



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.12579 of 2020
(Through Video Conferencing)

S.Natarajan

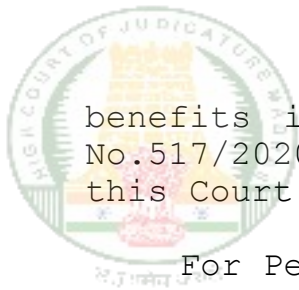
... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Department of School Education,
Fort St. George, Chennai.
- 2.The Director of School Education,
O/o. The Director of School Education
DPI Campus, College Road, Chennai.
- 3.The Joint Director of School Education (Vocational)
O/o. the Joint Director of School Education (Vocational)
DPI Campus, College Road, Chennai.
- 4.The Chief Educational Officer,
O/o. the Chief Educational Officer
Tuticorin, Tuticorin District.
- 5.The Principal Accountant General (A&E)
O/o. the Principal Accountant General (A&E)
361 Anna Salai, Chennai-18
- 6.The District Educational officer,
O/o. the District Educational Office,
Kovilpatti, Tuticorin District.
- 7.The Secretary
Nadar Higher Secondary School
Kovilpatti
Tuticorin District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to refix the petitioner's pension by including the 50% of the service rendered by the petitioner as Double Part Time Vocational Instructor in consolidated pay along with regular service ie. from 08.01.1985 to 31.05.1987 with all other consequential



benefits in the light of the Judgment of this Court in WA(MD) No.517/2020 dated 13.08.2020 within the time period stipulated by this Court.

For Petitioners :Mr.T.Aswin Rajasimman

For Respondents :Ms.S.Srimathy

Special Government Pleader for R1 to R4 and R6

Mr.P.Gunasekaran for R5

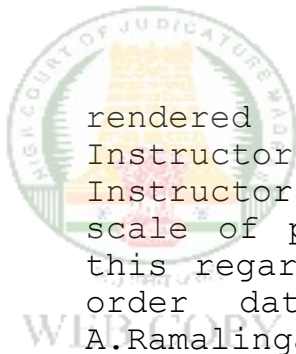
ORDER

The prayer in the writ petition is for issuance of a Writ of Mandamus to direct the respondents to refix the petitioner's pension by including the 50% of the service rendered by the petitioner as Double Part Time Vocational Instructor in consolidated pay along with regular service ie., from 08.01.1985 to 31.05.1987 with all other consequential benefits in the light of the Judgment of this Court in WA(MD) No.517/2020 dated 13.08.2020.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 to 4 and 6 and the learned standing counsel for the 5th respondent. In view of the order going to be passed, notice to the 7th respondent is dispensed with.

3. The petitioner was appointed as double part time Vocational Instructor at Nadar Higher Secondary School, Pandavarmangalam, Kovilpatti, Tuticorin District on 08.01.1985 and he continued in the said post till 31.05.1987. From 31.05.1987 to 20.03.1990, he was temporarily employed in the post of B.T.Assistant at Lakshmi Mill Higher Secondary School and thereafter, the petitioner was appointed in the post of B.T. Assistant in Science at Nadar Higher Secondary School, Kovilpatti, Tuticorin District and the same was approved on 10.07.1992 by the then District Educational Officer of Kovilpatti. Thereafter, the petitioner retired from service on 31.05.2016. The petitioner's services from 08.01.1985 to 31.05.1987 was not calculated, while calculating the pensionable service period, though the petitioner is entitled to calculate 50% of the service rendered by the petitioner in the post of Vocational instructor along with the regular service for calculating the pension. In this context, the petitioner has approached this Court by filing this writ petition.

