otherwise on temporary basis before they brought in regular time scale of pay and regular absorption, had been consistently followed by various Division Benches of this Court.



37. There had been earlier judgments of the Division Benches and there had been later judgments of the Division Benches including the recent one passed, just before a week or two. While so, the only Division Bench decision dated 06.04.2018 made in W.A.No.882/2017, as has been relied upon by the learned Special Government Pleader takes a slightly different view, where also, the principle in extending the said benefit had been accepted, but the only prohibition was that the same shall not be extended hereafter to any such employee, who comes to the Court, after 06.04.2018. In this regard, the learned counsel for the petitioners have relied upon a Full Bench judgment of the Patna High Court reported in **AIR 1987 Patna 191**, in **Amarsingh Yadav and another v. Shanti Devi and others**.

38. One of the question posed before the Full Bench for resolvment is as follows:

"(1) Where there is a direct conflict between two decisions of the Supreme Court, rendered by co-equal Benches, which of them should be followed by the High Court and the Court below ?"

39. After elaborate consideration, the Full Bench has given its answer, which reads thus:

"24. To conclude on this aspect, it is held that where there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The answer to question (1) posed at the outset is rendered in these terms."

40. Therefore, the principle was, as enunciated in the said Full Bench judgment of the Patna High Court that, if two conflicting decisions are available, rendered by co-equal benches, the High Court must follow the judgment, which appears to it to state the law more elaborately and accurately.

41. If the said principle is applied to the facts of the present case, except the decision dated 06.04.2018 of a Division Bench of this Court, no other Division Bench either prior to or after to that, has taken any different view, as the one taken in the said judgment and in all other Division Bench judgments, a uniform and consistent stand taken by this Court was that, the benefit of taking into account 50% of the services rendered by the employees before they brought into regular service shall be the basis for calculating for the purpose of pension and retiral benefits. Even in the said judgment dated 06.04.2018 in W.A.No.882/2017, that



view was accepted and endorsed by the said Division Bench also, but the only embargo the Division Bench has put in that, the said benefit cannot be extended to those who come to the Court hereafter. In order to meet out the said embargo, the aforesaid judgments of the Hon'ble Apex Court, as referred to above, with regard to the continuous cause of action and the benefit, which has been declared by the Court through a judgment in rem has to be extended to similarly placed persons, had been quoted.

42. In view of the settled legal position, as has been declared in all these decisions, all these petitioners, even though filed writ petitions recently and some of them might have filed after 06.04.2018 i.e., the date, on which the aforesaid Division Bench Judgment had been rendered by this Court, in the opinion of this Court, are entitled to get the similar benefits, as that of the benefits which have already been given to the number of similarly placed employees / Teachers.

43. Therefore, the observations made in the aforesaid judgment made in W.A.No.882 of 2017 and etc., batch, as has been heavily relied upon by the learned Special Government Pleader in this regard, would no way advance the case of the respondents and that no way be helpful to the respondents to deny the lawful right of the petitioners, which have already been accrued and has been continuously accruing every month because the pensionary benefits are to be disbursed till the death of the employee / death of the legal heirs. Therefore, the said objection raised by the respondents are liable to be rejected, accordingly, they are rejected.

44. In view of the aforesaid judgments, wherein the issue as has been put forth by the learned counsel for the petitioners, having been dealt with and decided more than once by the Writ Court and the same has been confirmed by the Division Bench of this Court more than once and in cases, where SLP preferred before the Hon'ble Supreme Court, wherein also the view taken by this Court has been confirmed, all these petitioners are entitled to, for calculating 50% of the past services, rendered by each of the petitioners in the respective employment before they got absorbed by bringing them under the time scale of pay irrespective of the years of service, for the purpose of pensionary benefits. Hence, these petitioners also shall be entitled to get the same benefits and accordingly, all these writ petitions are fit to succeed.

