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W.A.(MD)No.1082 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2020

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A (MD)No.1082 of 2019

- 1.The State of Tamil Nadu,
represented by its Secretary,
School Education Department,
Fort St. George, Chennai - 9.
- 2.The Joint Director (Vocational) of School Education,
College Road,
Chennai - 6.
3. The District Educational Officer,
Uthamapalayam, Theni District. ... Appellants/Respondents
Vs.

N.Muthuvijayan

.. Respondent/ Writ Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order passed by this Court in W.P(MD)No.12456 of 2018, dated 09.07.2018.

Prayer in WP(MD). 12456/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus direct the respondents to take the 50% of the part time service rendered by the petitioner ie.From 08.06.1981 to 31.07.2016 along with the regulars service for the pension benefits i.e., for the period of 32 years 2 months and 4 days based on the judgment dated 09.04.2014 passed in WP.No.16771 of 2013

For Appellants : Mrs.S.Srimathy
Special Government Pleader

For Respondents : Mr.R.Saravanan

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JUDGMENT

(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**)

The official respondents in W.P(MD)No.12456 of 2018 are the appellants and aggrieved by the disposal of a batch of writ

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petitions, including the writ petition filed by the first respondent/writ petitioner with certain directions, vide common order, dated 09.07.2018, the present Writ Appeal has been filed.

2. The respondent/writ petitioner was temporarily appointed as a Part Time Vocational Instructor on 08.06.1981 and thereafter, on 01.04.1990, he was regularised on the very same post in Z.K.M. Higher Secondary School, Bodinayakanoor and he attained superannuation on 31.07.2016.

3. The primordial grievance expressed by the respondent/writ petitioner is that though the Government had chosen to extend the benefit in respect of Part Time Panchayat Clerks in terms of G.O.Ms.No.39, Rural Development Department, dated 13.06.2011, similar benefits cannot be denied to the Part Time Vocational Instructors by taking the stand that said G.O. is applicable only to the Part Time Panchayat Clerks and not to the Vocational Instructors and in this regard, he has submitted a detailed representation, dated 25.05.2018 for taking 50% of the Part Time services rendered by him between 08.06.1981 and 31.07.2016, along with the regular service for pensionary benefits and since it has not been disposed of, the respondent/writ petitioner filed the writ petition in W.P. (MD).No.12456 of 2018, for issuance of a Writ of Mandamus praying for appropriate direction, directing the official respondents to take 50% of the Part Time service rendered by him between 08.06.1981 and 31.07.2016 and along with the regular service for pensionary benefits.

4. The learned Single Judge has taken up a batch of writ petitions in respect of persons similarly placed and the primordial objection put forth on behalf of the Education Department is that the Division Bench of this Court, vide common judgment, dated 06.04.2018 in W.A.Nos.882 of 2017, etc., batch, [**The Government of Tamil Nadu, rep. by its Secretary to Government, School Education Department, Fort St. George, Chennai - 600 009 and others v. K.Pachaiyappan**], fixed the cut-off date as 06.04.2018 and since the writ petitioner and other persons similarly placed are the fence-sitters, they cannot be jumped into the fray, claiming similar benefits. In some of the cases, it also took a view on delay and laches.

5. The learned Single Judge has considered the said aspect in paragraph Nos.19 and 26, of the impugned common order dated 09.07.2018, and has observed as under:-

"19. Further, it is a settled preposition of law that, in service matters, if the similarly placed persons, who are entitled to get the benefit under law, having been denied the benefit, even though in this regard already a decision has been rendered by the Court of law and the same is implemented, the very same relief shall also be



extended to all similarly placed persons irrespective of the fact, whether they approached the Court or not, if the law declared by the Court is judgment in rem.

26. Insofar as the principle that, seeking redressal against the denial of service benefits, for which, the employee is entitled to, and if it is the continuing cause of action, the question of limitation/delay does not arise in those cases, where the employee seek for such benefit, which has already been given to similarly placed persons, Courts have taken the view in favour of the employees."

Ultimately, in paragraph Nos.44 and 45, the learned Single Judge has reached the conclusion, as follows:-

"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 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 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.



6. It is also fairly brought to the knowledge of this Court that a batch of writ petitions filed by the official respondents challenging the impugned common order also came to be dismissed vide judgment in W.A(MD)No.517 of 2020, dated 13.08.2020 [**The State of Tamil Nadu, represented by its Secretary, School Education Department, Fort St. George, Chennai and others v. S.Durairaj and another**]. It is also a well settled position of law that in respect of persons similarly placed, the benefit conferred should also to be extended without driving them to approach this Court individually, as it may lead to unnecessary docket explosion.

7. The learned Single Judge in the impugned common order had exhaustively analysed the factual aspects of the earlier orders/judgments covering the said issue and also specifically dealt with the issue relating to the cut-off date as well as delay and laches and rightly reached the conclusion to dispose of all the writ petitions with certain directions.

8. This Court, on an independent application of mind to the entire materials placed on record, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge for disposing of the writ petitions with certain directions.

9. In the result, this **Writ Appeal is dismissed**, confirming the order, dated 09.07.2018, passed in W.P(MD)No.12456 of 2018. The appellants/official respondents are directed to comply with the directions given in the order dated 09.07.2018, as confirmed in this Writ Appeal within a period of **ten weeks** from the date of receipt of a copy of this order and communicate the decision taken to the respondent/writ petitioner. However, it is made clear that the respondent/writ petitioner is not entitled to any interest as to the settlement/belated settlement of the retiral/terminal/consequential benefits. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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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 Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai.

2.The Joint Director (Vocational) of School Education,
College Road,
Chennai - 6.

3. The District Educational Officer,
Uthamapalayam, Theni District.

+1 CC to Mr.R. SARAIVANAN, Advocate (SR-15317[F] dated 28/08/2020)

W.A(MD)No.1082 of 2019

27.08.2020

VB (25.09.2020) 5P 5C