



W.P.Nos.26013 & 26014 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26013 & 26014 of 2018

W.P.No.26013 of 2018:

M.Deivasigamani

...Petitioner

Vs.

1.The Government of Tamil nadu,
Rep.by its Secretary,
School Education Department,
Fort St.George,
Chennai – 600 009.

2.The Director of School Education,
Chennai – 600 006.

3.The Joint Director – Vocational
Chennai – 600 006.

4.The Chief Educational Officer,
Kanchipuram District.

5.The Head Master,
Govt.Hr.Sec.School,
Koovathur,
Kanchipuram District.

..Respondents



W.P.Nos.26013 & 26014 of 2018

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to take into account 50% of the service rendered by the petitioner from initial appointment till regularization (i.e. 31.07.1987 to 31.03.1990) for the purpose of retirement benefits, including pension.

W.P.No.26014 of 2018:

C.Balamurugan

...Petitioner

Vs.

1.The Government of Tamil nadu,
Rep.by its Secretary,
School Education Department,
Fort St.George,
Chennai – 600 009.

2.The Director of School Education,
Chennai – 600 006.

3.The Joint Director,
School Education (Vocational)
Chennai – 600 006.

4.The Chief Educational Officer,
Cuddalore District.

5.The Secretary,
Sri Ramakrishna Vidhalaya Hr.Secondary School,
Chidambaram, Cuddalore District.

..Respondents



W.P.Nos.26013 & 26014 of 2018

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to take into account 50% of the service rendered by the petitioner from initial appointment till regularization (i.e. 26.01.1989 to 11.11.1997) for the purpose of retirement benefits, including pension.

For Petitioners : Mr.R.Saravanakumar
[in both W.Ps]

For Respondents : Mrs.S.Mythreyechandru
Special Government Pleader
[in both W.Ps]

COMMON ORDER

The relief sought for in the present writ petitions is for a direction to direct the respondents to count 50% of the services rendered by the petitioners in the post of Vocational Instructor and accordingly, calculate the qualifying services for grant of pensionary benefits.

2. The writ petitioner in W.P.No.26013 of 2018 states that he was initially appointed on 31.07.1987 as double part-time Vocational Teacher and the writ petitioner in W.P.No.26014 of 2018 states that he was initially appointed on 26.01.1989 as Single part-time Vocational Teacher.



W.P.Nos.26013 & 26014 of 2018

3. Considering the long services, the Government passed orders, regularizing the services of these Part-time Vocational Instructors in the sanctioned post and they were brought under the regular establishment with effect from 01.04.1990. Thereafter, the petitioners are working as regular Vocational Instructors.

4. The grievances of the writ petitioners are that the part-time services rendered by them as Part-time Vocational Instructors has not been taken into consideration for the purpose of counting the qualifying services for grant of pensionary benefits and thus, they have approached the authorities for counting of 50% of the services as per the amended Rule 11(4) of the Tamil Nadu Pension Rules. Since the claim of the writ petitioners were not considered, they have approached this Court.

5. The learned counsel for the petitioners made a submission that the Hon'ble Division Bench of this Court has considered the claim of the Part-time Vocational Instructors and granted the relief for counting of 50% of the services.



W.P.Nos.26013 & 26014 of 2018

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6. There are many Division Bench judgments in this aspect. The scope of amended Rule 11(4) of the Tamil Nadu Pension Rules was referred to the Full Bench of this Court and the Full Bench delivered a judgment on 03.12.2019, wherein the amended Rule 11(4) of the Tamil Nadu Pension Rules was upheld and whoever is complying with the conditions stipulated in the amended Rule alone are eligible for counting of 50% of the services for grant of pensionary benefits.

7. Subsequently, another Division Bench passed an order on 13.08.2020 in W.A.(MD).No.517 of 2020, referring the Full Bench judgments, rejected the appeal filed by the Education Department.

8. The learned counsel for the petitioners made a submission that the relief was granted to several Part-time Vocational Instructors and therefore, the petitioners are also to be treated on par with other Part-time Vocational Instructors, who got the benefit. It is contended that near about 700 Vocational Instructors got the benefit.



W.P.Nos.26013 & 26014 of 2018

WEB COPY

9. The learned Special Government Pleader appearing on behalf of the respondents objected the said contention by stating that the Part-time Vocational Instructors are not eligible to avail the benefit under the amended Rule 11 (4) of the Tamil Nadu Pension Rules, since their initial appointment was to the post of Part-time Vocational Instructor and part-time services are not covered under Rule 11(4) of the Tamil Nadu Pension Rules. At one point of time, the Hon'ble Division Bench of this Court fixed a cut-off date on 06.04.2018 and held that anybody approaching the Court thereafter, is not entitled for the relief. However, the other Division Bench considered the case based on the earlier judgments and granted the relief subsequently in the year 2020.

10. Therefore, an anomalous situation is created, whether the petitioners are entitled for the benefit of Amended Rule 11(4) of the Tamil Nadu Pension Rules or not. When conflicting judgments are placed and reliefs' are granted to one group of people and it was declined to other group through various judgments, then this Court is of an opinion that the Statute



W.P.Nos.26013 & 26014 of 2018

and Rules must be looked into for the purpose of conferring the benefit to the person, who is approaching the Court.

