

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1532 of 2014

and

C.M.P. No. 13122 of 2016

1. The State of Tamil Nadu
Rep. by its Secretary,
Government School Education Department,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Director,
Directorate of Government Examinations,
College Road,
Chennai - 600 006.
3. The Regional Deputy Director of Government Examinations,
College Road,
Chennai - 600 006. ... Appellants/Respondents

E. Jayaraj

सत्यमेव जयते

... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 27.06.2013 made in W.P. No. 17319 of 2013.

Prayer in W.P. No. 17319 of 2013:- Writ petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records connected in G.O.Ms. NO.203 School Education (V1) Department dated 19.10.2006 of the 1st respondent and Pro.Na.Ka. NO.012989/A1/ 2006 dated 6.2.2008 and also Lr.Na.Ka.No. 015290/A1/2012 dated 30.11.2012 of the 3rd respondent and quash the same in respect of restricting regularisation from the date of

issuance of Government Order in so far as the petitioner is concerned and directing the respondents to extend the benefits of regularisation of service on completion of 10 years of service and also to pay the retirement/pensionary benefits as given to one Mr.Paramasivam similarly placed person by way of Government orders issued in G.O.(1D)No.363 & 438 School Education (V1) Department dated 11.10.2012 and 31.12.2012 respectively.

For Appellants : Mr. C. Munusamy,
Special Government Pleader

For Respondent : Mr. G. Elanchezhiyan

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 27.06.2013 in W.P. No. 17319 of 2013 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2.According to the Petitioner, his name was sponsored by the Assistant Director, District Employment Exchange, Chennai for appointment as Section Writer on daily wage basis in the office of the Regional Deputy Director of Government Examinations pursuant to the directions issued by the Government of Tamil Nadu in G.O. Ms. No. 2149, Education, Science & Technology Department dated 14.11.1983 and he joined duty on 22.05.1987 and was continuously working with some artificial break. Subsequently, he was appointed as Record Clerk in one of the vacant places already available in the time scale of pay as per the order of the Regional Deputy Director of Government Examinations, Chennai issued in Na. Ka. No. 012989/A1/2006 dated 20.10.2006 and he joined duty in that post on the forenoon on that date. Subsequently, his services were regularized with effect from 20.10.2006 in the post of Record Clerk by order of the Regional Director of Government Servants in Na. Ka. No. 012989/A1/2006 dated 06.02.2008 and the period of probation has also been declared satisfactory. The Petitioner on attaining the age of superannuation, retired from service on 30.04.2011, but had not been given any pensionary benefits taking into account the period he had worked as Section Writer and Record Clerk.

3. It has been brought to the notice of this Court by the Petitioner that his junior, viz., P. Paramasivan, who retired from service after attaining the age of superannuation on 30.04.2005, had filed W.P. No. 11731 of 2006 in this Court, in which it was directed by order dated 30.07.2010 that his services from the date of completion of ten years be regularized and sanction pensionary benefits by counting 50% of the earlier period of 10 years of service as Section Writer in terms of Rule 11(2) of the Tamil Nadu Pension Rules, 1978, which order was confirmed in W.A. No. 602 of 2011 on 22.09.2011 and in pursuance thereof, the same was implemented by the Government of Tamil Nadu by G.O. (ID) No. 363, Department of School Education (V1) dated 11.10.2012. Relying on that decision, the Petitioner made a representation to the Government to extend same benefits to him, but the same was rejected by R.C. No. 015290/A1/2012 dated 30.11.2012 on the ground that the case of the said P. Paramasivan could not be considered as a precedent for other cases. The Petitioner then filed W.P. No. 17319 of 2013 before this Court challenging the aforesaid order of rejection of his representation and for consequential direction to extend the same benefits including pension. The Writ Court by order dated 27.06.2013 accepted the contentions of the Petitioner and allowed the Writ Petition. Aggrieved thereby, the Respondents have preferred this appeal.

4. We have heard Mr. C. Munusamy, Learned Special Government Pleader appearing on behalf of the Respondents, Mr. G. Elanchezhiyan, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

5. The Learned Special Government Pleader appearing for the Respondents contended that the reliance placed by the Petitioner on the case of the said P. Paramasivan cannot be applicable to him in view of the decision of the Hon'ble Supreme Court of India in Secretary to Government, School Education Department, Chennai -vs- R. Govindaswamy [(2014) 4 SCC 769] in which it has been held that the benefit of regularization is not applicable to part-time temporary employees, which has been followed by the Division Bench of this Court in C. Lakshmi -vs- Government of Tamil Nadu (Order dated 10.07.2014 in W.A. No. 2911 of 2012 etc., batch) and as such, the order under appeal requires to be set aside.

