



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

and

THE HONOURABLE MRS.JUSTICE T.RAVINDRAN

W.A. (MD) No.766 of 2016 against WP(MD)No.2540 of 2012

and

C.M.P. (MD) No.4718 of 2016

1.State of Tamil Nadu

rep.by its Secretary to Government

School Education Department

Fort St.George

Chennai-600 009

2.The Director of Elementary Education

College Road

Chennai-600 006

3.The District Elementary Educational Officer

Tuticorin

... Appellants / Respondents

-vs-

M.Vellaiammal

... Respondent/ Writ Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 17.12.2014, passed in W.P.(MD) No.2540 of 2012, on the file of this Court.

Prayer in WP(MD)No.2540 of 2012

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue of a Writ of Mandamus, directing the 1st respondent to count half of the service rendered by the petitioner as part time vocational instructor for pensionary benefits, if necessary by giving necessary relaxation to enable the petitioner to get pension and to direct the respondents to pay the pension to the petitioner.

For Appellants : Ms.S.Srimathy

Special Government Pleader

For Respondent : Mr.R.Govindaraj

J U D G M E N T

[Judgment of the Court was made by M.DURAI SWAMY, J.]

Challenging the order, dated 17.12.2014, passed in W.P.(MD) No.2540 of 2012, the State has filed the above writ appeal.

2. The respondent herein filed the writ petition in W.P.(MD) No.2540 of 2012 to issue a writ of mandamus directing the first

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appellant to count half of the service rendered by her as part time Vocational Instructor for pensionary benefits, if necessary by giving necessary relaxation to enable her to get pension and to direct the appellants to pay the pension to her.

3. The respondent, who was one of the Vocational Instructors, underwent a training programme for three months and after completion of the training programme, she was appointed as a full time Teacher on 12.09.1995. The respondent worked as full time Teacher and retired from service, on attaining the age of superannuation, on 30.06.2004. However, she was denied pensionary benefits for want of requisite number of qualifying service.

4. The pensionary benefits were denied to the respondent on the ground that she worked as full time Teacher only between 12.09.1995 and 30.06.2004 i.e., for less than ten years, whereas, according to the respondent, 50% of her service as part time Teacher between 10.12.1980 and 11.09.1995 shall be counted along with her service period as full time Teacher for the purpose of calculating the net qualifying service for pensionary benefits and according to the respondent, in the event of the same, she has put in more than ten years of net qualifying service and is eligible to get pensionary benefits.

5. When an identical issue was referred to the Honourable Full Bench in W.A.No.158 of 2016 etc. batch, by Judgment dated 03.12.2019, the Honourable Full Bench has held as follows:

"46. In the light of the above, we answer the reference as follows:-

(i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of service rendered shall be counted for the purpose of conferment of pensionary benefits.



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W.A.(MD) No.766 of 2016

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10(a)(1) of Tamil Nadu State and Subordinate Service Rules and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

6. Ms.S.Srimathy, learned Special Government Pleader appearing for the appellants, fairly submitted that the respondent / writ petitioner is entitled to get pensionary benefits as per Clause (iii) of Paragraph No.46 of the above Judgment of the Honourable Full Bench.

7. As per Clause (iii) of the above Judgment, a government employee, who had rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of the service rendered by him / her shall be counted for the purpose of conferment of pensionary benefits. In the case on hand, the respondent / writ petitioner's case was regularized on 12.09.1995. That being the case, the ratio laid down by the Honourable Full Bench in the above-referred Judgment is squarely applicable to the present case.

8. Following the same, we make it clear that 50% of the service rendered by the respondent / writ petitioner as part time Teacher between 10.12.1980 and 11.09.1995 shall be counted for the purpose of conferment of pensionary benefits. We do not find any ground to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeal is dismissed. The appellants shall comply with the above directions within a period of four months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)



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To

1.The Secretary to Government
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School Education Department
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2.The Director of Elementary Education
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Tuticorin

+1 CC to M/s.R.GOVINDARAJ, Advocate (SR-104769[F]

+1 CC to M/s.SPL.GP (SR-105010[F] dated 13/12/2019)

SMA/03/01/2020/4P/6C

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and

C.M.P.(MD) No.4718 of 2016