



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.02.2023
Pronounced on	03.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

Writ Appeal.Nos.2133, 2134, 2136, 2139 to 2142, 2148,2149, 2155, 2157 & 2188 of 2019 and 2230 to 2235 of 2019, 2237,2328 & 2319 of 2019 and 2244, 2245, 2247 to 2250, 2253 to 2255 of 2019 and 2258 to 2260 of 2019 and 2322 & 2323 of 2019 and 2345 of 2019 and 2683 of 2019 and 2951 to 2957 of 2019 & 2964, 2966, 2978 & 2979 of 2019 and 2959, 2960, 2963, 2967 to 2969 of 2019 and 2972 to 2975 of 2019 and 2982, 2983, 2993, 2996, 2997, 3005, 3010, 3012 to 3014 of 2019 and 2984 to 2987, 2989, 2990, 3004, 3006, 3009, 3011 and 3015 of 2019 and 3023, 3025 to 3032, 3034, 3036 to 3040 of 2019 and 3043 to 3045 of 2019, 3047 to 3049, 3051, 3052, 3067, 3069, 3072, 3074 & 3076 of 2019 and 3058 to 3064 of 2019, 3068, 3070, 3071, 3073 & 3075 of 2019 and 3183 to 3189 of 2019, 3191, 3193, 3199, 3200, 3205, 3206, 3213 and 3214 of 2019

and

Writ Petition.Nos. 34480, 34485, 34487, 34491 & 34484 of 2019 and 35172, 35234, 35257, 35262, 35268, 35271, 35278, 35285, 35292, 35297 of



2019 and 35696, 35698, 35700, 35701, 35704 & 35705 of 2019 and 35780, 35784, 35786, 35789, 35791 & 35795 of 2019

WEB COPY

W.A.Nos.2133 of 2019

M.Velliyangiri

.. Appellant/Writ 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,
Vellore District.
- 5.The Head Master
Government Boys Higher Secondary School,
Jolarpet,
Vellore District.

....Respondents/Respondent 1 to 5

Prayer: Writ Appeals have been filed under Clause 15 of Letters Patent



against the order of this Court dated 28.03.2019 made in W.P. Nos. 24713 to 24724 of 2018.

For appellant : Mr.Saravanakumar

For RR1 to R5 : Mr.S.Silambanan,
Additional Advocate General assisted
by Mr.G.Nanmaran,
Special Government Pleader

COMMON J U D G M E N T

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI J.)

The instant writ appeals/writ petitions arise from the order dated 28.03.2019 passed in W.P.Nos. 24713 to 24724 of 2018 , whereby the writ petitions filed by the appellants herein was disposed of, directing the writ petitioners to approach the competent authorities by submitting representations and in the event of receiving any such representations, the cases of the writ petitioners shall be considered on individual basis and the authorities are bound to pass orders on merits and in accordance with law.

2. The reliefs sought for in the above writ petitions are for direction to



direct the respondents to take into account 50% of the services rendered by the writ petitioners from their initial appointments till regularisation for the purpose of retirement benefits, including pension.

3. Mr.Saravanakumar, the learned counsel appearing for the appellants/petitioners would submit that the appellants/petitioners are vocational teachers and the above writ petitions were filed for counting 50% of the past service (from initial appointment till time scale of pay was given) for retirement benefits. A batch of writ petitions were allowed, which were confirmed by the Hon'ble Division Bench and the Government also issued orders granting such benefits. However, the above writ petitions were disposed of, following G.O.Ms.No.194 dated 12.09.2018 and also by the order passed in writ appeal No.882 of 2017 dated 06.04.2018 in which it was held that only those vocational teachers whose writ petitions were allowed or pending as on 06.04.2018 are eligible to get the same and not to other teachers who approached this Court after 06.04.2018. Aggrieved, these writ appeals have been filed. The learned counsel for the appellants/petitioners vehemently contend that, Rule 11(4) of the Tamil Nadu Pension Rules 1978



WEB COPY

has specifically declared that 50% of the past service rendered by the employees, who were initially appointed in consolidated pay and who were brought in regular service before 01.04.2003, shall be counted for retirement benefits along with regular service, since the appellants/petitioners/vocational teachers, after appointment, were working continuously and handling the vocational subject for higher secondary stream, involving whole time employment. The learned counsel for the appellants/petitioners relied upon the decision rendered in W.A.(MD).No.392 of 2017 etc. batch and submitted that since the appellants/petitioners were in continuous service on consolidated pay from the date of initial appointment till regularisation, they deserve 50% of such service rendered by them for calculating their retirement benefits. While so, the Government in G.O.Ms.No.194 dated 12.09.2018 granted benefits only to those teachers who filed the writ petitions/ appeals which were either allowed or pending as on 06.04.2018. Therefore, restricting the benefits only to those teachers who approached to this Court prior to 06.04.2018 and denying the same to the appellants/petitioners who are similarly placed. This action of the Government is unjustified, discriminatory and violative of the Article 14 of



the Constitution of India, which resulted in Juniors getting more pension than the seniors. Hence, the order passed in W.P.Nos.24713 to 24724 of 2018 dated 28.03.2019 is unsustainable and prays for interference.

