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W.P.No.5860 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.5860 of 2021

and

W.M.P.No.6453 of 2021

1.S.Thirunavukkarasu
2.S.Anthony Anbarasu
3.K.Anbarasu

... Petitioners

Vs.

1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 600 009.

2.The Joint Director of School
Education (Vocational Education),
College Road,
Chennai – 600 006.

3.The chief Educational Officer,
Trichy District, Trichy.

4.The Chief Educational Officer,
Karur District, Karur.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to GO.Ms.No.194 School Education (Pa.Ka.7-1) Department dated 12.09.2018 and quash the same insofar as it fixes the cut-off date as



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06.04.2018 and consequently direct the respondents to count 50% of petitioner's part-time service from the date of initial appointment along with regular service of Vocational Teacher as qualifying service for the purpose of calculating the pensionary benefits.

For Petitioners : Mr.S.Kamadevan

For Respondents : Mr.S.John J. Raja Singh
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to issue a writ of certiorarified mandamus to quash the G.O.Ms.No.194 School Education (Pa.Ka.7-1) Department dated 12.09.2018 insofar as it fixes the cut off date as 06.04.2018 and for a consequential direction to the respondents to count 50% of petitioners' part time service from the date of initial appointment along with regular service of Vocational Teacher as qualifying service for the purpose of calculating the pensionary benefits.

2. Counter affidavits have been filed on behalf of the respondents 3 and 4.

3. No counter has been filed on behalf of the first respondent, who issued the impugned Government Order.



4.

During the course of hearing, the learned counsel for the petitioner has drawn the attention of the Court to the common order passed by the Madurai Bench of Madras High Court dated 05.11.2019 in W.P.(MD)No.22785 of 2019 and batch. The same G.O.Ms.No.194 School Education (Pa.Ka.7-1) Department dated 12.09.2018 issued by the first respondent, challenged before the Madurai Bench of Madras High Court in a batch of writ petitions. While allowing all writ petitions, it is held as extracted hereunder:

“6. When a relief is granted to an employee with regard to counting 50% of service rendered by him as part time employee, the same cannot be restricted only to the persons filed with petition or the persons filed the writ petitions on or before 06.04.2018. The said condition imposed by the impugned Government Order, is arbitrary and there is no reason given by the Government for fixing such cut-off date. In view of the same, the said condition is invalid and is liable to be set aside. For the above reason, the condition imposed is quashed. The respondents are directed to consider the representation of the petitioners for counting 50% of the service rendered by them as part time vocational instructors taking into account the various orders passed in the writ petitions and judgment of this Court, dated 21.04.2017, made in W.A.(MD)No.392 of 2017 etc., batch.”

5. Learned counsel for the petitioners also placed a copy of common



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judgment dated 03.03.2023 passed by the Division Bench of this Court in Writ Appeal No.2133 of 2019 and batch.

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6. On careful perusal of the said common judgment, it appears that prior to the order dated 05.11.2019 passed by the Madurai Bench of Madras High Court in W.P.(MD)No.22785 of 2019 and batch, the learned Single Judge of Madras High Court, dismissed the writ petitions filed by the petitioners therein seeking a relief for counting 50% of the service rendered by them, as part time Vocational Instructors. In a common judgment in W.A.No.2133 of 2019 and batch, the Division Bench set aside the orders of the learned Single Judge dated 28.03.2019 passed in W.P.No.24713 of 2018 and batch. While allowing the writ appeals by common judgment dated 03.03.2023, the Division Bench made observations at paragraphs 8, 9, 11 and 12 held as extracted hereunder:

“8. No doubt, the writ petitioners have approached the Court with few months delay and it is not in dispute, that, but for the fixation of cut-off date, they would have been entitled to the benefits of service rendered by them as vocational teachers. The learned Single Judge in the common order in W.P.No. 14365 of 2014 dated 09.07.2018 had also referred the common judgment dated 06.04.2018 made in W.A.No.882 of 2017 etc., and having noted the fact that persons similarly placed have been granted the benefits by referring to various judgments of the Hon'ble Supreme Court of India had held that the petitioners in those writ



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petitions are also entitled to such benefits. Therefore, the principle as enunciated in the above said order is that, the respondents/officials cannot deny the lawful right of the appellants/petitioners herein, which have already accrued to them and has been continuously accruing. Therefore, restricting the benefits only to those petitioners who approached this Court prior to 06.04.2018 and denying the same to the appellants/petitioners who are similarly placed is unreasonable, arbitrary and violative of the Article 14 of the Constitution of India.