6. The Learned Counsel for the Petitioner strenuously urged that the aforesaid contention made on behalf of the Respondent is mis-conceived, since it is based upon the fallacious premise that the temporary services of the Petitioner as Section Writer was on part-time basis, contrary to the fact

that the engagement of the Petitioner was actually only on full-time basis. It is further highlighted that the services of the Petitioner had already been regularized as Record Clerk with effect from the forenoon of 20.10.2006 as confirmed in order dated 06.02.2008 and what was now sought by the Petitioner was only to take into account his temporary service in the past as Section Writer for the purpose of grant of pensionary benefits. In support of the claim for extending the benefits that have been sought, similarly placed persons have already been extended the benefits that have been already granted to similarly placed persons and the Petitioner cannot be discriminated in granting those benefits, the following orders passed by this Court have been produced:-

- (i) Order dated 19.08.2009 in W.P. No. 23992 of 2008 passed by the Learned Judge as confirmed by the Order dated 29.11.2012 in W.A. No. 1438 of 2010 passed by the Division Bench of this Court and by the Order of the Hon'ble Supreme Court of India in S.L.P. (C) No. 5559 of 2014 dated 05.01.2015.
- (ii) Order dated 26.03.2010 in W.P. No. 39645 of 2004 passed by the Learned Judge as confirmed by the Order dated 05.11.2014 in W.A. No. 2678 of 2010 passed by the Division Bench of this Court.
- (iii) Order dated 12.11.2018 in W.A. (MD) Nos. 466 and 467 of 2018 passed by the Division Bench of this Court.

7. After considering the rival submissions, we find that the submissions made by the Learned Counsel for the Petitioner deserve acceptance. As rightly pointed out by him, the decision of the Hon'ble Supreme Court of India relied by the Learned Special Government Pleader appearing on behalf of the Respondents in Secretary to Government, School Education Department, Chennai -vs- R. Govindaswamy [(2014) 4 SCC 769] relates to denial of the benefit of regularization in respect of part-time employees and there is nothing from the materials produced before this Court to show that the service of the Petitioner as Section Writer were engaged only on part-time basis, particularly when he has already been regularized in the post of Record Clerk with effect from 20.10.2006.

8. In that view of the matter, there is no reason to deny the benefits to the Petitioner, which have been extended to similarly placed persons in respect of whom orders have been passed by this Court as stated earlier and also implemented by the Respondents. However, having regard to the fact that the Petitioner had neither made any representation nor approached the Court for any relief till he retired from service on attaining the age of superannuation on 30.04.2011, it should not be construed to mean as if the same would entitle the Petitioner

to claim any increase in the monetary benefits for the period he had temporarily worked as Section Writer, at this distance of time.

9. We are of the considered view that it would suffice to direct the Respondents to consider the claim of the Petitioner for inclusion of his temporary service as Section Writer for the purpose of counting the qualifying period of service for granting pension as per the relevant Rules, in the light of the decision of the Hon'ble Supreme Court of India in State of Tamil Nadu -vs- Tamil Nadu Registration Department Ministerial Service Association [(2001) 10 SCC 473], which has been followed by the Division Benches of this Court in State of Tamil Nadu -vs- K. Santhanakrishnan (Order dated 05.11.2014 in W.A. No. 2678 of 2010) and S. Kalavathi -vs- State of Tamil Nadu (Order dated 12.11.2018 in W.A. (MD) Nos. 466 and 467 of 2018). The concerned authority shall accordingly pass necessary orders and communicate the decision taken to the Petitioner and file a report of compliance to that effect before the Registrar (Judicial) of this Court by 31.05.2019.

10. In fine, the Writ Appeal is disposed of on the aforesaid terms. No costs. Consequently, the connected Miscellaneous Petition is closed.

vjt

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,
Government School Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Director,
Directorate of Government Examinations,
College Road,
Chennai - 600 006.

3. The Regional Deputy Director of
Government Examinations,
College Road,
Chennai - 600 006.

+1cc to Mr.G.Elancheziyan Advocate, S.R.No.21979

+1cc to the Government Pleader, vide S.R.No.22060

W.A. No. 1532 of 2014

Kak (20/03/2019)



WEB COPY