



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

CORAM :

WEB COPY

THE HONOURABLE TMT.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE THIRU.JUSTICE P.VELMURUGAN

W.A(MD)No.1984 of 2021

and

CMP(MD)No.8973 of 2021

- 1)The State of Tamilnadu,
Represented by its Principal Secretary,
School Education Department,
Fort St.George, Chennai-600 009.
- 2)The Director of Primary Education,
College Road,
Chennai - 600 006.
- 3.The District Educational officer,
Dindigul, Dindigul. ... Appellants/Respondents

vs.

S.Mary ... Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order passed by this Court in W.P(MD) No.9724 of 2020 batch cases, dated 1.9.2020.

Prayer in WP(MD) . 9724/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or order or direction in the nature of Writ of Certiorarified Mandamus calling for the records of the impugned G.O.Ms.No.194 dated 12/09/2018 issued by the 1st respondent and quash the same with regard to the cut of date i.e.06/04/2018 and directing the respondents to take the 50/ of the part time service rendered by the petitioner ir.from 09/07/1979 to 11/11/1997 along with the regulars service for the pension benefits i.e., for the period of 25 years 23 months 15 days.

For Appellants : Mr.M.Siddharthan
Addl.Govt.Pleader



JUDGMENT

**(Judgment of the Court was made by
PUSHPA SATHYANARAYANA, J.)**

The Writ Appeal is preferred by the State against the order passed in W.P(MD)No.9724 of 2020, dated 01.09.2020.

2.The writ petitioner, who is the respondent herein joined service as a Vocational Instructor on 19.7.1979 and her services were regularised only on 12.11.1997 and he attained the age of superannuation on 31.12.2013. When the pensionary benefits were extended to her, the services rendered by her from 19.7.1979 to 11.11.1997 was not taken into account. Her services from the date of joining till the date of regularisation was omitted to be considered. Hence, the Mandamus was filed to count atleast 50% of the part time services rendered by the writ petitioner along with the regular services, for the purpose of calculation of qualifying service for pension. The learned single Judge has placed reliance on a judgment in W.P(MD)Nos.16864 and 16926 of 2018, dated 31.07.2018 (S.Venkatachalam vs. The Principal Secretary to the Government, Department of School Education and others) and allowed the writ petition directing the authorities to consider the period from the date of joining, that is, from 19.7.1979 to 11.11.1997, the date of regularisation for the purpose of calculating the pensionary benefits. Aggrieved by the same. the above writ appeal is preferred.

3.The learned Additional Government Pleader appearing for the appellants would argue that the case of the writ petitioner cannot be considered in view of the Full Bench decision of this Court in W.A.No.158/2016 etc., batch, dated 03.12.2019 (The Government of Tamil Nadu and 2 others vs. R.Kaliyamoorthy and others). He also placed reliance on the Division Bench judgment in W.A.No.882/2017 etc., batch dated 06.04.2018 (The Government of Tamil Nadu and 2 others vs. The Chief Educational Officer, Villupuram District, Villupuram and others). Though the abovesaid Division Bench judgment is in favour of the writ petitioner, the said judgment had given a cut off date, within which, the writ petitioner/1st respondent does not come and therefore, he is guilty of delay and laches. However, subsequently, the Full Bench in W.A.No.158/2016 etc., batch, dated 03.12.2019 has held as follows:-

''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 W.A.No.158 of 2016 etc., batch 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."

4.The learned Additional Government Pleader though argued that the case of the writ petitioner does not fall in any of the above mentioned categories, he is unable to demonstrate before this Court, as to how the writ petitioner is not entitled to the relief. It was argued that the part time Vocational Instructors are not at all entitled to count half of the part time services, for the purpose of calculating the qualifying service, for pension, as the nomenclature indicates it is only a part time job. Though it is a part time job, the writ petitioner was regularised in the year 1997 and the services rendered prior to that, was the same even after regularisation. Therefore, the writ petitioner is entitled for the benefits of the service period prior to regularisation to be counted in the manner prescribed. Hence, we see no merits in the arguments of the learned Additional Government Pleader. We do not want to interfere with the order passed by the learned single Judge.

5.Accordingly, this Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS III)

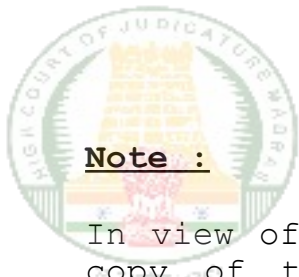
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Sub Assistant Registrar(CS)

vsn

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1)The State of Tamilnadu,
Represented by its Principal Secretary,
School Education Department,
Fort St.George, Chennai-600 009.

2)The Director of Primary Education,
College Road,
Chennai - 600 006.

3.The District Educational officer,
Dindigul, Dindigul.

+1 CC to M/s.SPL GP (SR-34730[F] dated 17/11/2021 & SR-35035[F]
dated 18/11/2021)

W.A(MD)No.1984 of 2021
and
CMP(MD)No.8973 of 2021
DATED : 16.11.2021

MGJ(26.11.2021) 4P 5C