



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.12984 of 2020

and

W.M.P. (MD) .NO.10938 of 2020

(Through Video Conferencing)

A.Eliot Eliazer

... Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai.

2.The Joint Director (Vocational)
College Road, Chennai.

3.The Chief Educational Officer,
Kanyakumari District at Nagercoil
Kanyakumari.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

5.The Correspondent
Christucoil L.M.S.Higher Secondary School
Palliyadi
Kanyakumari 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 count half of the service rendered by the petitioner in the post of Part Time Vocational Instructor during the period 15.07.1982 to 04.10.1996, viz., 7 years, 2 months and 10 days together with the full time service rendered in the said posts during the period 05.10.1996 to 28.02.2003 viz., 6 years 3 months and 23 days for the purpose of releasing the pension and other consequential benefits w.e.f. 01.03.2003 with interest.

For Petitioners :Mr.K.Ragatheeshkumar for
M/s.Isaac Chambers

For Respondents :Ms.A.Thiyagarajan for R1 to R3
Government Advocate



ORDER

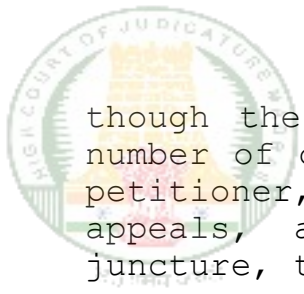
The prayer in the writ petition is for issuance of a Writ of Mandamus to direct the respondents to count half of the service rendered by the petitioner in the post of Part Time Vocational Instructor during the period 15.07.1982 to 04.10.1996, viz., 7 years, 2 months and 10 days together with the full time service rendered in the said posts during the period 05.10.1996 to 28.02.2003 viz., 6 years 3 months and 23 days for the purpose of releasing the pension and other consequential benefits w.e.f. 01.03.2003 with interest.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 3. In view of the order going to be passed, notice to the 4th respondent is dispensed with.

3.The petitioner was appointed as part-time Vocational Instructor in the year 1982 in the fourth respondent School. He had been working as part-time Vocational Instructors till he has been brought under regular time scale of pay with effect from 05.10.1996. After he has been brought under regular time scale of pay, he had been working as such for several years and he retired on 28.02.2003 on superannuation and he is getting pension. In this context, it is the grievance of the petitioner that, for the purpose of retiral and pensionary benefits, the services rendered by him from the date he has been brought under regular time scale of pay till his date of superannuation alone was taken into account. However, his past services rendered prior to he was brought under regular time scale of pay from the date of his original appointment was not at all taken into account for calculating total pensionable services.

4.In this regard, it is the submission of the learned counsel appearing for the petitioner that, the issue has been decided in number of cases at various point of time by this Court and as against the orders passed by the Writ Court, intra Court appeals were filed by the Government, which also went against them and ultimately, the issue has been settled in subsequent SLPs filed by the State Government. Therefore, the learned counsel appearing for the petitioner would submit that, the benefit of calculating the past services, at least 50% of the past services, rendered in any other service of similar nature from the date of original appointment till he was brought under regular time scale of pay, can also be taken into account and such benefit to be extended to the petitioner also, accordingly total pensionable service shall be reviewed and accordingly revised pension shall be calculated and be paid to the petitioner.

5.I have heard Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents 1, 2 and 3, who would submit that,



though the issue raised in the writ petition has been decided in number of cases as claimed by the learned counsel appearing for the petitioner, still some of the cases, where the department filed appeals, are pending before this Court. Therefore, at this juncture, the request of the petitioner cannot be considered.

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6.I have considered the submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

7.As has been rightly pointed by the learned counsel appearing for the petitioner, the issue raised in the writ petition is no more res-integra as in many number of cases, the issue has repeatedly been decided. In this case, this Court had an occasion to consider a batch of writ petitions in W.P.(MD) No.14365 of 2014 and etc. batch, where, this Court passed a detailed order on 09.07.2018. The operative portion of the order reads thus:

"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



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.

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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."



8.As against the said order, the State preferred appeal in W.A. (MD) No.517 of 2020, which was also decided by a Division Bench of this Court on 13.08.2020, where the Division Bench has passed the following order:

"8. During the course of arguments, the attention of this Court was also invited to the decision rendered by a Full Bench of this Court in **Government of Tamil Nadu, Represented by its Secretary to Government, Public Works Department and others v. R.Kaliyamoorthy**, reported in (2019) 6 CTC 705, wherein, one of the issues is relating to the counting of 50% of the service for the purpose of terminal benefits, in the light of the proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 and in paragraph 45, answered the references as follows:

"45. 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 regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 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.



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(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."

9. No doubt, the writ petitioner had approached the Court with a few months delay and it is not in dispute that but for the fixation of cut-off date, he would have been entitled to the benefits of service rendered by him as a Double Part Time Vocational Instructor. The learned Judge in the impugned common order had also referred to the above cited common judgment dated 06.04.2018, made in W.A.No.882 of 2017 etc., and having noted the fact that persons similarly placed have been granted the benefits and also taking note of various pronouncements of the Hon'ble Supreme Court of India, had held that the writ petitioners are entitled to such benefits.

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."

9. Therefore, the issue has already been concluded and very recently also, the order of the Writ Court has been confirmed by the division Bench. Therefore, no exemption can be sought for by the respondents to state that, some of the appeals filed by the State against the order passed by the Writ Court are pending. The only modification made by the Division Bench in W.A.(MD) No.517 of 2020 cited supra, is that pensioner like the petitioner, who come to the Court subsequent to the particular cut off date, as decided by the Division Bench, would not be entitled to seek any interest for the belated payment of revised pensionary benefits.

10. Except the said rider, in all other aspects, the order passed by the Writ Court, since having been considered by the Division Bench, in the latest judgment referred to above, this Court



has no hesitation to hold that the petitioner is entitled to get the relief he sought for.

11. In the result, this writ petition is disposed of by the following order:

"the respondents are hereby directed to consider the representation submitted by the petitioner dated 30.01.2020 and accordingly, decide the same by extending the benefit of calculating 50% of the past services rendered by the petitioner before he was 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."

12. With the above direction, the writ petition is disposed of No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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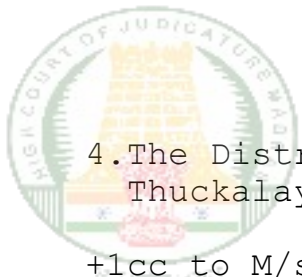
Sub Assistant Registrar(CS)

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 Director of School Education,
College Road, Chennai.
2. The Joint Director (Vocational)
College Road, Chennai.
3. The Chief Educational Officer,
Kanyakumari District at Nagercoil
Kanyakumari.



4.The District Educational Officer,
Thuckalay, Kanyakumari District.

+1cc to M/s.Isaac Chambers, Advocate Sr.No.18441

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W.P. (MD) No.12984 of 2020

29.09.2020

MJ (CO)

NR (18/01/2020) 8P : 6C