4.Mr.S.Silambanan, learned Additional Advocate General appearing for the respondent/State would submit that, in the light of the legal position coupled with the fact that the appellants/writ petitioners have belatedly approached this Court (i.e., after the cut off date 06.04.2018), the appellants/writ petitioners are guilty of delay and laches and hence, prays for dismissal of these writ appeals. The learned Additional Advocate General heavily relied upon the judgment of this Court made in W.A.No.882 of 2017 etc., batch dated 06.04.2018, wherein, the Hon'ble Division Bench eventhough had upheld the view that 50% of service rendered by the employees/teachers as part time vocational instructors either as single part time or double part time, shall be contented for the purpose of computing pension and other retiral benefits, the Hon'ble Division Bench put a rider stating that, the same shall be extended only to those who have already approached this Court and being party in the said judgment, but the same shall not be extended to future



litigants, who would approach this Court following the judgment rendered in this regard, by the order of the Hon'ble Division Bench of this Court, and therefore, in view of the embargo put in by the Hon'ble Division Bench, the appellants/petitioners are not entitled to get the same benefits, even though they are similarly placed persons.

5. Heard the learned counsels appearing for the appellants/petitioners and the respondents and perused the materials available on record.

6. The points for consideration;

(1) Whether 50% of past services rendered by the appellants/petitioners ought to be counted for the purpose of retirement benefits including pension?

(2) Whether the appellants/petitioners are entitled to get 50% of the past services rendered by them as vocational teachers should be counted for retirement benefits including pension when the Hon'ble Division Bench put a rider in Writ Appeal No.882 of 2017 etc. batch dated 06.04.2018 as cut-off date?



Point No.(1):-

WEB COPY

The first and foremost consideration is that whether 50% of the past services rendered by the appellants/petitioners to be counted for the purpose of retirement benefits including pension. Undisputed fact is that, the appellants/petitioners after being appointed as vocational teachers, were working continuously and handling the vocational subject for higher secondary stream involving whole time employment. Furthermore, as observed in W.P.(MD).No.392 of 2017 etc., batch dated 21.04.2017, and by virtue of G.O.Ms.No.408 dated 25.08.2009 and G.O.Ms.No.118 dated 14.02.1996 the appellants/petitioners employment being whole time employment, who were brought in regular service before 01.04.2003. Therefore, 50% of their past service shall be counted for retirement benefits along with regular service. Accordingly, this point is answered.

Point No.(2):-

The next point for consideration whether the benefits under G.O.Ms.No.194 dated 12.09.2018 could be extended to the appellants/petitioners herein.



WEB CODE

It is relevant to extract hereunder the operative portion of the common judgment of the Hon'ble Division Bench of this Court in W.A.Nos.882 of 2017, etc., batch, dated 06.04.2018 (cited supra):

“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 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.

16. The writ appeals are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.”

7. In a similar circumstances, the recent judgment of this Court in



WEB CCM

W.P.(MD).No.14365 of 2014, in the case of ***A.Ramalingam Vs. The State of***

Tamil Nadu and others, a learned Single Judge, after having gone through

various decided cases on the above issue, has passed the following order :

"Para19. Further, it is a settled proposition of law that, in service matters, if the similarly placed persons, who are entitled to get the benefit under law, having been denied the benefit, even though in this regard already a decision has been rendered by the Court of law and the same is implemented, the very same relief shall also be extended to all similarly placed persons irrespective of the fact, whether they approached the Court or not, if the law declared by the Court is a judgement in rem.

Para 21. Moreover, the cause of action arose in these kind of cases are continuous cause of action as each of the petitioners, who are the erstwhile employees of the respective employer/State would be entitled to get the pensionary benefits till their life time. Thereafter, the legal heirs would be entitled to get the family pension benefits.

Para 41. If the said principle is applied to the facts of the present case, except the decision dated



WEB COPY



06.04.2018 of a Division Bench of this Court, no other Division Bench either prior to or after to that, has taken any different view, as the one taken in the said judgment and in all other Division Bench judgments, a uniform and consistent stand taken by this Court was that, the benefit of taking into account 50% of the services rendered by the employees before they brought into regular service shall be the basis for calculating for the purpose of pension and retiral benefits. Even in the said judgment dated 06.04.2018 in W.A.No.882/2017, that view was accepted and endorsed by the said Division Bench also, but the only embargo the Division Bench has put in that, the said benefit cannot be extended to those who come to the Court hereafter. In order to meet out the said embargo, the aforesaid judgments of the Hon'ble Apex Court, as referred to above, with regard to the continuous cause of action and the benefit, which has been declared by the Court through a judgment in rem has to be extended to similarly placed persons, had been quoted.