45. In the result, these writ petitions are allowed and the respective respondents in each of the writ petitions are hereby directed to take into account the 50% of the past services rendered by each of the petitioners either as Vocational Instructors or any



other employment either as a Part Time / Full time / adhoc / temporary / daily wages employees before they brought in under the regular time scale of pay on permanent basis or absorption and by calculating the said 50% of their past service, pension eligibility and pension enhancement or difference of pay and pension shall be calculated and disbursed in favour of the respective petitioners. After fixing the revised pension by taking into account the past 50% services, the revised pension arrears shall be calculated and to be disbursed to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioners shall continue to receive the revised pension.

46. Insofar as W.P.(MD)Nos.6065 of 2016 and 6789 of 2017 are concerned, the petitioners since having not been paid any pension so far, the aforesaid exercise shall be undertaken by the respective respondents in that writ petitions also and the entire arrears of pension shall be disbursed to the said petitioners within the said time frame indicated above.

47. Insofar as W.P.(MD)No.11896 of 2018 is concerned, since the petitioner is the widow of the employee, the pensionary benefits shall be calculated, accordingly, as indicated, and arrears till the death of the petitioner's husband shall be calculated and thereafter, the family pension arrears shall be calculated and all the arrears shall be disbursed to the petitioner i.e., the widow of the employee, within the period of twelve weeks, from the date of receipt of a copy of this order.

48. With these directions all these writ petitions are allowed as indicated above. No costs."

8. Since the said issue has been considered and decided already in number of cases and in some of the cases, even though appeal filed before the Hon'ble Apex Court, the decision rendered by this Court has been confirmed and accordingly, in those cases, the orders passed by this Court have been complied with. When that being the position, since the petitioner in W.P.(MD) No. 16926 of 2018 is still working as Vocational Instructor and the writ petitioner in W.P.(MD) No.16864 of 2018 has already retired, and in both, the benefits now sought by these petitioners given raise to them as a continuous cause of action and therefore, the accrued right on the part of the petitioners and it is still accruing every month cannot be taken away merely by placing a predicament or impediment that those, who approaches this Court belatedly, cannot be granted the relief or extended the similar relief extended to similar persons.

9. In this regard, in the aforesaid decision of Mine, I have given a detailed and thorough consideration on the case laws and in view of the settled legal propositions, the said embargo, as has



been taken by the learned Special Government Pleader in those batch of cases, by citing the said Division Bench judgment dated 06.04.2018, cannot be applicable to these cases also. Hence, this Court has no hesitation to grant the similar relief, which have already been granted to similarly persons, to these writ petitioners also.

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10. Accordingly, these writ petitions are ordered in the terms of the said order dated 09.07.2018 by giving the following directions:

"the respective respondents in both of the writ petitions are hereby directed to take into account the 50% of the past services rendered by each of the petitioners either as Vocational Instructors or any other employment either as a Part Time / Full time / adhoc / temporary / daily wages employees before they brought in under the regular time scale of pay on permanent basis or absorption and by calculating the said 50% of their past service, pension eligibility and pension enhancement or difference of pay and pension shall be calculated and disbursed in favour of the respective petitioners. After fixing the revised pension by taking into account the past 50% services, the revised pension arrears shall be calculated and to be disbursed to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioners shall continue to receive the revised pension."

No costs.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Principal Secretary to the Government,
Department of School Education,
Fort St.George, Chennai-9.
- 2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road, Chennai-6.
- 3.The Joint Director of School Education (Vocational),
O/o.the Joint Director of School Education (Vocational)
DPI Campus, College Road,
Chennai-6.



4.The Chief Educational Officer,
O/o.the Chief Educational Officer,
Nagercoil,
Kanyakumari District.

5.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

6.The Principal Accountant General (A&E),
O/o.the Principal Accountant General (A&E),
361, Anna Salai, Chennai-600 018.

7.The District Educational Officer,
O/o. The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

(*)+1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No.76029
(*)+1 CC TO Mr.PRAHALAD RAVI, ADVOCATE IN SR No.76671
(*)+1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No.76298
(*)+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.76184,76228
(*)Copy Applications Received on 14.08.2019

W.P.(MD) Nos. 16864 and 16926 and of 2018
31.07.2018

pnn/RR
PK/13.05.2019 : 23P/8C

PK/14.08.2019 : 23P/4C