



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4782 of 2023

I.Nambikai Mery

... Petitioner

Vs.

1.The Director of Elementary Education,
Chennai – 06.

2.The Accountant General (A&E),
361, Anna Salai,
Teynampettai, Chennai.

3.The District Educational Officer (Elementary),
Sivagangai, Sivagangai District.

4.The Block Educational Officer,
Ilayankudi, Sivagangai District.

5.The Correspondent,
St.Anthony's Middle School,
Kalvalipottal,
Ilayankudi Taluk,
Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to count the 50% of the part time service period from 08.09.1983 to 11.09.1995 to pension benefits and confer all the consequential benefits.



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For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader
for R1, R3 & R4

Mr.Saravanakumar, standing counsel
for R2

No appearance for R5

ORDER

Heard the learned counsel on either side.

2.The petitioner was appointed in the fifth respondent school as a part time pre-vocational instructor on 08.09.1983. He was made full time worker on 03.04.1997. He got selection grade in the year 2005. He retired on 31.01.2016. However, he continued till 31.05.2016 on re-employment basis. The prayer made in the writ petition is that 50% of the part time service should be included for pensionary benefits.

3.The respondents have filed counter affidavit. The learned Additional Government Pleader took me through its contents. He opposed the writ prayer. After carefully considering the rival contentions, I more than satisfied that the issue raised in this writ petition is no longer res integra. A learned Judge of



this Court vide order dated 13.12.2022 in WP(MD)No.28011 of 2022 had held

as follows :

“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 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 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."

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 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)."

4.In this view of the matter, the petitioner's service has to be included. The respondents are directed to count 50% of the part time service rendered by the petitioner from 08.09.1983 to 11.09.1995 for pensionary benefits. The revised pension proposals shall be submitted by the fifth respondent within a period of six from the date of receipt of copy of this order. It shall be



processed by the official respondents and appropriate orders shall be passed in favour of the petitioner within a period of eight weeks thereafter. The consequential monetary benefits shall also be disbursed to the petitioner. Since the petitioner has come to this Court only in the year 2023, the question of paying interest will not arise. However, it is made clear that interest can be denied only if the monetary benefits are paid within the time stipulated above. If the timeline stipulated by this Court is not adhered to by the respondents, the petitioner will be entitled to interest from the date of his entitlement.

5.This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

12.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
Skm

To

The Correspondent,
St.Anthony's Middle School,
Kalvalipottal,
Ilayankudi Taluk,
Sivagangai District.



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G.R.SWAMINATHAN, J.

SKM

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