



W.P.(MD)No.28011 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.28011 of 2022

G.Subramanian

... Petitioner

Vs.

1. The Principal Secretary to Government of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai.
2. The Accountant General,
Officer of the Principal Accountant General (A&E),
361, Anna Salai,
Chennai – 600 018.
3. The Director of Elementary Education,
DPI Complex,
College Road,
Nungambakkam,
Chennai – 600 006.
4. The District Elementary Educational Officer,
Melur,
Melur Post,
Madurai District.



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5. The Block Elementary Educational Officer,
Madurai West Panchayat Union,
Anaiyur Post,
Madurai – 625 017.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order in No.P16/3/11628070/ADK dated 14.07.2021 issued by the second respondent and quash the same as illegal and arbitrary and in consequence thereof direct the respondents to grant pensionary benefits by considering the 50% of the service rendered by the petitioner's wife as a Part Time Teacher from 16.12.1988 to 04.10.1996 along with her full time service.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the impugned order in No.P16/3/11628070/ADK, dated 14.07.2021 issued by the second respondent, quash the same and consequently, direct the respondents to grant pensionary benefits by considering 50% of the service rendered by the petitioner's wife as a Part Time Teacher from 16.12.1988 to 04.10.1996 along with her full time service.



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2. The case of the petitioner is that the petitioner's wife, namely, Gnanesakalavalli was initially appointed as Part Time Pre-Vocational Instructor (Sewing Teacher) vide proceedings of the fourth respondent, dated 16.02.1988. She had undergone training at the District Institute of Education and Training (DIET) at T.Kallupatty, Madurai, during 1996-1997 and her services were regularised as a Full Time Pre-Vocational Instructor on 05.10.1996. After rendering unblemished service, she retired from service on 31.01.2013 and subsequently, she died on 13.06.2014. However, the petitioner has been receiving the family pension after the death of his wife. The petitioner claims that his wife is entitled for calculation of 50% as a Part Time Pre-Vocational Instructor for pensionary benefits. Hence, the petitioner submitted a representation to the third respondent. However, the same was rejected by the second respondent. Challenging the same, the present Writ Petition.

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 this Court in the



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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 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



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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.

5. The facts in the present case are not in dispute. Admittedly, the petitioner's wife initially entered into a service on 16.12.1988 and



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subsequently, her services were regularised on 05.10.1996 and thereafter, she died on 13.06.2014. Hence, the petitioner's wife is fully entitled for calculation of 50% as a Part Time Pre-Vocational Instructor for pensionary benefits. However, without taking into account the judgment of the Hon'ble Full Bench, the second respondent mechanically passed the impugned order.

6. Hence, the impugned order passed by the second respondent vide proceedings in No.P16/3/11628070/ADK, dated 14.07.2021 is set aside and the matter is remanded back to the second respondent, who shall pass appropriate orders in terms of the decision of the Hon'ble Full Bench (supra).

7. With the above observations, this Writ Petition is allowed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

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