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W.P.(MD)NO.8190 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8190 of 2023

P.Vasanthakumari Amma

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Secretariat, St. Fort George,
Chennai.
2. The Account General (Accounts & Entitlement),
Tamilnadu, Chennai.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The Sub Treasury Officer,
Vilavancode Sub-Treasury Office,
Kanyakumari District.
5. The Head Master,
Government Higher Secondary School,
Arumanai,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 5th



respondent pertaining to its order bearing Na.Ka.No. 26/2021 dated 04.08.2021 and to quash the same and consequently directing to the respondents to sanction and disburse the eligible pension by calculating 50% of service rendered by petitioner as Vocational Instructor from 26.10.1978 to 31.03.1990 along with regular pension service for the purpose of calculation of pension by considering the proposal resubmitted by the 5th respondent dated 19.02.2019 and disburse the pensionary benefits in accordance with the same within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.S.C.Herold Singh

For R-1 & R-3 to R-5: Mr.N.Satheesh Kumar,
Additional Government Pleader.

For R-2 : Mr.P.Gunasekaran,
Standing Counsel.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner was appointed as part time Vocational Instructor on 26.10.1978 in the fifth respondent school. She became full time Vocational Instructor with effect from 01.04.1990. She retired from service on 31.05.2007. The



petitioner's request is that the period of 50% of her service rendered as part time Instructor must be taken into account for the purpose of computing for the pensional and other benefits. However, the request was rejected by the fifth respondent. Challenging the impugned rejection order, this 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 set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. Reliance is placed on G.O.(Ms)No.194 School Education Department dated 12.09.2018 which contains cut-off date for claiming this benefit. It is not in dispute that the said Government Order has since been quashed. The learned counsel appearing for the petitioner has enclosed a copy of the order dated **07.12.2022** made in **W.P.(MD) No.4913 of 2020 (S.Rose Jacintha Buela V. The**



Secretary to Government, School Education

Department, Chennai). Paragraph Nos.3, 5 and 6 of the said

order read 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 the Principal Seat 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



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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



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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 was appointed as Part Time Vocational Instructor on 01.08.1979 and her services were regularised as Vocational Instructor with effect from 02.06.1989. Hence, the petitioner is fully entitled for calculation of 50% as a Part Time Vocational Instructor. A perusal of the above decision makes it clear that 'the Government employees / servants 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.'

6. Considering the above submissions and taking into account the ratio laid down by the Full Bench of the Principal Seat of this Court (supra), this Court is inclined to issue a direction to the respondents to consider the proposal re-submitted by the sixth respondent dated 09.10.2018 and calculate 50% of the service rendered by the petitioner prior to regularisation and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order."

5. The same approach has to be adopted in the present case also. The fifth respondent is directed to send appropriate proposal by taking into account 50% of service rendered by the petitioner prior to full time Vocational Instructor. This



shall be done within a period of four weeks from the date of receipt of a copy of this order. This shall be sent through proper channel and the other authorities are directed to issue requisite proceedings within a period of twelve weeks thereafter. Disbursement of consequential benefits shall be done within a period of four weeks thereafter. This writ petition stands allowed. No costs.

27.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

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G.R.SWAMINATHAN,J.

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