



W.P.(MD)No.4913 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4913 of 2020

S.Rose Jacintha Buela

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Secretariat,
St.Fort George,
Chennai.
2. The Accountant General (Accounts and Entitlement),
Tamil Nadu,
Chennai.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Kuzhithurai,
Kanyakumari District.
5. The Sub-Treasury Officer,
Vilavancode Sub-Treasury Office,
Kanyakumari District.



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6. The Correspondent,
C.S.I. V.V.Girls High School,
Irenipuram - 629 162,
Kanyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to sanction and disburse the eligible pension by calculating 50% of service rendered by the petitioner as Vocational Instructor from 01.08.1979 to 01.06.1989 along with regular pension service as per G.O.(Ms)No.194, School Education (Pa7-1) Department, dated 12.09.2018 for the purpose of calculation of pension by considering the proposal re-submitted by the sixth respondent dated 09.10.2018 and disburse the pensionary benefits in accordance with law.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.S.Shaji Bino
Spl. Govt. Pleader for R1, R3 & R4
Mr.P.Gunasekaran
Standing Counsel for R2

ORDER

This Writ Petition has been filed to direct the respondents to sanction and disburse the eligible pension by calculating 50% of service rendered by the petitioner as Vocational Instructor from 01.08.1979 to 01.06.1989 along with regular pension service as per G.O.(Ms)No.194,



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School Education (Pa7-1) Department, dated 12.09.2018 for the purpose of calculation of pension by considering the proposal re-submitted by the sixth respondent dated 09.10.2018 and disburse the pensionary benefits in accordance with law.

2. The case of the petitioner is that the petitioner was appointed as Part Time Vocational Instructor on 01.08.1979 in the sixth respondent School and she has worked as Part Time Vocational Instructor from 01.08.1979 to 01.06.1989. The fourth respondent, vide proceedings, dated 01.08.1991, absorbed her services as Secondary Grade Teacher with effect from 02.06.1989. Since her service was absorbed as Full Time Vocational Instructor, the respondent regularised her services as Vocational Instructor with effect from 02.06.1989 instead from her initial date of appointment, i.e., from 01.08.1979. Further, the petitioner has not given with the benefits for the period from 01.08.1979 to 01.06.1989. In this regard, the petitioner made a representation to the respondents to extend the benefits, pursuant to which, the fifth respondent sent a proposal to the fourth respondent and the same was returned on 29.11.2018. Hence, the present Writ Petition.



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3. The learned counsel appearing for the petitioner would submit that the issue that arises in the present Writ Petition, is no longer *res integra* and the same was decided by the Hon'ble Full Bench of the Principal Seat of this Court in the case of ***Government of Tamil Nadu, Represented by its Secretary to Government and Others Vs. R.kaliyamoorthy*** reported in ***2019 (6) CTC 705***. As per the decision of the Hon'ble Full Bench, the service rendered by the Government employees in non-provincialised services or being consolidated pay or on daily wages requires to be counted for the purpose of pensionary benefits, to the extent of 50% of such services. The relevant portion of the Hon'ble Full Bench reads thus:

"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 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



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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. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.



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5. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Part Time Vocational Instructor on 01.08.1979 and her services were regularised as Vocational Instructor with effect from 02.06.1989. Hence, the petitioner is fully entitled for calculation of 50% as a Part Time Vocational Instructor. A perusal of the above decision makes it clear that '*the Government employees / servants 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.*'

6. Considering the above submissions and taking into account the ratio laid down by the Full Bench of the Principal Seat of this Court (supra), this Court is inclined to issue a direction to the respondents to consider the proposal re-submitted by the sixth respondent dated 09.10.2018 and calculate 50% of the service rendered by the petitioner prior to regularisation and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.



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7. With the above observations, this Writ Petition is disposed of.

No costs.

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Speaking Order : Yes / No

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