11. It is not in dispute that the Full Bench settled the issue and the amended Rule 11(4) of the Tamil Nadu Pension Rules was upheld. Therefore, the Rules are to be followed in respect of the Part-time Vocational Instructors for the purpose of counting of 50% of the services. When discretionary relief is granted in favour of few persons, Courts are not expected to follow the judgments in a mechanical manner. Similarity if raised, is to be ascertained with reference to the facts and circumstances of each case. Application of mind with reference to the facts are of paramount important, while exercising the powers of judicial review.

12. Question arises, whether a part-time employee is entitled for counting of 50% of the services based on Rule 11 of the Tamil Nadu Pension Rules, 1978.



W.P.Nos.26013 & 26014 of 2018

13. Rule 11 (2) (i) of the Tamil Nadu Pension Rules, 1978 states as follows:

“11.(1).....

(2).....

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.”

14. As per the Rule stated above, part-time employees are not eligible to avail the benefit of counting of half of the services.

15. The Full Bench also held that as per Rule 11, the conditions stipulated are to be complied with for the purpose of getting the benefit. Therefore, this Court is of an opinion that the Rule contemplates that the part-time employees are not eligible for claiming counting of 50% of the services rendered by them.

16. Regarding the similar orders passed earlier by the Courts and the petitioners claiming that they cannot be discriminated in view of Article 14



W.P.Nos.26013 & 26014 of 2018

of the Constitution of India, the Hon'ble Division Bench of this Court in the case of **Director of Sericulture Department Vs. K.Kumar** reported in [2015

(4) CTC 241], considered the binding nature of the orders, relying on the judgment of Honourable Supreme Court, which reads as under:

"34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay vs. R.S.Nayak [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal



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W.P.Nos.26013 & 26014 of 2018

inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

41. In Union of India v. Kartick Chandra Mondal [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 69], held that Article 14 is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has



W.P.Nos.26013 & 26014 of 2018

been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in Kartick Chandra Mondal was subsequent to the decision in Maharaj Krishan Bhatt and the decision in Maharaj Krishan Bhatt is also referred to in Kartick Chandra Mondal."

17. The Hon'ble Supreme Court of India in the case of ***Basawaraj & Anr. Vs. Special Land Acquisition Officer*** reported in ***2013 14 SCC 81*** held in unambiguous terms that *"it is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an*



W.P.Nos.26013 & 26014 of 2018

earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order.”

18. Thus, the Courts are bound to consider the Statute and Rules, while considering the similar orders passed by the Courts. Mechanical approach, no doubt, would result in miscarriage of justice. In the present cases, the Rule contemplates that part-time employees are not entitled for counting of 50% of the services. Whether the petitioners have rendered part-time or not, has to be decided by the competent authorities with reference to the Service Records available.

19. In the present cases, the petitioners themselves have stated that they were appointed as Double part-time and Single part-time Vocational



W.P.Nos.26013 & 26014 of 2018

Instructors respectively. However, the time and workload cannot be a ground to alter the conditions of appointment. In public services, time cannot be a criteria for the purpose of ascertaining the nature of appointment.

20. In public services, employees are bound to work beyond working hours in the interest of public and on necessity. Therefore, the public service, which is a solemn function, cannot be compared with the other services in a private sector. For example, a Teacher may bound to take some additional classes in the interests of children during exam time. Merely because a Teacher served extra time, he/she cannot claim that he/she is a regular Teacher or full-time Teacher. The conditions stipulated in the appointment order alone is to be taken into consideration for the purpose of determining the appointment and its conditions.

21. High Court cannot interfere with the conditions of appointment and form an opinion that the part-time teachers are working extra hours and therefore, they should be converted as full-time teachers. So long as the



W.P.Nos.26013 & 26014 of 2018

appointment conditions remains as it is, the terms and conditions are binding on the part-time employees. In public interest, few part-time Vocational Instructors would have worked extra time and that will not confer any additional right for the purpose of grant of regularization or counting of 50% of the services under Rule 11 of the Tamil Nadu Pension Rules.

22. In view of the facts and circumstances, the respondents are directed to verify the Service Records of the petitioners and if the petitioners were appointed as Part-time Vocational Instructors, then they are not eligible for counting of 50% of the services for the purpose of grant of pensionary benefits. Only if they are appointed as Regular Vocational Instructors as full time employees, then alone, they are eligible for counting of 50% of the services as per Rule 11 of the Tamil Nadu Pension Rules. Part-time Vocational Instructors accepted the terms and conditions applicable to the post of Part-time Instructors and therefore, they cannot turn around and claim the benefit of full-time employee, which is impermissible.



W.P.Nos.26013 & 26014 of 2018

WEB COPY 23. With these clarifications, both the writ petitions stand disposed of.

No costs.

18.11.2022

Index : Yes
Speaking order: Yes
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To

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Government of Tamil nadu,
School Education Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
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W.P.Nos.26013 & 26014 of 2018

S.M.SUBRAMANIAM, J.

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W.P.Nos.26013 & 26014 of 2018

18.11.2022