



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) Nos.4357 & 4362 of 2020 and

WMP(MD) Nos.3664, 3666, 3671 & 3669 of 2020

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G.Antony

..Petitioner in W.P. (MD) No.4357/2020

M.Jelestin Paul Raj

..Petitioner in W.P. (MD) No.4362/2020

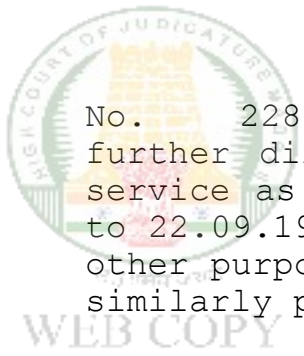
Vs

1. The State of Tamilnadu,
Rep by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.
4. The District Educational Officer,
Thuckalay - 629 175,
Kanyakumari District.
5. The Correspondent,
St.Joseph's Higher Secondary School,
Asaripallam - 629 201,
Kanyakumari District.

..Respondents in both WPs.

PRAYER in W.P. (MD) No.4357/2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent Secretary in Letter No.25337/PAKA6(1)/2019-3, dated 13.11.2019, quash the same and further direct the respondents to reckon the petitioner's half of service as Vocational Instructor (Single part time) from 18.08.1986 to 31.01.1992 and from 27.08.2001 to 12.11.2001 ie 2 years and 10 months for disbursement of pension and other purpose along with the petitioners regular service on par with similarly placed person.

PRAYER in W.P. (MD) No. 4362/2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent Secretary in Letter



No. 22818/PAKA6(1)/2019-1 dated 13.11.2019, quash the same and further direct the respondents to reckon the petitioner's half of service as Vocational Instructor (Single part time) from 18.08.1986 to 22.09.1994 ie 4 years and 1 month for disbursement of pension and other purpose along with the petitioners regular service on par with similarly placed person.

For Petitioner : M/s.S.Xavier Rajini
(In both WPs.)
For Respondents 1 to 4 : Mr.K.Mu.Muthu
(In both WPs.) Additional Government Pleader

C O M M O N O R D E R

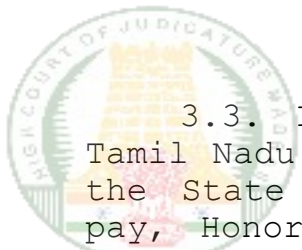
These Writ Petitions are filed to call for the records relating to the impugned proceedings issued by the 1st respondent Secretary and quash the same and further to direct the respondents to reckon the petitioners' half of service as Vocational Instructor (Single part time), for disbursement of pension on par with similarly placed persons.

2. Mr.K.Mu.Muthu, learned Additional Government Pleader takes notice for the respondents. By consent of both parties, these Writ Petitions are taken up for final disposal at the stage of admission itself.

3. The case of the petitioners is that initially they were appointed as Vocational Instructor(Single Part Time) in the 5th respondent school on 18.08.1986 and the same was approved by the CEO. According to the petitioner in W.P.(MD)No.4357 of 2020 , the 5th respondent School has not permitted him to discharge his duties as Vocational Instructor (Single part time) w.e.f.01.02.1992 and on obtaining the order from Subordinate Court, he was permitted to discharge his duties from 27.08.2001. On 13.11.2001, he was promoted as Vocational Instructor Grade -I, which was approved by the CEO.

3.1. According to the petitioner in W.P.(MD)No.4362 of 2020, he was subsequently promoted as Vocational Instructor Grade -I. PG Assistant in English and Headmaster and all the promotions given to him were approved by the concerned CEO and DEO.

3.2. Since both the petitioners are going to retire on 31.05.2021 and 31.05.2020 respectively, they have to submit their pension proposals to the respondents 2 to 4 and the officials of the respondents 3 & 4 instructed that the service period from 18.08.1986 to 31.01.1992 and 27.08.2001 to 12.11.2001 of the petitioner in W.P. (MD)No.4357 of 2020 and the service period from 18.08.1986 to 22.09.1994 of the petitioner in W.P.(MD)No.4362 of 2020 should not be reckoned for pension and other purposes.



