



W.P.(MD)No.6941 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6941 of 2023

N.Krishnamoorthi

... Petitioner

Vs

- 1.The State represented by
The Secretary,
School Education Department,
Fort St.George,
Chennai – 09.
- 2.The Director of School Education,
College Road,
Chennai – 06.
- 3.The District Educational Officer,
Dindigul District.
- 4.The Chief Engineer (Agril.Engg),
Agricultural Engg Dept.,
487, Anna Salai Nandanam,
Chennai – 600 035.
- 5.The Executive Engineer,
Agricultural Engg Department,
Trichy – 01.



W.P.(MD)No.6941 of 2023

6. The Secretary,
Then Nadars' Sundara Visalakshi Vidhyasala
Higher Secondary School,
Pattiveeranpatti,
Kodaikanal Road RLY.STN,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned letter dated 07.06.2019 bearing letter No.APa1/47895/2018 sent by the fourth respondent and consequential impugned order passed by the second respondent dated 09.08.2019 bearing Na.Ka.No.21369/V1/E3/2019 and quash the same and directing the respondents to take the 50 % of the part time service rendered by the petitioner i.e. from 28.06.1979 F.N. to 28.01.1987 A.N in the sixth respondent's school along with the regular service rendered in the 4th and 5th respondent's Agriculture department from 29.01.1987 F.N to 30.06.2013 A.N for the pension benefits I.e., for the period of 30 years 02 months 16 days based on the Judgment passed by the Hon'ble Division Bench in W.A.No.517 of 2020 dated 13.08.2020.

For Petitioner : Mr.R.Saravanan

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader
for R.1 to R.5

Mr.S.Chinnaian for R.6

ORDER

Heard the learned counsel on either side.



W.P.(MD)No.6941 of 2023

2.The writ petitioner joined as a part time Vocational instructor on 28.06.1979 in the sixth respondent school and rendered his service till 28.01.1987. Thereafter, he joined the service in Agricultural Department from 29.01.1987. Hence he sought to take 50% of the service rendered in the sixth respondent school from 28.06.1979 to 28.01.1987 along with regular service rendered in the Agricultural Department from 29.01.1987 to 30.06.2013. While calculating his pensionary benefits, the period on service rendered by the petitioner from 28.06.1979 to 28.01.1987 was not considered. The petitioner had been representing to the Department for computing the said service also. Subsequently for similarly placed individuals, it was directed that 50% of such service shall be taken into account for computing the pensionary benefits. Since the petitioner has not been extended the same benefit, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The learned Additional Government Pleader relied on the order dated 06.04.2018 passed by the Hon'ble



W.P.(MD)No.6941 of 2023

Division Bench in *W.A.No.882 of 2017 etc batch (The Government of Tamil Nadu & Others Vs. The Chief Educational Officer & Others)*. The Hon'ble Division Bench had held that the Writ Court should shut the door and not entertain any claim from similarly placed retired staff. The Hon'ble Division Bench went to the extent of holding that if any such writ petition is filed, it should be dismissed. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record.

6.Though the Hon'ble Division Bench passed an order dated 06.04.2018 as stated by the learned Additional Government Pleader, subsequent benches have taken a contra view. My attention is drawn to the order dated 13.08.2020 passed in *W.A(MD)No.517 of 2020 (The State of Tamil Nadu Vs. S.Durairaj & another)* in which it was held that while similar claims can be entertained, interest will have to be denied. An authoritative pronouncement has come recently on 03.03.2023 in *W.A.No.2133 of 2019 etc batch (M.Velliyangiri Vs. The Government of Tamil Nadu)*. The Hon'ble Division Bench posed a specific issue as to whether writ petitions filed subsequent to the cutoff date can also be entertained. Paragraph Nos.11 and 12 of the said order read as follows:



W.P.(MD)No.6941 of 2023

“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 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.”

A perusal of the impugned letter dated 07.06.2019 and 09.08.2019 would show that those orders have been passed without hearing the petitioner and without following the principles of natural justice. Hence the impugned orders are set



W.P.(MD)No.6941 of 2023

aside. The case on hand is squarely covered by the aforesaid decision.

Adopting the very same approach, the respondents are directed to take into account 50% of the part time service of the petitioner herein. The petitioner's pensionary benefits will be refixed accordingly. Arrears shall also be paid. But the petitioner will not be entitled to any interest. The entire exercise shall be completed within a period of sixteen weeks from the date of receipt of a copy of this order.

7.This writ petition is allowed. There shall be no order as to costs.

12.04.2023

Index : Yes / No
Internet : Yes/ No
NCC : Yes / No
MGA

To

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W.P.(MD)No.6941 of 2023

G.R.SWAMINATHAN, J.

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W.P.(MD)No.6941 of 2023

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