4. Heard Mr.T.Aswin Rajasimman, learned counsel for the petitioner, who would submit that, the issue raised in the writ petition is no more res integra, as in number of cases, this Court has passed orders, where directions were issued to the department, ie., Education Department to calculate the 50% of the service



rendered by the Teachers, who are appointed as Vocational Instructors either single part time or double part time Vocational Instructors and thereafter, brought to the regular service with time scale of pay for the purpose of total pensionable service and in this regard, the learned counsel for the petitioner relied upon my order dated 09.07.2018 made in W.P.(MD) No.14365/2020 in A.Ramalingam v. The State of Tamil Nadu, Rep. by its Secretary. He would also submit that, the said order, having been appealed by the department, in W.A.(MD) No.517/2020, where a Division Bench, by order dated 13.08.2020, has dismissed the writ appeal with one modification to state that, those who approached the Court belatedly would not be entitled to seek interest on the settlement of the retirement and terminal benefits. The relevant portion of the judgment is extracted hereunder:

"10. Admittedly, the fact of the case would disclose that the petitioner had approached the Court with a delay of three months and in the light of answering of the references in paragraph No.45 of the above cited Full Bench judgment **[(2019) 6 CTC 705]** (*supra*), this Court finds no merit in this Writ Appeal. However, it is made clear that if at all any future claim is made by any persons who are similarly placed like that of the writ petitioners who had worked as Single/Double Part Time Vocational Instructors, they are not entitled for any interest on the settlement of the retiral/terminal benefits."

5. In view of this settled legal position, the learned counsel for the petitioner would submit that, the 50% of the past services as past time Vocational Instructor rendered by the petitioner for the period mentioned above shall also be taken into account for the purpose of total pensionable services to be calculated and accordingly, the revision in pension of the petitioner has to be made and arrears have to be paid.

6. Heard the learned Special Government Pleader for the respondents 1 to 4 and 6 and the learned standing counsel for the 5th respondent.

7. The learned standing counsel for the fifth respondent would point out that, though the law has been settled in this regard, as has been rightly pointed out by the learned counsel for the petitioner, on factual matrix, whether the period from 08.01.1985 to 31.05.1987, which is in question, the whether the petitioner worked in a recognized aided private school or not has not been clearly spelt out in the averments made in the affidavit in this regard. Therefore, he submitted that, only those who worked in the aided recognized school alone would be entitled to calculate the 50% of the service rendered by them as Vocational Instructor and in this regard, that issue has to be clarified and accordingly, decision can be made by the respondents.



8. I have considered the said submissions made by the learned counsel for the parties and have perused the materials available on record.

9. As has been pointed out by the learned counsel for the petitioner, the issue raised in the writ petition is no more *res integra* as number of orders have been passed by this Court repeatedly and the order referred to by the learned counsel for the petitioner, where I had an occasion to consider the issue in a batch of Writ Petitions dated 09.07.2018 in W.P.(MD) Nos.14365/2014 etc. batch , where I have passed the following order:

"42. In view of the settled legal position, as has been declared in all these decisions, all these petitioners, even though filed writ petitions recently and some of them might have filed after 06.04.2018 i.e., the date, on which the aforesaid Division Bench Judgment had been rendered by this Court, in the opinion of this Court, are entitled to get the similar benefits, as that of the benefits which have already been given to the number of similarly placed employees / Teachers.

43. Therefore, the observations made in the aforesaid judgment made in W.A.No.882 of 2017 and etc., batch, as has been heavily relied upon by the learned Special Government Pleader in this regard, would no way advance the case of the respondents and that no way be helpful to the respondents to deny the lawful right of the petitioners, which have already been accrued and has been continuously accruing every month because the pensionary benefits are to be disbursed till the death of the employee / death of the legal heirs. Therefore, the said objection raised by the respondents are liable to be rejected, accordingly, they are rejected.

44. In view of the aforesaid judgments, wherein the issue as has been put forth by the learned counsel for the petitioners, having been dealt with and decided more than once by the Writ Court and the same has been confirmed by the Division Bench of this Court more than once and in cases, where SLP preferred before the Hon'ble Supreme Court, wherein also the view taken by this Court has been confirmed, all these petitioners are entitled to, for calculating 50% of the past services, rendered by each of the petitioners in the respective employment before they got absorbed by bringing them under the time scale of pay irrespective of the years of service, for the purpose of pensionary benefits. Hence, these petitioners also shall be entitled to get the same benefits and accordingly, all



these writ petitions are fit to succeed.

