



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 26.04.2022

DELIVERED ON: 21.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.23020 to 23028 of 2018

W.P.(MD)No.23020 of 2018

M.Charles

... Petitioner

Vs

- 1.The State of Tamilnadu,
Represented by its Principal Secretary to Government,
Department of School Education,
Fort St.George,
Chennai – 9.
- 2.The Director of School Education,
O/o. the Director of School Education,
DPI Campus,
College Road,
Chennai – 6.
- 3.The Joint Director of School Education (Vocational),
O/o. the Joint Director of School Education (Vocational),
DPI Campus,
College Road,
Chennai – 6.



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

- 4.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Kanyakumari,
Kanyakumari District.
- 5.The Principal Accountant General (A&E),
O/o. the Principal Accountant General (A&E),
361, Anna Salai,
Chennai – 600 018.
- 6.The District Educational Officer,
O/o. the District Educational Officer,
Kuzhithurai,
Kanyakumari District.
- 7.The Correspondent,
St.Bernadette's Higher Secondary School,
Mangalakuntu – 629 178,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to re-fix the petitioner's pension by including the 50% of the service rendered by the petitioner as Part Time Vocational Instructor in consolidated pay from 23.07.1986 to 15.10.1992 along with regular service with all other consequential benefits in the light of the Judgment of this Court in W.P.(MD).Nos.795 to 797 of 2018 dated 12.02.2018 within the time period stipulated by this Court.



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

(In All Writ Petitions)

For Petitioner : Mr.T.Lajapathi Roy
For R-1 to R-4 : Mr.V.Omprakash,
and R-6 Government Advocate (Civil Side)
For R-5 : Mr.P.Gunasekaran
For R-7 : No appearance

COMMON ORDER

The petitioners in these Writ Petitions are claiming to refix the petitioners' pension by including 50% of service rendered by the petitioners as part time Vocational Instructor in consolidate pay from 23.07.1986 to 15.10.1992 along with the regular service with all consequential benefits.

2. The brief facts of the case are that the petitioners were appointed as Vocational Instructor on 23.07.1986 and was regularized on 16.10.1992 in the post of Vocational Instructor. The petitioner would attain superannuation on 31.03.2023. The claim of the petitioners is that the Government has issued G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009 in which 50%



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

of the temporary services rendered in consolidated pay shall be included for the purpose of calculating pension. In view of the same, the Tamil Nadu Pension Rules was also suitably amended. The respondents have not included the petitioners' service as part time Vocational Instructors in consolidated pay from 23.07.1986 to 15.10.1992.

3. The issue of claiming pension to the post of Vocational Instructor were considered by several Writ Petitions and the same was allowed in favour of the petitioners. In Writ Appeal No.882 of 2018 batch vide order dated 06.04.2018, the Division Bench is held as follows:

4. By order dated 06.04.2018, the Division Bench, while disposing the Writ Appeals held as follows:

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



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

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 laches, 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.

5. Thus, while granting the relief as sought for, the Bench fixed a cut-off date, being the date of that order by way of a restriction for advancing such claim. The restriction was evidently placed in order to protect against belated claims by those who had remained as passive onlookers without proactively agitating the matter and obtaining timely relief for themselves.

6. The same issue came up for consideration in a batch of matters before a learned Single Judge of this Court, who while disposing the writ petitions on 09.07.2018, extensively dealt with the decision rendered by the Bench including the issue of whether the decision in writ appeal was one passed in persona or in rem.

7. The learned Single Judge concluded that decision dated 06.04.2018 was one passed in rem and that the



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

benefits granted thereunder must be extended to similarly placed employees as well. It has specifically to be noted that the Writ Petitions disposed by the learned Single Judge were of the year 2014, 2017 and 2018, some of the writ petitions having been filed subsequent to the cut-off date, being 06.04.2018.

8. In W.P.(MD) No.15904 of 2018, writ petitioner had approached the Court three (3) months after the cut-off date. The Division Bench, in an appeal by the State in Writ Appeal in W.A(MD)No.517 of 2020 notes that Writ Petition had been filed belatedly with a delay of 3 months but condones the delay, by order dated 13.08.2020 though with a caveat that while similarly placed employees would be entitled to retiral/terminal benefits, they would not be entitled to interest in regard to the same. The decision of the Bench dated 06.04.2018 was thus somewhat modified by the subsequent Bench.