"Para 44. In view of the aforesaid judgments,



wherein the issue as has been put forth by the learned counsel for the petitioners, having been dealt with and decided more than once by the Writ Court and the same has been confirmed by the Division Bench of this Court more than once and in cases, where SLP preferred before the Hon'ble Supreme Court, wherein also the view taken by this Court has been confirmed, all these petitioners are entitled to, for calculating 50% of the past services, rendered by each of the petitioners 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. Hence, these petitioners also shall be entitled to get the same benefits and accordingly, all these writ petitions are fit to succeed.

Para 45. In the result, these writ petitions are allowed and the respective respondents in each of the writ petitions are hereby directed to take into account the 50% of the past services rendered by each of the petitioners either as Vocational Instructors or any other employment either as a Part Time / Full time / adhoc / temporary / daily wages employees before they brought in under the regular



time scale of pay on permanent basis or absorption and by calculating the said 50% of their past service, pension eligibility and pension enhancement or difference of pay and pension shall be calculated and disbursed in favour of the respective petitioners. 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 12 weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioners shall continue to receive the revised pension."

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 petitions are also entitled to such



WEB COPY

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.



10.The observation made in the W.P.(MD).No.22785 of 2019 etc., batch is extracted as hereunder:

"Placing reliance on the observation made in W.P.(MD).No.14365 of 2014 etc., batch, this Court has passed the following order :

6.The learned counsels for the petitioners would submit that, the issue raised in this batch of cases is covered by number of orders passed by this Court. They also submitted that, the decisions rendered by the learned Single Judge of this Court, had been upheld by a Division Bench of this Court, where also, the said view taken by the Writ Court had been confirmed and in some of the cases the matters were taken up to the Hon'ble Supreme Court, where also, the view taken by this Court directing the official respondents to calculate the 50% of the services temporarily rendered by the similarly placed persons for the purpose of their pensionary benefits, had been affirmed and upheld and the orders have also been complied with by issuing Government Orders in this regard. All those, who have already filed writ petitions and got orders for recalculating the pension, are fully



eligible for pension by taking into account their 50% of the past services rendered by them before their absorption.

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 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,



WEB COPY

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.

(R.S.M.,J.) (K.G.T.,J.)
03.03.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



To

WEB COPY

1. The 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,
Vellore District.
5. The Head Master
Government Boys Higher Secondary School,
Jolarpet,
Vellore District.



WEB COPY





WEB COPY



R.SUBRAMANIAN, J.

and

K.GOVINDARAJAN THILAKAVADI, J.

VSN

Pre-delivery Common Judgment in

Writ Appeal.Nos.2133, 2134, 2136, 2139 to 2142, 2148,2149, 2155, 2157 & 2188 of 2019 and 2230 to 2235 of 2019, 2237,2328 & 2319 of 2019 and 2244, 2245, 2247 to 2250, 2253 to 2255 of 2019 and 2258 to 2260 of 2019 and 2322 & 2323 of 2019 and 2345 of 2019 and 2683 of 2019 and 2951 to 2957 of 2019& 2964, 2966, 2978 & 2979 of 2019 and 2959, 2960, 2963, 2967 to 2969 of 2019 and 2972 to 2975 of 2019 and 2982, 2983, 2993, 2996, 2997, 3005, 3010, 3012 to 3014 of 2019 and 2984 to 2987, 2989, 2990, 3004, 3006, 3009, 3011 and 3015 of 2019 and 3023, 3025 to 3032, 3034, 3036 to 3040 of 2019 and 3043 to 3045 of 2019, 3047 to 3049, 3051, 3052, 3067, 3069, 3072, 3074 & 3076 of 2019 and 3058 to 3064 of 2019, 3068, 3070, 3071, 3073 & 3075 of 2019 and 3183 to 3189 of 2019, 3191, 3193, 3199, 3200, 3205, 3206, 3213 and 3214 of 2019

and

Writ Petition.Nos. 34480, 34485, 34487, 34491 & 34484 of 2019 and 35172, 35234, 35257, 35262, 35268, 35271, 35278, 35285, 35292, 35297 of 2019 and 35696, 35698, 35700, 35701, 35704 & 35705 of 2019 and 35780, 35784, 35786, 35789, 35791 & 35795 of 2019

03.03.2023