BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.07.2019

CORAM

THE HON'BLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD) No.2991 of 2015

S.Mariaselvam ... Petitioner

-vs-

1.The Secretary to Government
School Education Department,
Tamil Nadu Government,
Fort St. George, Chennai.

2.The District Elementary Educational Officer,
Ramanathapuram District,
Ramanathapuram.

3.The Additional Assistant Elementary Educational Officer,
Muthukulathur,
Ramanathapuram District.

4.The Correspondent,
R.C.Middle School,
Kodarenthal, Thirvarur,
Muthukulathur Union,
Ramanathapuram District.

5.The Accountant General
Office of Principal Accountant General,
361, Anna Salai, Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to count 50% service of the Petitioner with effect from 05.07.1963 to 31.05.1981 as Part-time Craft Teacher along with regular Government Service from 01.06.1981 to 30.11.1996 as pensionable service and to direct the respondents to pass appropriate orders thereon and to direct the 5th respondent to sanction eligible pension and all other retirement and pensionary benefits on the basis of the Petitioner's representation dated 04.02.2015 within a time frame that may be stipulated by this Court.

For Petitioner : Mr.R.R.Kannan
For Respondents : Mrs.S.Srimathy
Special Government Pleader
(for R-1 to R-3)
Mr.K.Sudalaiyandi (for R-4)
Mr.P.Gunasekaran (for R-5)

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to count 50% of the service of the writ Petitioner with effect from 05.07.1963 to 31.05.1981 as Part-time Craft Teacher along with regular Government Service from 01.06.1981 to 30.11.1996 as pensionable service and to direct the respondents to pass appropriate orders and to direct the 5th respondent to sanction eligible pension and all other retirement and pensionary benefits on the basis of the Petitioner's representation dated 04.02.2015.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner was appointed as part-time Craft Teacher from 05.07.1963 to 31.05.1981. The writ petitioner rendered the services of 14 years 9 months and 9 days as part-time Craft Teacher. Thereafter, as per the proceeding of the second respondent dated 29.09.1981, the writ petitioner was absorbed as full-time Craft Teacher and thereafter, retired from service under the Voluntary Retirement Scheme with effect from 30.11.1996.

3.The grievances of the writ petitioner is that the services rendered by him as part-time Craft Teacher from 05.07.1963 to 31.05.1981 has not been taken into account for the purpose of calculating the qualifying service for granting of pensionary benefits. In this regard, the writ petitioner has referred the amended Rule 11 (4) of the Tamil Nadu Pension Rules 1978.

4.The learned counsel appearing on behalf of the Accountant General of the Tamil Nadu as well as the learned Special Government Pleader appearing on behalf of the Education Department opposed the contention of the writ petitioner by stating that the writ petitioner was retired from the services under the VR scheme on 30.11.1996 and the writ petition is filed during the year 2015, after a lapse of about 19 years from the date of retirement. Thus, the writ petition is liable to be rejected on the ground of latches. Secondly, it is contended that even as per Section 11(4) of the Tamil Nadu Pension Rules, the writ petitioner is not entitled to count 50% of the services are not falling within the ambit of terms and conditions stipulated in the amended rules.

5.Let us now considered the amended Rule 11(4) of the Tamil Nadu Pension Rules which reads as under:-

> "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."

6.The amended rule 11(4) unambiguously enumerates that half of the honorarium service rendered in the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis, shall be counted for retirement benefits provided the services shall be in a job involving whole time employment.

7.Admittedly the services rendered by the writ petitioner was in the part time craft teacher post. When the writ petitioner himself admitted that she was appointed as part-time Craft Teacher, the amended rule 11(4) of the Tamil Nadu Pension Rules is not applicable with reference to the temporary services rendered by the writ petitioner in the post of part-time Craft Teacher. It is made clear that the writ petitioner is not falling with the ambit of the amended rule 11(4) of the Tamil Pension Rule 1978, the benefit of counting of 50% of the services cannot be granted.

8.Accordingly, this Writ Petition is devoid of merits and stands dismissed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

sj1/NS

To

1.The Secretary to Government
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3.The Additional Assistant Elementary Educational Officer,
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4.The Accountant General
Office of Principal Accountant General,
361, Anna Salai, Chennai.

+1CC TO MR.RR.KANNAN, Advocate Sr. No.74792
+1CC TO MR.P.GUNASEKARAN, Advocate Sr. No.74875
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 74738

W.P.(MD) No.2991 of 2015
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NA(CO)
TR (19.07.2019) 4P 8C