



WEB COPY



W.A.(MD).Nos.347 of 2020 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.08.2022

DELIVERED ON : 20.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A.(MD).Nos.347 and 526 of 2020, 1896, 1897, 1898, 1899, 2121,
2130 and 2134 of 2021, 65, 335, 613, 697 and 868 of 2022
Review Application (MD)Nos.39, 118, 119, 120, 121, 162, 164, 165,
166, 167, 168 of 2021 of 2022

and

C.M.P.(MD).Nos.2364, 3673 of 2020, 8369, 8372, 8373, 8375, 9889,
9955, 9987 of 2021, 3345, 5183, 5862, 7169 of 2022,
C.M.P.(MD).Nos.8836, 8837, 8838, 8839, 11222, 11325, 11326, 11327,
11328, 11329 of 2021 and, 823, 1153, of 2022

Review.Appl.(MD).No.39 of 2022

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Finance (CMPC) Department,
Fort St.George,
Chennai.
- 2.The Director of School Education,
College Road,
Chennai.
- 3.The Chief Educational Officer,
Madurai District,
Madurai.



W.A.(MD).Nos.347 of 2020 and batch

4.The District Educational Officer,
Usilampatti,
Madurai District.

... Review Petitioners/
Appellants

Vs.

1.M.Subbian

... 1st Respondent/Writ Petitioner

2.The Principal Accountant General (G & SSA),
LekhaParikshaBhavan,
No.361, Anna Salai,
Teynampet,
Chennai – 600 018.

... 2nd Respondent/2nd Respondent

PRAYER : Review Application filed under Order 47 1 r/w 114 of the Civil Procedure Code, to set aside the order dated 25.08.2020 made in W.A.(MD).No.689 of 2020 and allow the Review Petition.

For Review Petitioners : Mr.R.Baskaran,
Additional Advocate General,
Assisted by,
Mr.S.Saji Bino,
Special Government Pleader.

For Respondent No.1 : Mr.R.Saravanan

For Respondent No.2 : Mr.P.Gunasekaran



COMMON ORDER

(Order of the Court was made by S.SRIMATHY, J.)

Since in all the review applications and the writ appeals similar issue is raised, all the cases were taken up for hearing and this Common order is passed.

2. The facts as stated in the Rev.Appl. (MD)No.39 of 2022 is narrated below, however the facts are same and similar in all the review applications and writ appeals.

3. The Review Application (MD)No.39 of 2022 is filed against the order dated 25.08.2020 passed in W.A.(MD)No.689 of 2020. The said Writ Appeal was filed against the order dated 09.07.2018 passed in W.P.(MD)No.11761 of 2018.

4. The Writ Petition in W.P.(MD)No.11761 of 2018 was filed for Mandamus directing the respondents therein to take 50% of the part time service rendered by the petitioner from 03.10.1988 to 11.11.1997 which comes to 9 years, 1 month and 2 days along with the regular service for the pensionary benefits.



5. The brief facts as stated in the affidavit in W.P.(MD)No.11761 of 2018 is that the employee was temporarily appointed as Single Part Time Vocational Instructor on 03.10.1988, then from 01.07.1989, appointed as the Double Part Time Vocational Instructor and from 12.11.1997 permanently appointed as the Vocational Instructor, then without any promotion served as Vocational Instructor and retired from service on attaining superannuation.

6. The Government of Tamil Nadu had issued G.O.Ms.No.1719 Education Department dated 14.09.1978 granting permission for running vocational courses related to various subjects in Higher Secondary School with part time instructors for salary of Rs.350/- per month. Subsequently, the Government issued G.O.Ms.No.105 dated 21.01.1980 stating that if the work load warrants, a second part time instructor may be appointed separately for Rs.350/- per month. If the situation further warrants, the same part time instructor may be allowed to handle more than 21 periods on remuneration of Rs.700/- per month. Such part time instructors were required to take 20 or more periods. Even though the Vocational Instructor are called as single part time instructors or double part time instructors, the vocational teachers would take classes based on



WEB COPY



W.A.(MD).Nos.347 of 2020 and batch

the number of periods. The Government as well as the Private Schools were engaging number of qualified teachers for the Vocational subjects either as double part time or single part time teacher according to their needs and they were employed for years together. After repeated representations and agitations, the services of double part time Vocational Instructors were regularized through G.O.Ms.No. 712 dated 28.05.1990. Aggrieved over such discriminatory regularization, which is applicable only in respect of “Double Part Time Vocational Instructors”, several objections and representations were filed. Thereafter, the Government issued G.O.Ms.No.967 dated 16.10.1992 to bring all qualified “Single Part Time Instructors” into existing/sanctioned secondary grade posts. Insofar as unqualified single part vocational instructors were concerned, it was decided to give training for them and thereafter absorb them as secondary grade teachers in future. Further G.O.Ms.No.69 dated 20.03.2007 was issued stating that the qualified Vocational Instructors can be appointed on par with B.T. Assistants.

