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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20499 of 2021

T.V.Usha Rani

...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Chennai Education District,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai - 600 008.
4. The Principal Accountant General (A & E),
Order of the Principal Accountant General,
AG's Office Complex,
361, Anna Salai,
Teynampet, Chennai - 600 018.
Tamil Nadu.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to pass orders for counting 50% of service rendered by the petitioner as Part Time Vocational Instructor from 04.09.1991 to 08.12.1999 towards pensionable service and consequently revise the retirement benefits including regular pension payable to the petitioner from the date of retirement on 30.05.2017 with all consequential and other attendant benefits as per G.O.Ms.No.194, School Education Department dated 12.09.2018, by considering the representation submitted by the petitioner dated 21.07.2020 in the light of various orders passed by this Hon'ble Court.



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For Petitioner	: Mr.G.Sankaran
For Respondents	:
For R1 to R3	: Mr.L.S.M.Hasan Fizal Government Advocate
For R4	: Mr.V.Vijay Shankar

ORDER

The petitioner was appointed as a Part Time Vocational Teacher in the year 1991 and thereafter the services of the petitioner were regularized with effect from 08.12.1999. The petitioner has now retired from service on 30.05.2017.

2. It is the case of the petitioner that the petitioner is entitled for the benefit of G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018, in terms of the decision of the Hon'ble Division Bench of this Court in the case of The Government of Tamil Nadu, Represented by its Secretary, School Education Department, Chennai and others Vs K.Pachaiyappan and others, passed in W.A.Nos.882 of 2017 etc batch dated 06.04.2018.

3. The learned counsel for the petitioner submits that though in the aforesaid order it has been made clear that the benefit is to be given only to those persons who had filed a writ petition in W.P(MD).Nos.22785 of 2019 etc batch in the case of D.Ramachandran Vs The State of Tamil Nadu, Represented by its Secretary, School Education Department, Chennai and others, dated 05.11.2019, similar benefit was extended to a person who was similarly placed.

4. The learned counsel for the petitioner therefore submits that the petitioner is entitled to the benefit of G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018, wherein, 50% of the services rendered earlier has to be considered for computing the terminal benefits and pension.

5. Appearing on behalf of the first to third respondents, the learned Government Advocate submits that this writ petition is devoid of merits in view of the fact that there is a restriction in the decision of the Hon'ble Division Bench of this Court in the above case. He specifically draws attention to Paragraph 15(ii) which reads as under:-

"15. (i)

(ii) The above said benefit shall be extended only to the respondents in these writ appeals and



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for the persons similarly situated like that of the respondents herein, whose cases are pending before this Court. Thus it is made clear that the above said benefit shall not be extended to any other future cases that may be filed on this account, on the ground of delay and latches, since all along they have not come up before this Court and remained as fence-sitters. It is also needless to point out that allowing such cases would amount to opening the pandora's box, touching upon the financial implications of the State."

He further submits that the representation of the petitioner dated 21.07.2020 is not based on the above G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018. He therefore submits that the writ petition is devoid of merits and is liable to be dismissed. The learned Government Advocate further submits that the petitioner relied on certain Government Orders in G.O.Ms.No.224, Education, Science and Technology Department dated 24.03.1994 and G.O.Ms.No.752, Education, Science and Technology Department dated 18.10.1996. Therefore, on this count also this writ petition is liable to be dismissed.

6. The learned Government Advocate referred to the decision of the Full Bench of this Court in the The Government of Tamil Nadu, Represented by Secretary to Government, Public Works Department, Chennai and others Vs R.Kaliyamoorthy, passed in W.A.Nos.158 of 2016 etc batch, dated 03.12.2019.

7. In this connection, he has drawn attention to Paragraph 46 of the order, which reads 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.



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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 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 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."

8. The learned Government Advocate for the respondents further submitted that G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018 also does not apply to the petitioner as the petitioner only served as a Vocational Instructor in the Middle School whereas, the aforesaid Government Order applies to the Vocational Instructors in the Higher Secondary Schools.

9. Heard the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents and the learned counsel for the fourth respondent. I have perused the relevant Government Order.

