



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2019

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMARW.P(MD) No.12718 of 2019

Devanesan Samuel

... Petitioner

vs.

1. The State of Tamil Nadu
rep.by the Principal Secretary to Govt.,
School Education Dept.,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Complex,
College Road,
Chennai - 600 006.
3. The Joint Director of School Education,
(Vocational),
O/o.Director of School Education,
DPI Complex,
College Road,
Chennai - 600 006.
4. The District Education Officer,
District Educational Office,
Tirunelveli - 627 001.
5. The Correspondent,
SCHAFFTER Higher Secondary School,
Tirunelveli - 1.
6. The Accountant General,
No.361, Anna Salai,
Chennai - 15.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to calculate 50% of service rendered by the petitioner as double part time vocational instructor from 1978



to 1990 along with regular service for arriving net qualifying service for calculation of pension and to grant all monetary and other service and attendant benefits and arrears.

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For Petitioner : M/s.K.Abiya
For R1 to R4 : Mrs.S.Srimathy
Special Government Pleader
For R6 : Mr.P.Gunasekaran

O R D E R

This writ petition has been filed seeking a direction to the respondents to calculate 50% of service rendered by the petitioner as double part time Vocational Instructor from 1978 to 1990 along with regular service to arrive at net qualifying service for calculation of pension and to grant all monetary and other service and attendant benefits.

2.Heard the learned counsel for the petitioner; the learned Special Government Pleader for the respondents 1 to 4 and the learned Standing Counsel for the sixth respondent.

3.The learned counsel appearing for the petitioner submitted that this Court has already decided the similar issue in W.P(MD)No.16771 of 2013 etc., batch, dated 09.04.2014 and (2019) SCC Online Mad 1201 in W.A.No.964 of 2019, dated 01.04.2019. The relevant portions of the order read as follows:

"10.In the order dated 08.10.2012 in W.A.No.1618 of 2012 preferred against the aforesaid order, the Division Bench of this Court confirming the same, held as follows:

"7.From a mere reading of the order in W.P.No.30003 of 2004, it is clear that this Court has already given a specific finding on facts that the Rural Medical Practitioners are to be treated as employees on regular service working in the rural dispensaries. As such, the earlier services rendered by the Respondent cannot be refused to be taken into account with the G.O.Ms.No.408 dated 25.08.2009 and he cannot be treated differently.

8.It is also pertinent to note that the Government Order gives the benefit to the erstwhile consolidated and daily rated employees who are not in a better position than the Respondent. As rightly held by the learned Judge that when a party gets a right under a judgment,



the said accrued right cannot be denied based upon an artificial classification. Further, this Court on the earlier occasions found that such a classification cannot be sustained in the eye of law. More so, to explain, at the cost of repetition, the very object of G.O.Ms.No.408 dated 25.08.2009 is to give benefits to the employees, who were working earlier on consolidated pay as well as daily rated wages. Therefore, the 50% of the service rendered by the Respondent from 01.07.1972 till 01.10.1984 will have to be taken into account for calculation of pension. We are in total agreement with the findings rendered by the learned single Judge. Therefore, the interference sought to be made into the well considered and merited order passed by the learned single Judge is neither warranted nor called for."

11. In the light of the clear findings in the earlier decisions of this Court referred supra and in the absence of any materials placed before this Court to the contrary, it is not possible to accept the self-serving claim of the Respondents that the services of the Rural Medical Officers like the Petitioner prior to 01.10.1984 were engaged on part time basis. We must also point out here that the Hon'ble Supreme Court of India in State of Uttar Pradesh v. Arvind Kumar Srivastava [(2015) 1 SCC 347] has reiterated that when a particular set of employees have been given relief by the Court, all other identically situated employees should be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. In view of the aforesaid dictum, the petitioner is entitled to the same benefit, which has been granted in respect of similarly placed persons in the decisions referred supra.

12. The order passed by the Writ Court is in consonance with the earlier orders passed by the Division Benches of this Court and we do not find any reason to differ from the same."

4. The learned counsel also submitted that following the judgment of the Division Bench, this Court has passed order in W.P.Nos.33057 and 33058 of 2014, dated 11.02.2019. The relevant portions of the judgment are as follows:-

"3. The learned Government Advocate appearing for the respondents has submitted that following the above Division Bench judgment of this Court, the Government has passed an order in G.O.Ms.No.194 School Education Department, dated 12.09.2018, entitling the said benefit. She also submitted that these writ



petitions have been filed in the year 2014 and as per the Division Bench Judgment of this Court, the relief would cover the writ petitions, pending till 06.04.2018.

4. Admittedly, the petitioners have approached this Court in the year 2014. It is also seen that the petitioners have made representations dated 23.09.2014 to the first respondent in this regard. Hence, the first respondent is directed to consider the representations of the petitioners dated 23.09.2014 in the light of the Division bench judgment of this Court in W.A.Nos.882 of 2017 etc., batch dated 06.04.2018 and also the order passed by the Government in G.O.Ms.No.194 School Education Department dated 12.09.2018, and pass appropriate orders, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of the copy of the order."

The learned counsel appearing for the petitioner prays this Court for passing similar order in this writ petition also, for which, the learned Special Government Pleader for the respondents 1 to 4 has no serious objection.

5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the above order passed by this Court in similar issue, this Court is inclined to pass the following order:

"The first respondent is directed to consider the representation of the petitioner dated 29.03.2019 in the light of the Division Bench Judgment of this Court in W.A.Nos.882 of 2017 etc batch, dated 06.04.2018 and also in the light of G.O.Ms.No.194, School Education Department, dated 12.09.2018 and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order."

6. The Writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar

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To

1. The Principal Secretary to Govt.,
State of Tamil Nadu,
School Education Dept.,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
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Chennai - 600 006.
3. The Joint Director of School Education,
(Vocational),
O/o.Director of School Education,
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District Educational Office,
Tirunelveli - 627 001.
5. The Accountant General,
No.361, Anna Salai,
Chennai - 15.

+1cc to M/S.P.GUNASEKARAN,Advocate, Sr.No.69575

+1cc to M/S.K.ABIYA,Advocate, Sr.No.69377

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No.69630

W.P(MD) No.12718 of 2019
17.06.2019

BUC(26/06/2019) 5P/9C