

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2754 of 2021

N.Sampath

... Petitioner

-vs-

1. The State of Tamil Nadu,
Through its Secretary,
Department of School Education,
Fort St. George, Chennai - 9.
 2. The Director of School Education,
D.P.I.Campus,
College Road, Chennai.
 3. The Director of Personnel,
D.P.I.Campus,
College Road, Chennai.
 4. The Joint Director of School Education,
(Vocational), College Road, Chennai - 6.
 5. The Accountant General
(Accounts and Establishments),
Accountant General Department,
Chennai - 625 018.
 6. The Chief Education Officer,
Salem District.
 7. The Headmaster,
Government Higher Secondary School,
Mettur dam, Salem District.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 16.12.2020 in the light of the full bench judgment made in W.A.Nos.158, etc, batch, (Government of Tamil Nadu and others Vs. R.Kaliyamoorthy dated 03.12.2019, reported in (2019) 6 CTC 705, and re-fix the petitioner's pension by including 50% of service rendered by the petitioner as Double Part Time Vocational Teacher from 09.07.1979 to 04.10.1996 within the time period stipulated by this Court.

For Petitioner : Mr.S.Kousik

For R1 to R4 & : Mr.P.Raja,
R6 and R7 Government Advocate

For R5 : Mr.V.Vijayshankar

O R D E R

The petitioner seeks a direction to the respondents to consider the representation of the petitioner dated 16.12.2020 in the light of the full bench judgment made in W.A.Nos.158, etc, batch, (Government of Tamil Nadu and others Vs. R.Kaliyamoorthy dated 03.12.2019, reported in (2019) 6 CTC 705, and re-fix the petitioner's pension by including 50% of service rendered by the petitioner as Double Part Time Vocational Teacher from 09.07.1979 to 04.10.1996 within the time period stipulated by this Court.

2. By consent, this writ petition is taken up for final disposal at the admission stage. Mr.P.Raja, learned Government Advocate takes notice for R1 to R4 and R6 and R7 and Mr.V.Vijayshankar, learned Standing Counsel takes notice for R5.

3. It is the case of the petitioner that he has joined service as Double Part Time Vocational Teacher in Government Higher Secondary School, Mettur as early as on 09.07.1979. His appointment was approved by the Chief Educational Officer by proceedings dated 22.09.1979 and his service was regularized in a time scale of pay with effect from 05.10.1996. On 05.10.1996, the petitioner was given Selection grand of pay. The grievance of the petitioner is that his 50% of service as Part Time Vocational Teacher for the period between 09.07.1979 to 04.10.1996 has not been taken into account while calculating the pensionable service.

4. The learned counsel relied upon the decision of the Full Bench of this Court in a batch of writ appeals and writ petitions i.e., in W.A.No.158 of 2016 etc batch, dated 03.12.2019 wherein this Court held that if the service of an employee has been regularized before 01.04.2003 only, his half of past service will be counted for the purpose of determination of qualifying service for pension. The relevant paragraph is extracted hereunder:

"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.

(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."

5. Admittedly, in this case, the service of the petitioner has been regularized in the year 1996 itself. Hence, he approached the respondents to extend the said benefit to this petitioner by way of representation, dated 16.12.2020. Since there is no response on the side of the respondents, the petitioner has preferred the writ petition with the above said prayer.

6. In view of the limited prayer sought for by the petitioner, this Court is inclined to direct the respondents to consider the representation of the petitioner dated 16.12.2020 in the light of the Full Bench Judgment made in W.A.Nos.158, etc batch dated 03.12.2019, if the petitioner is found to be eligible and when his case comes under the purview of the said Judgment of the Full Bench of this Court and pass appropriate orders in accordance with law, as early as possible, preferably within a period of three months from the date of receipt of a copy of this order.

7. The petitioner shall furnish his phone number, email ID, if any, etc., along with a copy of the representation dated 16.12.2020 and this order, to the respondents forthwith. The respondents are directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the parties to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the parties, they will have to face the civil

imprisonment in case of contempt proceedings and, if they are unable to serve the order and the cover being returned unserved for one reason or the other, the same shall be kept in the file without opening it for the proof of attempt of delivery, so that the parties, at a later point of time, will not take a plea that he is not aware of the order.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vum

To:

- 1.The Secretary,
Department of School Education,
The State of Tamil Nadu,
Fort St. George, Chennai - 9.
2. The Director of School Education,
D.P.I.Campus,
College Road, Chennai.
3. The Director of Personnel,
D.P.I.Campus,
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Salem District.
- 7.The Head Master,
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Mettur Dam, Salem District.

+1cc to M/s.K.Sathish Kumar, Advocate SR.7473
+1cc to the Government Pleader SR.7487

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