



W.P.(MD)No.13628 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13628 of 2020

M.Subramania Barathi

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat, Chennai.

2. The Accountant General (Accounts and Entitlement),
Tamil Nadu, Chennai.

3. The Director of School Education,
Chennai.

4. The Chief Educational Officer,
Tuticorin.

5. The District Educational Officer,
Kovilpatti, Tuticorin District.

6. The Secretary,
Nadar Higher Secondary School,
Pandavarmangalam,
Kovilpatti, Tuticorin District.

... Respondents



W.P.(MD)No.13628 of 2020

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the fifth respondent vide proceedings in O.Mu.No.2325/A2/2019, dated 18.06.2019 and quash the same and the respondents to count 50% of part time services rendered by the petitioner, i.e., from 24.10.1985 to 15.10.1992 along with regular service for pension benefits with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.S.Shaji Bino
Spl. Govt. Pleader for R1, R3 to R5
Mr.P.Gunaseelan for R2
No appearance for R6

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the fifth respondent vide proceedings in O.Mu.No.2325/A2/2019, dated 18.06.2019, quash the same and direct the respondents to count 50% of part time services rendered by the petitioner, i.e., from 24.10.1985 to 15.10.1992 along with regular service for pension benefits with all consequential benefits.



W.P.(MD)No.13628 of 2020

WEB COPY

2. The case of the petitioner is that the petitioner was appointed as Single Part Time Instructor on 24.10.1985 in the sixth respondent School and he continued upto 15.10.1992. Thereafter, his services were regularised on 16.10.1992 and he reached superannuation on attaining the age of 58 years on 30.04.2020. He was sanctioned with pension benefits by calculating the period from the date of regularisation till the date of superannuation, i.e., from 16.10.1992 to 30.04.2020. Hence, he made a representation to the respondents dated 02.02.2019 to calculate 50% of his service as Part Time Instructor for pensionary benefits. However, the same was rejected by the fifth respondent. Challenging the same, the present Writ Petition.

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



W.P.(MD)No.13628 of 2020

WEB COPY

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. Accordingly, he prayed for appropriate orders.

4. The learned Special Government Pleader appearing for the respondents would submit that as per Rule 11 of the Tamil Nadu Pension Rules, 1938, service rendered in a regular post shall alone be counted for calculation of pension and half of service rendered in non-pensionable service will be counted provided such service is rendered on a time scale of pay involving whole time employment. Accordingly, by counting the service rendered in full time post in time scale of pay was calculated and eligible pension was sanctioned to the petitioner. The petitioner representation was rejected on the ground that counting of 50% as Part Time Vocational Instructor services is allowed only to those who were petitioners in W.A.No. 882 of 2017 etc., batch. Hence, he prayed for dismissal of the Writ Petition.



W.P.(MD)No.13628 of 2020

WEB COPY

5. Heard the learned counsel appearing for the parties and persued the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Single Part Time Instructor on 24.10.1985 and his services were regularised on 16.10.1992 and he retired from service on 30.04.2020. Thereafter, he made representation to the respondents to calculate his pension benefits by taking into account 50% of the past service rendered by him in Single Part Time Instructor, i.e., from 1985 to 1992 and the same was not considered on the ground that the petitioner has not obtained any order from this Court.

7. It is useful to refer to the judgment of the Hon'ble Full Bench of this Court (*supra*), which held as under:

"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.



WEB COPY



W.P.(MD)No.13628 of 2020

(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."*

8. However, the fact remains that the respondents failed to consider the decision of the Hon'ble Full Bench of this Court and without taking into account the judgment of the Hon'ble Full Bench, the fifth respondent mechanically passed the impugned order, is not sustainable one.



W.P.(MD)No.13628 of 2020

WEB COPY

9. Considering the above submissions and taking into account the ratio laid down by the Hon'ble Full Bench of the Principal Seat of this Court (*supra*), the impugned order passed by the fifth respondent dated 18.06.2019 is set aside and the matter is remanded back to the fifth respondent to consider the claim of the petitioner in terms of the decision of the Hon'ble Full Bench (*supra*), within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observations, this Writ Petition is allowed. No costs.

19.01.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



W.P.(MD)No.13628 of 2020

WEB COPY

To

1. The Secretary,
The State of Tamil Nadu,
School Education Department,
Secretariat,
Chennai.
2. The Accountant General (Accounts and Entitlement),
Tamil Nadu,
Chennai.
3. The Director of School Education,
Chennai.
4. The Chief Educational Officer,
Tuticorin.
5. The District Educational Officer,
Kovilpatti,
Tuticorin District.
6. The Secretary,
Nadar Higher Secondary School,
Pandavarmangalam,
Kovilpatti,
Tuticorin District.



WEB COPY



W.P.(MD)No.13628 of 2020

M.DHANDAPANI,J.

vji

W.P.(MD)No.13628 of 2020

19.01.2023