9. Further more, the learned counsel appearing for the appellants/petitioners would submit that the writ petitions filed by the appellants/petitioners were disposed, following the G.O.Ms.No.194 dated 12.09.2018. However, a Writ petition in W.P.(MD).No.22785 of 2019 etc. batch dated 05.11.2019 was filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned G.O.Ms. No.194, dated 12.09.2018 issued by the first respondent and quash the same with regard to the cut-off date i.e., 06.04.2018 and directing the respondents to take the 50% of the part time service rendered by the petitioner in that writ petition.

11. Therefore, the respondents cannot deny the lawful right of the appellants/petitioners herein by virtue of G.O.Ms.No.194 dated 12.09.2018 for the reason that the cut-off date in the said G.O has been quashed in the above mentioned writ petitions.

Therefore, the objections raised by the respondent/officials are



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liable to be rejected, accordingly they are rejected. The appellants/petitioners are entitled to, for calculating 50% of the past services, rendered by each of the petitioner in the respective employment before they got absorbed by bringing them under the time scale of pay irrespective of the years of service, for the purpose of pensionary benefits. Accordingly, this point is answered.

12. In the result, these writ appeals are allowed subject to the above observations, setting aside the orders in all the writ petitions mentioned above. Consequently, connected writ petitions are allowed. The respective respondents in each of the writ appeals/writ petitions are hereby directed, after fixing the revised pension by taking into account the past 50% services, the revised pension arrears shall be calculated and to be disbursed to the appellants/petitioners within a period of twelve weeks from the date of receipt of a copy of this order. No costs.”

7. Learned Additional Government Pleader appearing for the respondents sought further time to file counter affidavit on behalf of the first respondent. But, this Court declined the request of the learned Additional Government Pleader to grant further time to file counter due to the reason that one Mr.P.Raja, learned Government Advocate took notice on behalf of the respondents on 10.03.2021.

8. As per the provisions of the Madras High Court Writ Petition Rules, the



respondents, if they intend to file any counter affidavit, they have to file it within 60 days time from the date of receipt of notice. In this case, as already Government Advocate took notice on 10.03.2021 on behalf of the respondents, the time stipulated in the Madras High Court writ proceedings Rules already expired.

Rule 24(2) of Madras High Court Writ Rules, 2021 is extracted hereunder:

“any respondent who intends to file a counter affidavit, shall, unless otherwise ordered, file it within eight weeks from the date of service on him of the notice or rule nisi provided the Court may extend the time or condone the delay for sufficient cause.”

9. In the present case, admittedly, the impugned order is issued by the first respondent. Though, the respondents 3 and 4 filed their counters, it is not useful for adjudication of this case in proper manner. The first respondent, who issued Government Order which is under challenge, has to file his counter affidavit to substantiate or to support the said Government Order.

10. As the first respondent did not chose to file any counter affidavit, within a time stipulated in Madras High Court Writ Rules, 2021 and as he did not chose to file counter affidavit even after expiry of the time stipulated in the Writ Rules along with appropriate application seeking the permission of the Court to file counter affidavit, in my considered view, the first respondent is not entitled to ask further



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time to file counter as a matter of right.

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11. However, considering the issue involved in the present writ petition that the Government Order in G.O.Ms.194 School Education (Pa.Ka.7-1) Department which is under challenge is already quashed by Madurai Bench of Madras High Court in its common order dated 05.11.2019 and the said order has become final, in my considered view, no further orders are required to quash G.O.Ms.194 School Education (Pa.Ka.7-1) Department dated 12.09.2018.

12. Considering the consequential relief sought by the petitioners to direct the respondents to count 50% of petitioners' part time service from the date of initial appointment, along with regular service of Vocational Teacher as qualifying service for the purpose of calculating the pensionary benefits, this Court is of the view that already the said issue also decided by the Division Bench of this Court in a common judgment dated 03.03.2023 in W.A.No.2133 of 2019 and batch.

13. For the above said reasons, this Writ Petition is disposed of, with a direction to the respondents, after fixing the revised pension by taking into account the past 50% services, the revised pension arrears shall be calculated and to be disbursed to the petitioners, within a period of two months from the date of receipt of copy of this order.



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14. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Neutral Citation :Yes/No

AT

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School Education Department,
Fort St.George,
Chennai – 600 009.

2.The Joint Director of School
Education (Vocational Education),
College Road,
Chennai – 600 006.

3.The chief Educational Officer,
Trichy District, Trichy.

4.The Chief Educational Officer,
Karur District, Karur.



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BATTU DEVANAND, J.

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