

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :29.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.29527 of 2013

and

M.P.No.1 of 2013

A.Shanthi

... Petitioner

Vs.

1.The Secretary to Government
Department of Tourism, Culture &
Religious Endowments,
Fort st. George,
Chennai -9.

2.The Commissioner of Arts and Culture,
Tamil Valarchi Valagam,
Halls Road,
Egmore, Chennai 600 028.

3.The Principall,
Government Music College,
Tiruvaiyaru, Tanjore District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned condition imposed in Para 5(3) of G.O.Ms.No.88 Tourism and culture (Culture 1-2) Department dated 24.06.2011 issued by the 1st respondent and quash the same and direct the respondents count the period of service from 8.2.1999 as qualifying service for pensionary benefits allot GPF number to the petitioner by including her name in the Old Pension Scheme under Tamil Nadu Pension Rules, 1978.

For Petitioner : Mr.R.Prem Narayan

For Respondents: Mr.A.N.Thambidurai, Spl.G.P.,

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ORDER

The present Writ Petition has been filed by the petitioner, to call for the records in pursuant to the impugned condition imposed in Para 5(3) of G.O.Ms.No.88 Tourism and Culture (Culture 1-2) Department dated 24.06.2011 issued by the 1st respondent and quash the same and direct the respondents to count the period of service from 8.2.1999 as qualifying service for pensionary benefits allot GPF number to the petitioner by including her name in the Old Pension Scheme under Tamil Nadu Pension Rules, 1978.

2. When the matter is taken up today for hearing, learned counsel for the petitioner submitted that the petitioner was initially appointed as English Lecturer on contract basis on consolidated pay on 8.2.1999 and thereafter her appointment was regularised in the year 2011, and thereafter she made representation to regularise her services from the date of her initial appointment for pensionary purpose, however her services were regularised only after 24.06.2011, from the date of the G.O, and her service were not counted for the purpose of pension from her initial date of appointment, which made her to file the present writ petition.

3. On the above contention, this Court heard the learned Additional Government Pleader appearing for the respondents, who submitted a detailed counter has been filed on behalf of the respondents, denied the averments made in the affidavit filed by the petitioner.

4. Similar issue, as raised in the present writ petition, fell for consideration before the Hon'ble Supreme Court in Union of India & Ors. v. A.S. Pillai & Ors., (2010) 13 SCC 448, relating to regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

5. Yet again, in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, the Hon'ble Apex Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay, the

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relevant portion of which is extracted hereunder :

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

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(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

(Emphasis added)

8. Similar issue was also considered by the Division Bench of this Court in W.A.No.17/2018 dated 3/12/2019, reported in 2019 (6) CTC 705 and the Division Bench negatived the stand of the petitioner therein for grant of regularisation in consonance with the orders of the Supreme Court above.

9. The present writ petition is squarely covered by clauses (iv) and (v) of the decision of the Hon'ble Apex Court. The relief sought for by the petitioner in the present case being identical to the one as above, the same cannot be granted. Accordingly, the present writ petition is dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Secretary to Government
Department of Tourism, Culture &
Religious Endowments,
Fort St. George,
Chennai -9.

2. The Commissioner of Arts and Culture,
Tamil Valarchi Valagam,
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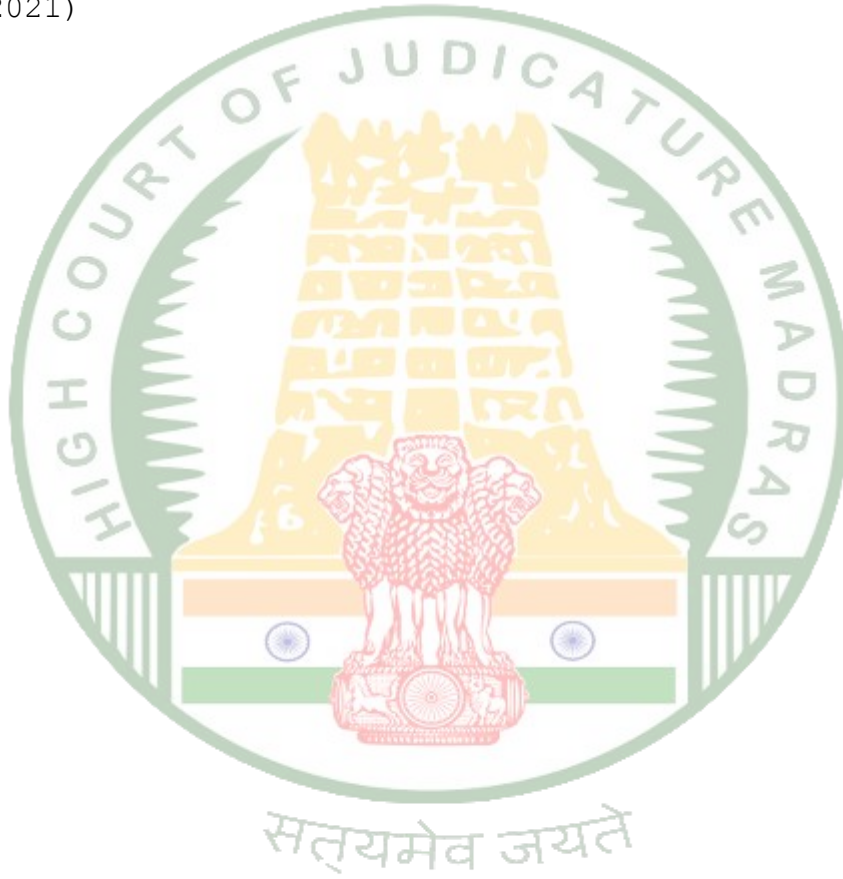
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3.The Principal,
Government Music College,
Tiruvaiyaru, Tanjore District.

+1cc to M/s.Prem Narayanan, Advocate SR.35290
+1cc to the Government Pleader SR.35207

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KJ(CO)
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