

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.6764 of 2021

1. S. Mathivanan
2. R.Punniakotti
3. N.Palanivelu
4. A.Mani
5. J.Venkatesan
6. C.Velmurugan
7. A. Ravi
8. D. Venugopal
9. T.Jagadeesan
10. A. Peter Kulandai Thamburaj ... Petitioners

..Vs..

1. The State of Tamil Nadu
Rep.by Principal Secretary to Government
School Education Department,
Fort St.George, Chennai 600 009.
2. The Director of School Education,
DPI Complex, College Road,
Chennai 600 006.
3. The Joint Director of School Education (Vocational)
O/o.The Director of School Education,
DPI Complex, College Road,
Chennai 600 006.
4. The Chief Educational Officer,
O/o.Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
5. The Principal Accountant General (A&E)
No.361, Annasalai,
Teynampet,
Chennai 600 018. ... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to calculate the 50% of service rendered by the petitioners as part-time Vocational

Instructor drawing consolidated pay along with regular service for arriving net qualifying service for calculation of pension and to grant all monetary and other attendant benefits and arrears within a stipulated time.

For Petitioners : Mr.M.Saravanakumar
For Respondents : Mr. P. Raja
Government Advocate

ORDER

This writ petition has been filed, seeking a direction to calculate the 50% of service rendered by the petitioners as part-time Vocational Instructor drawing consolidated pay along with regular service for arriving net qualifying service for calculation of pension and to grant all monetary and other attendant benefits and arrears within a stipulated time.

2. Mr.P.Raja, learned Government Advocate takes notice for Respondents. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. It is the case of the petitioner that the Government issued G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009 and categorically held that the 50% of temporary services taken into account for regular establishment and for pensionary benefits. It is pertinent to note that the petitioners were initially appointed as Vocational Instructor on consolidated pay in the Tamil Nadu Educational Service and consequently absorbed in the regular time scale of pay. The Government specifically directed the respondents to calculate 50% of consolidated pay service rendered by the petitioners for calculation of pension to arrive the net qualifying service. But the respondents refused to give effect to the Government order. Number of similar cases were considered in respect of the State Government employee under the Tamil Nadu Pension Rules, 1978 wherein also Rule 11(2) of the Tamil Nadu Pension Rules, 1978 provides counting of 50% of the contingency service on similar terms and conditions as enumerated under the above Rule 14(2) of CCS (Pension) Rules, 1972. In the case of Plot Watcher of Forest Department, appointed on daily wage basis from 01.09.1982 without interruption was absorbed in regular service from 24.08.2005 and he retired on 31.07.2011 and ordered sanction of eligible pension and other benefits.

4. It is further averred that in the said also, regularisation was granted after the new Pension Scheme was introduced with effect from 01.04.2003 by the State Government. The said Order was made in W.P.No.8205 of 2011 dated 19.04.2011, which was confirmed in W.A.No.27 of 2012 dated 13.02.2012 as well as in SLP.No.16119 of 2012 dated 10.05.2012 and in W.P.No.14987 of 2012 dated 14.06.2012. The

Division Bench of this Court also considered the similar issue in Writ Appeal (MD).No.51 of 2018 (Batch case) a judgment was delivered on 27.03.2018 and further the Full Bench also rendered judgment and the same was followed by the Division Bench in W.A.(MD).No.858 of 2020 on 18.09.2020 and directed the respondents to count 50% of the services rendered by the writ petitioners therein on temporary basis and consequently refix their pension within a period of four months from the date of receipt of a copy of this order.

5. Though a larger relief is sought for by way of mandamus, at the time of argument, the learned counsel for the petitioners submitted that it would suffice if the representations of the petitioners are considered suitably and disposed of in a time bound manner in the light of the judgments of this Court in W.P.(MD).No.25475 of 2019 dated 29.11.2019, W.A.(MD).No.766 of 2016 dated 12.12.2019 and W.A.(MD).No.858 of 2020 dated 18.09.2020.

6. Considering the facts and circumstances of the case and taking into account the fact that the petitioners representations are already pending with the respondents and if the representations are not already disposed of earlier, the Writ Petition is disposed of with the following directions:-

i) A direction is issued to the respondents herein to consider the representations preferred by the petitioners dated 24.03.2017 if the petitioners are found to be eligible and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioners and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of 60 days from the date of receipt of a copy of this order, in the light of the decision of this Court in W.P.(MD).No.25475 of 2019 dated 29.11.2019, W.A.(MD).No.766 of 2016 dated 12.12.2019 and W.A.(MD).No.858 of 2020 dated 18.09.2020, if applicable.

ii) In case the petitioner is unable to appear for personal hearing, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioners can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioners fails to appear or file a written submission in time, the respondents shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioners;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representations dated 24.03.2017 and this order, to the respondents forthwith;

v) The respondents are directed to communicate the decision taken on the representations, to the petitioners 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 petitioners to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioners, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioners, later on, will not take a plea that the petitioners are not aware of the order. No costs.

Sd/-

Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

dpq

To

1. The Principal Secretary to Government
School Education Department,
Fort St.George, Chennai 600 009.
2. The Director of School Education,
DPI Complex, College Road,
Chennai 600 006.
3. The Joint Director of School Education (Vocational)
O/o.The Director of School Education,
DPI Complex, College Road,
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4. The Chief Educational Officer,
O/o.Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
5. The Principal Accountant General (A&E)
No.361, Annasalai,
Teynampet,
Chennai 600 018.

+1cc to Mr.M.Saravanakumar, Advocate, SR.No.17479/21
+1cc to the Government Pleader, SR.No.17332/21

W.P.No.6764 of 2021

JPL (CO)
RLP (13.07.2021)



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