

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.7236 of 2021

S. Madhu

... 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  
DPI Campus,  
College Road,  
Chennai.
3. The Accountant General (A&E)  
Teynampet, Chennai 600 018.
4. The Chief Education Officer  
Salem District.
5. The District Educational Officer,  
Edapadi,  
Salem District.
6. The Correspondent and Headmaster,  
Nirmala Higher Secondary School,  
Kolathur, Salem District.

... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 04.02.2021 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 01.07.1987 to 15.10.1992 within the time period stipulated by this Court.

For Petitioner : Mr.S.Kousik

For Respondents: Mr.P.Raja  
Government Advocate  
for R1, R2, R4, R5 & R6  
Mr.V.Vijayashankar for R3

ORDER

This writ petition has been filed, seeking a direction to the respondents to consider the representation of the petitioner dated 04.02.2021 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 01.07.1987 to 15.10.1992 within the time period stipulated by this Court.

2. Mr.P.Raja, learned Government Advocate takes notice for Respondents 1, 2 & 4 to 6 and Mr.V.Vijayashankar, learned counsel takes notice for 3<sup>rd</sup> respondent. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that he joined as a Double Part Time Vocational Teacher (Auditing and Accountancy) on 01.07.1987 in Nirmala Higher Secondary School, Kolathur, Mettur dam which is a Government Aided School, the appointment was approved by the Chief Educational Officer/4<sup>th</sup> respondent by its order dated 17.11.1987 and the petitioner service was regularised in a time scale of pay on 16.10.1992. On 16.10.2002, the petitioner was given selection grade of pay and on 16.10.2012, the petitioner was given special grade of pay. The petitioner's 50% of service as part time vocational teacher for the period between 01.07.1987 to 15.10.1992 has not been taken into account while calculating the pensionable service. Though similarly placed persons have been given pensionary benefit by taking 50% of service rendered by them as part time vocational teacher based on the orders passed in W.A.No.1380 of 2019 and the same was disposed by its order dated 24.04.2019.

4. It is further averred that the G.O.Ms.No.194, School Education Department, dated 12.09.2018 stating that the Government has passed orders giving the benefit of the earlier service to the vocational instructors, only for the matters pending before the Court. Subsequently the said G.O. has been overruled by the recent Full Bench decision of this Court in a batch of writ appeals and writ petitions i.e., in W.A.Nos.158

etc., batch (Government of Tamil Nadu and others Vs. R.Kaliyamoorthy) dated 03.12.2019 it has been held that if the service of an employee has been regularised before 01.04.2003 only his/ her half of past service will be counted for the purpose of determination of qualifying service for pension. Admittedly in this petition, the service of the petitioner has been regularised as early as on 16.10.1992 itself and therefore this petitioner is entitled to get the same. The Division Bench of Madurai High Court passed an order by following the above said full bench judgment of this Court and by following the Hon'ble Supreme Court order in an identical matter in W.A.(MD). No.517 of 2020, dated 13.08.2020 and in W.P.(MD).5944 of 2020 dated 23.03.2020 and in W.P.(MD).No.10466 of 2020 dated 30.08.2020. There respondents have not extended the said benefit to this petitioner despite of several representation made by the petitioner and finally the petitioner made a representation on 04.02.2021 and requested to include 50% of his service as Part Time Vocational Teacher for the purpose of calculating the pension benefits from 01.07.1987 to 15.10.1992 and to disburse the same. On receipt of such representation no order was passed till date. Therefore the petitioner has filed the present writ petition.

5. Learned counsel for the Petitioner relied upon a Full Bench decision 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. For better appreciation, relevant portion of the said judgment 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."

6. Considering the facts and circumstances of the case and taking into account the fact that the petitioner representation is already pending with the respondents and if the representation is 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 representation preferred by the petitioner dated 04.02.2021 if the petitioner is found to be eligible and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected including the 6<sup>th</sup> respondent 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 the Hon'ble Division Bench of this Court in W.A.Nos. 158 of 2016 etc., batch dated 03.12.2019, if applicable and there are no legal impediments.

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 petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner 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 petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representations dated 04.02.2021 and this order, to the respondents forthwith;

v) 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 petitioner 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 petitioner, later on, will not take a plea that the petitioners are not aware of the order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dpq  
To

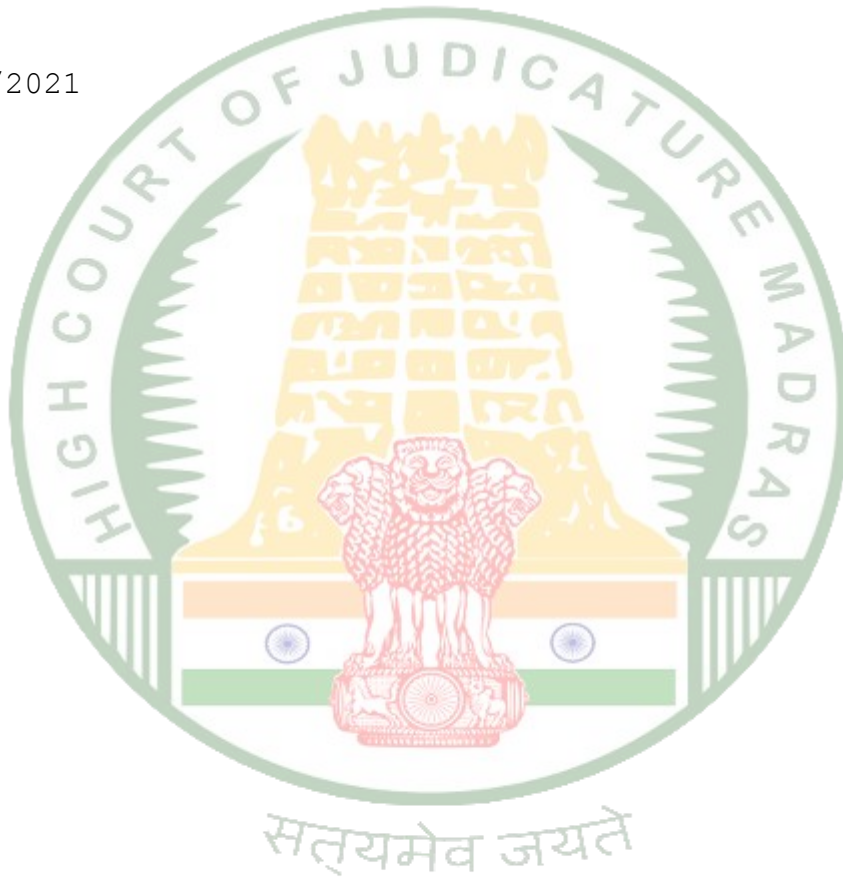
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+1cc to Mr.K.Sathish Kumar, Advocate Sr.18286  
+1cc to the Government Pleader SR.18450

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srg 12/07/2021



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