



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.02.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.1118 of 2013

WEB COPY

P.Pushpam

... Petitioner

-vs-

- 1.The Accountant General (A & E)
No.361, Annasalai,
Chennai-600 018.
 - 2.The Secretary to Government of Tamilnadu,
(Primary Education)
Secretariat, Chennai-600 009.
 - 3.The Director of Primary Education,
College Road,
Chennai-6.
 - 4.The District Elementary Education Officer,
Dindigul District.
 - 5.The Additional Assistant Elementary Educational Officer,
Reddiyarchatram Union,
Dindigul District-624 622.
- ... Respondents

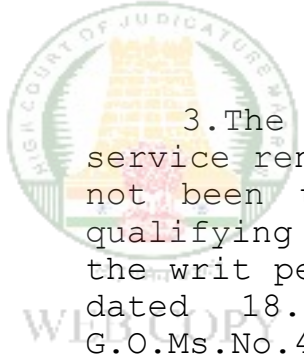
Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his order No.PEN17/III/11702080/RTD/09-10/ADK/593 dated 18.02.2010 and quash the same, subsequently order the 1st Respondent to issue the pension to the petitioner on the basis of the petitioner's representation dated 01.12.2011.

For Petitioner	: Mr.M.Sheik Abdullah
For R1	: Mr.P.Gunasekaran,
For R2 to R4	: Mr.R.Sethuraman,
	Special Government Pleader

O R D E R

The order of rejection, dated 18.02.2010 issued by the first respondent in relation to the claim of the writ petitioner for counting of the 50% of the past services rendered on temporary basis is under challenge in this writ petition.

2.The writ petitioner was appointed as part time Vocational instructor on 09.10.1986 and subsequently, he was regularly appointed as a full time Vocational Instructor from 02.01.2001 onwards.



3.The grievances of the writ petitioner is that the part time service rendered by him for about 14 years 11 months and 22 days had not been taken into account for the purpose of calculating the qualifying service for fixing the pensionary benefits. The claim of the writ petitioner was rejected by the respondent vide proceedings, dated 18.02.2010. The reasons stated is that as per the G.O.Ms.No.408 (Finance) Pension, dated 25.08.2009 only those Teachers worked as Part Time Vocational Instructor as full time are eligible for the 50% of the services to be taken as qualifying service and not for part time official.

4.The Government amended the Rule 11 of the Tamil Nadu Pension Rules, 1978 in G.O.Ms.No.41, Finance (Pension), dated 9th February 2010. The amended Rule 11 of the Tamil Nadu Pension Rules is extracted hereunder:-

"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 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;

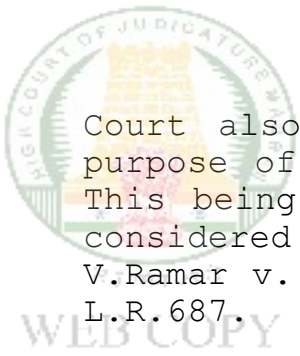
(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government;

(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 whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially 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."

5.Pursuant to the amended Rule even the honorarium or daily wage basis or consolidated pay service also can be taken into account for the purpose of counting of 50% of the service. This



Court also allowed the claim of such part time employee for the purpose of counting of their 50% of service as qualifying service. This being the factum, the case of the writ petitioner also to be considered in the light of the judgment rendered by this Court in V.Ramar v. The State of Tamil Nadu and others reported in 2014 Writ L.R.687.

6.In this view of the matter, the order impugned passed by the first respondent, vide proceedings No.PEN 17/III/11702080/RTD/09-10/ADK/593, dated 18.02.2010 is quashed. The writ petitioner is permitted to submit necessary representation along with required documents to the respondents within a period of two weeks from the date of receipt of a copy of this Order and on receipt of such representation, the respondents are directed to re-consider the case of the writ petitioner in the light of the amended Rule-11 and based on the judgment of this Court and pass appropriate orders on merits and in accordance with law by verifying his service records, within a period of twelve weeks thereafter.

7.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government of Tamilnadu,
(Primary Education)
Secretariat, Chennai-600 009.
- 2.The Director of Primary Education,
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Chennai-600 018.
- 5.The Additional Assistant Elementary Educational Officer,
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Dindigul District-624 622.

+1cc to M/S.M.Sheik Abdullah, Advocate SR.No. 51475

+1cc to Special Government Pleader, SR.No. 51988

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