9. In fine, the Writ Appeal filed by the State was dismissed and the official respondent directed to comply with order dated 09.07.2018 within a period of 10 weeks from date of receipt of a copy of that order. Order dated 13.08.2020 has become final.

10. Thus, and to clarify, (i) persons similarly placed to those who were parties W.A.No.882 of 2018 and batch



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

would also be entitled to retiral/terminal benefits and (ii) in cases of those who approach the court after 06.04.2018, however within a reasonable time, while their entitlement to the benefits continues, they would not be entitled to interest.

11. It is in light of the aforesaid pronouncements that the question of delay in approaching this Court is liable to be examined. The petitioner in W.P(MD)No.19570 of 2018, had filed the Writ Petition on 06.09.2018 with a delay of five (5) months from the cut-off date. As far as the second batch of writ petitions are concerned, the date of filing of Writ Petitions is 17.12.2018, with a delay of eight (8) months.

12. That apart, W.P(MD).Nos.19570 of 2018 has been filed by the spouse of the deceased employees. A similar situation came to be considered under order dated 09.07.2018 wherein a claim was made for retiral benefits by the spouse of the deceased employee that came to be accepted and allowed. In the interests of uniformity, the same view is taken to be passed in the present matter as well.

13. In line with the discussion as above, the claims of the petitioners in all writ petitions are liable to be accepted. The official respondents will compute the benefits to be paid over and remit the same to them within a period of ten



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

(10) weeks from the date of uploading of this order in the official website of this Court.

14. In fine, these Writ Petitions are allowed. No costs.

4. The Learned Government Advocate submitted that the writ petitions were allowed and the Government had preferred writ appeal and the same were dismissed. Thereafter the Government had issued G.O. and the same is applicable only to persons who had challenged and preferred writ petitions. But the same is not applicable to the present writ petitioners since the present writ petitioner were not covered in the said order. Subsequently, some of the teachers had filed writ petitions and the same was allowed, invoking Article 14 and the Learned Single Judge had held that the teachers who had preferred writ petitions belatedly are also entitled to calculate the 50% past service. The Government had preferred writ appeal and the same was dismissed. Thereafter, the Government in order to implement the order, had taken steps to pass a common Government order, but, the Finance Department had submitted a report stating that there will be financial burden on the Government's exchequer. Thereafter, the Government had preferred review applications and the same is pending. In the present case, the writ petitioners were appointed in the year 1986, subsequently they were regularized



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

before 01.04.2003. The issue of granting pension on these issues were considered by Hon'ble Three Member bench in the case of *the Government of Tamil Nadu and others VS R. Kaliyamoorthy, reported in 2019 (6) CTC 705 and (2020) 2 MLJ 369* and it has been held under paragraph 45(iii), that if the person is appointed prior to 01.04.2003 and was regularized in the same post prior to 01.04.2003, then 50% of the said service would be included while calculating the pensionable service. The operative portion of the aforesaid order is extracted hereunder:

45. In the light of the above, we answer the reference as follows:-

.....

“(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”.

.....



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

5. Therefore, by considering the issue, this Court is directing the respondents to calculate 50% of the earlier service and rework the pension and disburse the same. However, it is made clear that the petitioners are not entitled to any interest. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

6. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs.

21.07.2022

Index : Yes / No

Internet : Yes

Nsr

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.



W.P.(MD)Nos.23020 to 23028 of 2018

WEB COPY

To

- 1.The Principal Secretary to Government,
The State of Tamilnadu,
Department of School Education,
Fort St.George,
Chennai – 9.
- 2.The Director of School Education,
O/o. the Director of School Education,
DPI Campus,
College Road,
Chennai – 6.
- 3.The Joint Director of School Education (Vocational),
O/o. the Joint Director of School Education (Vocational),
DPI Campus,
College Road,
Chennai – 6.
- 4.The Chief Educational Officer,
O/o. the Chief Educational Officer,
Kanyakumari,
Kanyakumari District.
- 5.The Principal Accountant General (A&E),
O/o. the Principal Accountant General (A&E),
361, Anna Salai,
Chennai – 600 018.
- 6.The District Educational Officer,
O/o. the District Educational Officer,
Kuzhithurai,
Kanyakumari District.



WEB COPY



W.P.(MD)Nos.23020 to 23028 of 2018

S.SRIMATHY, J

Nsr

Pre-Delivery Order made in
W.P.(MD)Nos.23020 to 23028 of 2018

21.07.2022