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W.P.Nos.29699, 29701 & 29705 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.29699, 29701 & 29705 of 2023

and

W.M.P.Nos.29308, 29311 & 29313 of 2023

M.Asokan ...Petitioner in W.P.No.29699/2023

S.Anbanandam ...Petitioner in W.P.No.29701/2023

M.Rajendran ...Petitioner in W.P.No.29705/2023

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Finance (Pay Cell) Department,
Fort St. George, Chennai – 600 009.

2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai – 600 009.

3.The Director of School Education,
DPI Compound, College Road,
Chennai – 600 006.



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4.The Joint Director (Vocational),
Directorate of School Education,
DPI Compound, College Road,
Chennai – 600 006.

...Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records relating to the letter of the 2nd respondent having Lr.No.16280/VE/2011-4, dated 14.06.2012 to the 3rd respondent rejecting the request of the 3rd respondent to take the service rendered by part time Vocational Instructors for the purpose of pension and quash the same and consequently direct the 4th respondent to send the proposal for computing the 50% service rendered by the petitioner as part time Vocational Instructor drawing consolidated pay for calculating the qualifying service for pension and the quantum of pension under Rule 43(2) of the Tamil Nadu Pension Rules to the 2nd respondent to enable the 1st respondent to sanction the pension to the petitioner based on the said proposal from the date of retirement of the petitioner and to enable the concerned authorities to disburse the pension to the petitioner.

(in all WPs)

For Petitioners : Mr.R.Murugabharathi

For Respondents : Mr.R.Neelakandan, AAG
assisted by Mr.P.Ganesan, GA



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COMMON ORDER

With the consent of both the parties, these Writ Petitions are taken up for final disposal and the following common order is passed.

2. The claim in the present Writ Petitions is for counting of 50% of the past services of the part-time Vocational Instructors for the purpose of calculating the qualifying service for pension. This claim, having been rejected by the second respondent in this proceedings dated 14.06.2012, is put under challenge in these Writ Petitions.

3. While the learned counsel for the petitioners submitted that the issue has already been dealt with in various decisions of this Court, including the batch of cases in ***W.A.No.2133 of 2019, etc.***, in the case of ***M.Velliyangiri vs. The Government of Tamil Nadu, School Education Department and others, dated 03.03.2023***, the learned Additional Advocate General placed reliance on the averments in the counter affidavit and submitted that for the purpose of counting the past services, the same should be in full time. He also submitted that as per



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G.O.Ms.No.408, Family (Pension) Department, dated 25.08.2009, only the full time past services can be taken into account for the purpose of calculating the pensionable service.

4. The ground raised by the learned counsel for the petitioners is no more *res integra* and in the case of ***M.Velliyangiri (supra)***, the points for consideration therein were as follows:-

“(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?”



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5. While answering these points, the Division Bench had allowed the batch of Writ Appeals by holding that the part-time services of the Vocational Instructors can also be taken into account for the purpose of calculating the pensionary benefits. For such purpose, reliance was placed in another batch of Writ Appeals in W.A.No.882 of 2017, etc., dated 06.04.2018. The relevant portion of the judgment reads as follows:-

“....

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,



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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 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



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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 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,



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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



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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 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



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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:



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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/



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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.”

6. The aforesaid extract is self explanatory. In view of the law settled by the Hon'ble Division Bench of this Court in the aforesaid



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judgment, the petitioners' past services as part-time Vocational Instructors requires to be taken into account for the purpose of calculating the pensionary benefits.

7. In the light of the above observations, the impugned order 14.06.2012 passed by the second respondent herein is quashed. Consequently, there shall be a direction to the respondents herein to take into account 50% of the past services rendered by the petitioners as part-time Vocational Instructors and thereby disburse the arrears of revised pension to the petitioners, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. Accordingly, all these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes
Neutral Citation:Yes
Speaking order
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M.S.RAMESH,J.

hvk

To

- 1.The Secretary to Government,
Finance (Pay Cell) Department,
Fort St. George, Chennai – 600 009.
- 2.The Secretary to Government,
School Education Department,
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