45. In the result, these writ petitions are allowed and the respective respondents in each of the writ petitions are hereby directed to take into account the 50% of the past services rendered by each of the petitioners either as Vocational Instructors or any other employment either as a Part Time / Full time / adhoc / temporary / daily wages employees before they brought in under the regular time scale of pay on permanent basis or absorption and by calculating the said 50% of their past service, pension eligibility and pension enhancement or difference of pay and pension shall be calculated and disbursed in favour of the respective petitioners. After fixing the revised pension by taking into account the past 50% services, the revised pension arrears shall be calculated and to be disbursed to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioners shall continue to receive the revised pension.

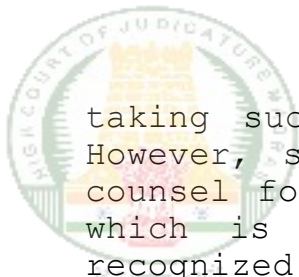
46. Insofar as W.P.(MD)Nos.6065 of 2016 and 6789 of 2017 are concerned, the petitioners since having not been paid any pension so far, the aforesaid exercise shall be undertaken by the respective respondents in that writ petitions also and the entire arrears of pension shall be disbursed to the said petitioners within the said time frame indicated above.

47. Insofar as W.P.(MD)No.11896 of 2018 is concerned, since the petitioner is the widow of the employee, the pensionary benefits shall be calculated, accordingly, as indicated, and arrears till the death of the petitioner's husband shall be calculated and thereafter, the family pension arrears shall be calculated and all the arrears shall be disbursed to the petitioner i.e., the widow of the employee, within the period of twelve weeks, from the date of receipt of a copy of this order.

48. With these directions all these writ petitions are allowed as indicated above. No costs."

10. The said order having been appealed to the Division Bench, where also, by order, dated 13.08.2020 a Division Bench of this Court upheld the said order except one modification with regard to the entitlement of the interest as stated in Paragraph 10 of the Division Bench extracted hereinabove.

11. Therefore, the entitlement of the petitioner to calculate the 50% of the service rendered by him between 08.01.1985 and 31.05.1987 is concerned, absolutely, there is no impediment for



taking such period for the purpose of total pensionable period. However, since a doubt has arisen as pointed out by the learned counsel for the fifth respondent that, whether during that period, which is in question, the petitioner had worked in an aided recognized school, though the same has been clarified by the learned counsel for the petitioner that, the petitioner worked in the aided recognized school alone, that aspect can once again be considered and verified by the respondents before passing the order. Only after satisfying that the petitioner had worked during the relevant period only in the recognized aided school, the final order can be passed.

12. In that view of the matter, this Writ Petition is disposed of with the following order:

"the respondents are hereby directed to consider the representation submitted by the petitioner dated 15.09.2020 and accordingly, decide the same by extending the benefit of calculating 50% of the past services rendered by him before he brought into regular time scale of pay from the date of his original appointment for the purpose of total pensionable service and accordingly, calculate the revised pension and pay the same including arrears and continue to pay the revised pension till his entitlement and the needful, as indicated above, shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order."

13. With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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



2.The Director of School Education,
O/o. The Director of School Education
DPI Campus, College Road, Chennai.

3.The Joint Director of School Education (Vocational)
O/o. the Joint Director of School Education (Vocational)
DPI Campus, College Road, Chennai.

4.The Chief Educational Officer,
O/o. the Chief Educational Officer
Tuticorin, Tuticorin District.

5.The Principal Accountant General (A&E)
O/o. the Principal Accountant General (A&E)
361 Anna Salai, Chennai-18

6.The District Educational officer,
O/o. the District Educational Office,
Kovilpatti, Tuticorin District.

+1cc to Mr.T.Lajapathi Ray, Advocate Sr.No.18313
+1cc to Special Government Pleader Sr.No.18219

W. P. (MD) No.12579 of 2020

25.09.2020

SSS (CO)

NR (19/01/2020) 7P : 9C