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W.P.No.14102 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.14102 of 2017

M.Ganesan (died)

G.Jamuna

*(Petitioner brought on record
vide order dated 26.07.2023
made in WMP No.6635 of 2022
in WP No.14102 of 2017)*

.. Petitioner

VS

1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Rural Development Department,
Fort St.George, Chennai – 9.

2.The Director,
Local Fund Audit Department,
Kuralagam, Chennai – 600 108.

3.The Collector,
Cuddalore Collectorate,
Cuddalore.

4.The Commissioner,
Parangipettai Panchayat Union,
Cuddalore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to forthwith calculate and pay the revised pension and arrears of pension based on G.O.Ms.No.408 (Finance), Pension Department dated 25.08.2009 in the time bound manner by taking into consideration the 50% of the services rendered by the petitioner's husband prior to 01.10.1984.



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For Petitioner : Mr.S.Ramesh

For Respondents : Mr.S.Ravikumar
Special Government Pleader
for R1 to R3
Mr.P.S.Siva

Shanmugasundaram

for R4

ORDER

The petitioner is the legal representative of M.Ganesan, who had been appointed as B-II Class Siddha Doctor on 05.08.1972. He retired on attaining the age of superannuation on 31.03.1998. Pension had also been sanctioned to him. He died on 17.06.2020. Thereafter, family pension had been sanctioned to the petitioner herein.

2. Thereafter, the Government introduced G.O.(Ms).No.408, Finance dated 25.08.2009 whereby, the period of one and half a year for which the employee was working on a daily basis or on consolidated pay before the date of regularization was included for calculation of pension. Effectively not the entire period would be calculated but one half of that period would be calculated. Consequent to introduction of G.O.(Ms).No.408 dated 25.08.2009, the pension rules had also been amended bringing in Rule 11 (4) in conformity with the aforementioned Rule.



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3. Pension Rule 11(4) is as follows:-

"(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break"

4. The only issue which turns around for interpretation was about the entitlement of the husband of the petitioner herein.

5. Since it had been contended by the respondents that the deceased petitioner was working as part time in the post of B-II Class Siddha Doctor. It was therefore contended that the aforementioned Government Order would not apply to the late



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husband of the petitioner herein and, therefore, he was not entitled for consideration of 50% of the number of years in which he worked prior to his regularization. He was brought into regular service only on 01.10.1984. The other contention raised by the respondents is the issue of delay which probably was on the basis of the financial commitment which would be incurred on the respondents.

6. Let me address the second issue first. It is made clear that G.O.No.408 (Finance) Pension Department, which had been introduced on 25.08.2009, can be applied only prospectively and, therefore, there cannot be any arrears or re-calculation of the pay structure of the late husband of the petitioner but only from 25.08.2009 for the period in which he was working as, according to the respondents, part time, one half of that service alone will be taken into consideration at the rate of salary which was paid at that particular time.

7. The second issue which has to be addressed is the classification of the work as part time prior to regularization. I am quite fortunate in that particular aspect since there is series of judgments which have addressed this very issue and have declared



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that those who already worked before regularization as B – II Class Siddha Doctor could not be termed as part time workers but as full time workers.

8. One judgment is the judgment in W.A.No.608 of 2019 by a Division Bench judgment of this Court dated 01.04.2019 in the *State of Tamil Nadu Rep. By its Sec. Rural Development Department and others v G.Salomi*. Even in that particular case, when application of G.O.No.408, Finance (Pension) Department dated 25.08.2009 was put to question.

9. It was contended by the respondents therein that the writ petitioner therein was on part time basis. He was Rural Medical Officer prior to 01.10.1984. It was contended that since that service was part time, the Government Order No.408 or pension Rules, Rule 11 (4) would not be applicable to him. However, the Division Bench had held otherwise and had very categorically stated that though even categorization of any employee as part time would not come to the rescue of the respondents and they would be bound to pay pension for one and half services rendered prior to regularization on 01.10.1984. After examining a catena of decisions, the Division Bench finally held as



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follows:-

"10. In the light of the clear findings in the earlier decisions of this Court referred supra and in the absence of any materials placed before this Court to the contrary, it is not possible to accept the self-serving claim of the Respondents that the services of the Rural Medical Officers like the Petitioner prior to 01.10.1984 were engaged on part time basis. We must also point out here that the Hon'ble Supreme Court of India in State of Uttar Pradesh vs Arvind Kumar Srivastava [(2015) 1 SCC 347] has reiterated that when a particular set of employees have been given relief by the Court, all other identically situated employees should be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. In view of the aforesaid dictum, the Petitioner is entitled to the same benefit, which has been granted in respect of similarly placed persons in the decisions referred supra.

11. The order passed by the Writ Court is in consonance with the earlier orders passed by the Division Benches of this Court and we do not find any reason to differ from the same."

10. Thus, the writ appeal filed was dismissed and it directed that the benefit of G.O.No.408, Finance (Pension) Department dated 25.08.2009 should be extended to the respondent therein / writ petitioners.

11. Since the issue is no longer *res integra*, I have extracted only the defining portion of the aforementioned judgment



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in the writ appeal. But it is to be noted that the said conclusion was based on the catena of judgments namely (i) *A.Muthuselvam v State of Tamil Nadu* [W.P.No.30003 of 2004 etc batch dated 19.04.2006], (ii) *J.Krishnamoorthy v State of Tamil Nadu* [W.A.No.922 of 1995 dated 01.02.1996] and (iii) *The Assistant Director, Local Fund Audit Department v K.Dhanapalan* [W.A.No.1618 of 2012 dated 08.10.2012].

12. Since consistently the courts have recognized that Rural Medical Officers are discharging full time work and cannot be categorized as part time thereby negating the claim for the application of G.O.No.408, Finance (Pension) Department dated 25.08.2009 , I would follow the same ratio laid down and allow the writ petition. No costs. Necessary proceedings in this regard may be issued by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

26.07.2023

Index:Yes/No

Neutral Citation:Yes/No

ssm

To

1.The Secretary to Government,
Rural Development Department,Fort St.George, Chennai – 9.

2.The Director,
Local Fund Audit Department,Kuralagam, Chennai – 600 108.



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C.V.KARTHIKEYAN,J.

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