3.3. It is further submitted that as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, the half of the service rendered in the State Government in Non Provincialised Service, consolidated pay, Honorarium and daily wage has to be calculated for pension purpose. It is further submitted that as per G.O.Ms.No.194(School Education) PaKa 7-1) Department) dated 12.09.2018, the half of service period as Single Part Time Vocational Instructors/Double Part Time Vocational Instructors can be reckoned for pension and other purpose along with their regular service. For the representation given by the petitioners, the 1st respondent herein have issued impugned Letter Nos.25337/PAKA6(1)/2019-3 and 22818/PAKA6(1)/2019-1 dated 13.11.2019, stating that the benefit of reckoning half of service may extend to the person, who approached this Court only upto 06.04.2018. Challenging the said letter, the petitioners are before this Court, with these present Writ Petitions.

4. The learned counsel for the petitioners submitted that the issue involved in these Writ Petitions was covered by the order passed by this Court in W.P.(MD) No.1910/2016. Hence, he prays this Court for the same relief to the petitioners also.

5. The learned Additional Government Pleader appearing for the respondents has also not disputed the submission made by the learned counsel for the petitioner that the matter is covered by the order of this Court.

6. For the sake of better appreciation and clarity, the relevant portion of the order in W.P.(MD) No.1910/2016 is extracted as under:-

14. When I had an occasion to consider the similar issue in W.P.(MD) Nos.256 and 257 of 2015 in the case of P.Natarajan and another Vs.the State of Tamil Nadu represented by its Secretary, School Education Department and others, I have considered the said decision of the learned Judge referred to above, in the teeth of the amended Rule 11(4) of the Rules, 1978, which reads thus:-

"In the said Rules in Rule 11, after sub-rule (3), the following sub-rule shall be added namely:-

- 1. 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*



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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-provincilised 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."

.....18.It is an admitted fact that these two petitioners were working as part-time Vocational Instructors for longer years. Only after several years they were brought under full-time Vocational Instructors by regularising their services. Though both the petitioners are getting pensions, since their past 50% service has not been taken into account they are getting a very meagre pension. Considering these aspects, legislators themselves though it fit to make amendment in the Rule. That is why amendment in Rule 11(4) came into the statutory book. The normal rule of interpretation of statutory rule is to be given effect when specific rule was brought in by way of beneficial rule. Rule 11(4) of the Tamil Nadu Pension Rules has been brought in by way of beneficial rule for the benefit of those who have rendered unblemished service for several years and going without getting any pensionary benefits. Therefore, the



said rule cannot be subjected to a differed interpretation as has been sought for by the respondents side. Therefore, this Court is of the view that Rule 11(4) of the Tamil Nadu Pension Rules certainly would give leverage to the petitioners ie. 50% of their past service, when they were working as part-time Vocational Instructors, shall be taken into account for the purpose of pensionary benefits

19. For all the reasons and discussions made above, this Court is of the firm view that the petitioners succeed in these Writ Petitions and they are entitled to the Mandamus as sought for in these Writ Petitions.

7 .Following the same, the impugned letters issued by the first respondent are hereby quashed. There shall be a direction to the respondents to take into consideration 50% of the past services of the petitioners, when they were working as part time Vocational Instructors along with their regular service, for disbursement of pensionary benefits.

8. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

vrn

To

1. The Secretary to Government
Department of School Education,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.



4. The District Educational Officer,
Thuckalay - 629 175,
Kanyakumari District.

+2 CC to Mr.S.XAVIER RAJINI, Advocate (SR-10657,10658[F]dated
09/03/2020)

+1 CC to SPL.GP (SR-10769,10781[F] dated 10/03/2020)

Common order in
W.P. (MD) Nos.4357 & 4362 of 2020 and
WMP(MD) Nos.3664, 3666,3671 & 3669 of 2020
09.03.2020

VB(03.06.2020) 6P 8C