10. In W.P.No.5832 of 2014 by an order dated 26.03.2014 the learned single Judge of this Court had directed the authorities to count 50% of the part time service Vocational Instructors to be considered for calculating the pension. There, the dispute pertained to vocational instructors who had rendered part time service between 24.07.1979 to 11.11.1997 and had retired already. It was under these circumstances, the order came to be challenged before the Hon'ble Division Bench of this Court.



11. After considering the various decisions of this Court rendered earlier including that of the decision of the Hon'ble Division Bench of this Court, this Court ultimately held as follows:-

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"15. In terms of the above discussions, we dispose of the writ appeals as under:

(i) 50% of the services rendered by the respondents herein, as Part Time Vocational Instructor (either as Single Part time or Double Part Time Vocational Instructor), shall be counted for the purpose of computing pension and other retiral benefits.

(ii) The above said benefit shall be extended only to the respondents in these writ appeals and for the persons similarly situated like that of the respondents herein, whose cases are pending before this Court. Thus it is made clear that the above said benefit shall not be extended to any other future cases that may be filed on this account, on the ground of delay and latches, since all along they have not come up before this Court and remained as fence-sitters. It is also needless to point out that allowing such cases would amount to opening the pandora's box, touching upon the financial implications of the State."

The order of the Hon'ble Division Bench of this Court dated 06.04.2018 was implemented by the Government in G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018.

12. G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018 flows from an order of the Hon'ble Division Bench of this Court which has been referred to supra. It was rendered in the context of a similarly placed persons as the petitioner who had however retired before 2016. In fact, those the case pertains to the persons who had already retired at earlier whereas, in the present case, the petitioner retired from services only on 30.05.2017. The respondents ought to applied the ratio to the case of the petitioner.

13. The restrictions in Paragraph 15(ii) of the said decision cannot be applied to the petitioner as the petitioner had not retired at that point of time and cause of action has been made at that point of time. The petitioner retired only on



30.05.2017. Therefore, the restrictions in sub-clause (ii) to Paragraph 15 cannot be imposed on the petitioner to state that the petitioner was not entitled to the benefit of G.O.Ms.No.194, School Education (SE7-1) Department dated 12.09.2018.

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14. Incidentally, in a similar batch of case, the Hon'ble Division Bench of this Court in W.A(MD).No.656 of 2020 dated 25.08.2020 has upheld the contentions of the persons who have retired after the order was passed by the Hon'ble Division Bench of this Court referred to supra. The relevant paragraphs from the aforesaid order reads as under:-

"8. In the considered opinion of this Court, the case of the first respondent herein/writ petitioner is similar to that of the respondents in the above writ appeals and though it was open to the appellants/official respondents 1 to 4 to confer the similar benefit without asking them to approach the Court, they were asked to get individual orders, may be on account of financial liability. The factual aspects pertaining to service condition of the first respondent/writ petitioner are not under dispute. The issue relating to delay and laches depends upon the facts and circumstances of the case and there cannot be any straight jacket formula while considering the said issue and in the case on hand, the same cannot be put against the first respondent/writ petitioner in the light of the settled position of law that persons similarly placed have to be conferred with the same benefits without driving them to the Court.

9. In the light of the legal position being settled as to the entitlement of the first respondent/writ petitioner, this Court is of the considered view that in terms of the above cited two judgments of the Division Bench of this Court, this writ appeal deserves dismissal.

10. In the result, this writ appeal is dismissed, confirming the order, dated 02.08.2018, passed in W.P(MD)No.17306 of 2018 and the appellants/official respondents are directed to settle the retiral/terminal/consequential benefits to the first respondent/writ petitioner within a period of ten weeks from the date of receipt of a copy of this order. However, it is made clear that the first respondent/writ petitioner is not entitled



to any interest as to the settlement/belated settlement of the retiral/terminal/consequential benefits. No costs. Consequently, the connected civil miscellaneous petition is also dismissed."

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15. In view of the above, this Writ Petition deserves to be allowed and is accordingly allowed. The respondent shall implement this order within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Chennai Education District,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai - 600 008.
4. The Principal Accountant General (A & E),
Order of the Principal Accountant General,
AG's Office Complex,
361, Anna Salai,
Teynampet, Chennai - 600 018.
Tamil Nadu.

+1CC to Mr.G.Sankaran, Advocate, Sr.No.49953

W.P.No.20499 of 2021

CA (CO)

K.RK. (17.11.2021)