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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. No.19083 of 2021

and

W.M.P. No.20363 of 2021

(Through Video Conferencing)

S.Madhu

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Through its Secretary,
Department of School Education,
Fort S.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 Education Officer,
Salem District.
- 6.The District Educational Officer,
Edapadi, Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent order in Na.Ka.No.005653/A3/2021, dated 13.07.2021 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 01.07.1987 to 15.10.1992 within a specified time frame that may be fixed by this Hon'ble Court.



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For Petitioner : Mr.S.Kousik
For R1 to R3 and R : Mr.L.S.M.Hasan Fazal,
Government Advocate
For R4 : Mr.Vijay Shankar

ORDER

The petitioner has challenged the impugned order dated 13.07.2021 and direct the 5th respondent to disburse the revised pension to include 50% of the service rendered by the petitioner as Double Part Time Vocational Teacher from 01.07.1987 to 15.10.1992 within a specified time frame fixed by this Hon'ble Court.

2. The petitioner had served as a Double Part Time Vocational Instructor with the respondent Educational Department. He was serving from 01.07.1987. The petitioner's service was regularised on 16.10.1992. After serving the respondent from 01.07.1987 continuously, the petitioner attained the age of superannuation on 30.06.2018. The petitioner has now filed this writ petition by placing reliance on the decision on the Full Bench of this Court delivered on 03.12.2019 in the batch of W.A.Nos.158 etc, in the case of Government of Tamil Nadu, Represented by its Secretary to Government, Public Works Department and others Vs. R.Kaliyamoorthy reported in (2019) 6 CTC 705.

3. The learned counsel appearing for the petitioner submits that the Division Bench of the Madurai High Court in The State of Tamil Nadu and 2 others Vs. S.Durairaj and the Accountant General of Tamil Nadu in order dated 13.08.2020 in W.A.(MD) No.517 of 2020, has held the contention of the appellant and granted relief to appellant therein with the following observation:

"9. No doubt, the writ petitioner had approached the Court with a few months delay and it is not in dispute that but for the fixation of cut-off date, he would have been entitled to the benefits of service rendered by him as Double Part time Vocational Instructor. The learned Judge in the impugned common order had also referred to the above cited common judgment dated 06.04.2018, made in W.A.No.882 of 2017 etc., and having noted the fact that persons similarly placed have been granted the benefits and also taking note of various pronouncements of the Hon'ble Supreme Court of India,



had held that the writ petitioners are entitled to such benefits.

10. Admittedly, the fact of the case would disclose that the petitioner had approached the Court with a delay of three months and in the light of the answering of the references in paragraph No.45 of the above cited Full Bench Judgment Government of Tamil Nadu, Represented by its Secretary to Government, Public Works Department and others Vs. Kaliyamoorthy, reported in [(2019) 6 CTC 705], this Court finds no merit in this Writ Appeal. However, it is made clear that if at all any future claim is made by any persons who are similarly placed like that of the writ petitioners who had worked as Single/Double Part Time Vocational Instructors, they are not entitled for any interest on the settlement of the retiral/terminal benefits".

4. The learned counsel for the petitioner has also placed reliance on few other decisions of the Single Judge which followed the above decision of the Division Bench of the Court.

5. Opposing the prayer, the learned counsel for the respondents submits that the petitioner was not entitled to benefit of the decision of the Full Bench order dated 3.12.2019 and it would result in opening of the pandora box and the department will be forced face similar request for recomputing the pension by considering 50% of service rendered on temporary basis for determining the pension.

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 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 renderd 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.

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(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".

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.

12. This writ petition is disposed of in terms of the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort S.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.



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4.The Accountant General,
(Accounts and Establishments),
361 Anna Salai,
Teynampet, Chennai - 600 018.

5.The Chief Education Officer,
Salem District.

6.The District Educational Officer,
Edapadi, Salem District.

+1cc to M/s.K.Sathish Kumar, Advocate Sr.46059

W.P.No.19083 of 2021
and
W.M.P.No.20363 of 2021

sj[col
srg 26/10/2021