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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

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THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.13313 OF 2021

AND

W.M.P.NO.14136 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 Joint Director of School Education,
(Vocational)College Road,
Chennai - 6.
4. The Accountant General,
(Accounts and Establishments),
361, Anna Salai,
Teynampet,
Chennai - 600 018.
5. The Chief Educational Officer,
Salem District.
6. The Headmaster,
Government Higher Secondary School,
Mettur Dam,
Salem District.

... Respondents



Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent order in Na.Ka.No.006266/E2/2021 dated 05.05.2021 and quash the same and consequently direct the 5th respondent to disburse the revised 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 a specified time frame that may be fixed by this Court.

For Petitioner :Mr.K.Sathish Kumar

For Respondents :Mr.Abishek,
Government Advocate

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent order in Na.Ka.No.006266/E2/2021 dated 05.05.2021 an quash the same and consequently direct the 5th respondent to disburse the revised 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 a specified time frame that may be fixed by this Court.

2. The case of the petitioner herein is that he joined as a Double Part Time Vocational Teacher on 09.07.1979 in a Government Higher Secondary School, Mettur Dam. His service was regularised on time scale of pay on 05.10.1996 and the same had also been approved by the Chief Educational Officer, Salem District by proceedings dated 22.09.1978. On attaining the age of superannuation, the petitioner retired from service on 30.04.2012.

3. The grievance of the petitioner is that 50% of his service as part time vocational teacher for the period from 09.07.1979 to 04.10.1996 has not been taken into account while calculating his pensionary benefits.

4. When the matter is taken up for hearing, it is submitted by the learned counsel for the petitioner that the claim in this writ petition is covered by the ruling of the Full Bench of this Court followed by several single and Division Bench orders.

5. The learned counsel would rely on the latest decision of this Court dated 09.09.2021 in W.P.No.19083 of 2021. He would



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rely on paragraph Nos.6 to 11 which are extracted hereunder.

"6. It is further submitted that the issue has also been considered in the context of Double Part Time Vocational Instructor in W.A.No.359 of 2015 dated 16.03.2015. It is submitted that this Court made a threadbare analysis of the relevant Government Orders and a conclusion was arrived that the Double Part Time Vocational Instructors were also entitled for the relief. It was submitted that in the case of Single Part Time Vocational Instructor, the Division Bench of Madurai High Court in W.A.(MD).No.392 of 2017 etc., batch dated 21.04.2017, this Court relied upon the decision of this Court in WP.No.11389 of 2003 etc., dated 08.07.2004 wherein the Hon-ble Division Bench held that though the Single Part Time Teachers should be treated equally on par with Double Part Time Teachers and all benefits that were given to the Double Part Time Teachers should be extended to the Single Part Time Teachers as well, Court also observed that the benefit shall not be extended to any other future cases that may be filed on this account, on the ground of delay of laches, since all others have not come up before this Court and remained as fence-sitters.

7. The learned counsel for the respondents submits that the present writ petition is liable to be dismissed on account of laches. The learned counsel for the respondents further submits that the decision of the Division Bench rendered in R.Kaliyamoorthy (cited supra) cannot apply to the fact of the case.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents and peruse the decisions of this Court including the Full Bench and also that of the Division Bench of this Court.

9. Pursuant to order in W.A.No.882 of 2017, etc., batch dated 06.04.2018 (Government of Tamil Nadu, represented by its Secretary to Government, School Education Department, Chennai ? 9 and others Vs.K.Pachaiyappan and other) a reference was made to the Full Bench. The Full Bench was constituted and an order came to be



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passed / delivered on 03.12.2019. The fact remains that the petitioner was in service of the respondent from 1987 and his service was made permanent on 16.10.1992. The Full Bench of this Court in the above said judgment delivered on 03.12.1990 as ultimately held as under:-

"46. 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 honararium or daily wage basis and if such services were regularised before 01.04.2003, half of 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) (1) of Tamil Nadu State and Subordinate Service Rules 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



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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?."

10. The Full Bench of the Court has made it clear that the above order would apply all the Government servants. The said decision is not confined to only the parties therein. It applies to all the Government servants.

11. Considering the same, this writ petition is disposed by allowing the writ petition as prayed for. However, there shall not be entitled for any interest on the settlement of the retiral/terminal benefits as ordered by the Division Bench of this Court of Madurai High Court in its order dated 13.08.2020 in W.A.(MD).No.517 of 2020."

6. In view of the ruling of the Hon'ble Full Bench of this Court, the rejection of the petitioner's claim as contained in the order passed by the 5th respondent in Na.Ka.No.006266/E2/2021 dated 05.05.2021 is hereby set aside. The respondents are hereby directed to revise the pension of the petitioner by including 50% of service rendered by him as Double Part Time Teacher.

7. The respondents/ competent authorities are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi



To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai - 9.
2. The Director of School Education,
D.P.I. Campus,
College Road,
Chennai .
3. The Joint Director of School Education,
(Vocational) College Road,
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6. The Headmaster,
Government Higher Secondary School,
Mettur Dam,
Salem District.

+1cc to the Government Pleader, S.R.No.69752

W.P.No.13313 of 2021
and
W.M.P.No.14136 of 2021

GJ(CO)
PM/12/01/2022