7. Again another litigation was started claiming to add the part time service along with regular service for pensionary benefits. The Hon’ble Court in W.P.No.39177 of 2002 dated 16.04.2009 directed the



W.A.(MD).Nos.347 of 2020 and batch

respondents to count 50% of the part time service while calculating the pensionable service. Aggrieved over, the Government preferred writ appeal in W.A.No.1702 of 2010 and the same was dismissed on 20.09.2010. Further appeal was filed before the Hon'ble Supreme Court and the same was also dismissed. Thereafter, some of the persons who had filed Writ Petitions were granted the relief and the Government had complied with the orders. However, the Government had granted relief to those persons who had filed the writ petitions, but denied the same relief to the persons who had not filed the writ petitions. Hence, the respondent had filed W.P.(MD)No.11761 of 2018 praying to include 50% of the past service rendered from 03.10.1988 to 11.11.1997 which comes to 9 years, 1 month and 2 days and add the same to the regular pensionable service and grant pension. The learned Single Judge allowed the petition and aggrieved over the same, the Government has preferred Writ Appeal in W.A.(MD)No.689 of 2020 and the same was dismissed vide order dated 25.08.2020. Aggrieved over the same, the present Review Application in Rev.Appl.(MD)No.39 of 2021 is filed on various grounds.

8. Heard Mr.R.Baskaran, the Learned Additional Advocate General, assisted by Mr.S.Saji Bino, Special Government Pleader



appearing for the Review Applicants, Mr.R.Saravanan, the Learned Counsel appearing for the 1st respondent and Mr.P.Gunasekaran, the Learned Counsel appearing for the 2nd respondent and perused the records.

9. The issue of regularization of Single Part Time and Double Part Time Vocational Instructors have prolonged history of litigations. Based on the orders of this Hon'ble Court, the Government had issued G.O.Ms.No. 712 dated 28.05.1990, G.O.Ms.No.834 dated 23.09.1994 and G.O.Ms. No.221 dated 15.07.1999, whereby, the service of the Vocational Instructors in both Single Part Time and Double Part Time were periodically regularized during the years 1990, 1994 and 1999.

10. Again the teachers demanded to count the past service and filed several writ petitions. After considering the demand, the Government had issued G.O. to count 50% of the part time Vocational Instructor service but granted the benefits only for the "Double Part Time Instructors" and denied the benefits to "Single Part Time Instructors". The teachers who were serving as Single Part Time Instructors had preferred several writ petitions and the same was allowed. Aggrieved



over, the Government had filed writ appeals. The Hon'ble Division Bench after hearing the arguments of the Government in W.A.Nos.882 of 2017 batch vide order dated 06.04.2018 had specifically held that the benefits shall be granted to the persons who had filed the writ petitions and denied the benefits for fence sitters. The said finding was rendered since the same was touching the financial implication of the State. The relevant portion of the order is extracted here under:

15.In terms of the above discussions, we dispose of the writ appeals as under:

(i)50% of the services rendered by the respondents herein, as Part Time Vocational Instructor (either as Single Part time or Double Part Time Vocational Instructor), shall be counted for the purpose of computing pension and other retiral benefits.

(ii)The above said benefit shall be extended only to the respondents in these writ appeals and for the persons similarly situated like that of the respondents herein, whose cases are pending before this Court. Thus, it is made clear that the above said benefit shall not be extended to any other future cases that may be filed on this account, on the ground of delay and laches, since all along they have not come up before this Court and remained as fence-sitters. It is also needless to point out that allowing such cases would amount to opening the pandora's box, touching upon the financial implications of the State.



11. Based on the aforesaid judgment of the Hon'ble Division Bench, the Government had issued G.O.Ms.No.194 School Education Department dated 12.09.2018, wherein the benefits were granted to the persons who had filed the cases.

12. Subsequently, several writ petitions were filed by persons who had not filed any writ petitions earlier, thereby praying to grant the same benefits. The contention of subsequent claimants is that the conditions stated in the G.O. is against Article 14 of the Constitution, since they are similarly placed persons and they are entitled to the same benefits. The said writ petitions were allowed and the Learned Single Judge had held the said G.O.Ms.No.194 is discriminatory.

13. Aggrieved over, the Government had preferred writ appeal in W.A.(MD)No.689 of 2020 and the Hon'ble Division Bench had held as under:

“8. In the considered opinion of this Court, the case of the first respondent herein/writ petitioner is similar to that of the respondents in the above writ appeals and though it was open to the appellants/official respondents 1 to 4 to confer the similar benefit without asking them to approach the Court, they were asked to get individual orders, may be on account of financial liability. The factual aspects pertaining to service



WEB COPY



W.A.(MD).Nos.347 of 2020 and batch

condition of the first respondent/writ petitioner are not under dispute. The issue relating to delay and laches depends upon the facts and circumstances of the case and there cannot be any straight jacket formula while considering the said issue and in the case on hand, the same cannot be put against the first respondent/writ petitioner in the light of the settled position of law that persons similarly placed have to be conferred with the same benefits without driving them to the Court.

9. As rightly pointed out by the learned Counsel for the first respondent/writ petitioner, in the light of the legal position being settled as to the entitlement of the first respondent/writ petitioner, this Court is of the considered view that in terms of the above cited two judgments of the Division Bench of this Court, this writ appeal deserves dismissal.

14. Aggrieved over the aforesaid order, the present review application in Rev.Appl.(MD)No.39 of 2021 is filed. The learned Additional Advocate General submitted that the Hon'ble Division Bench in W.A.(MD)No.882 of 2017 has not fixed the cut off date to count 50% of service. But, it is only freezing the rights of the employees. Hence in the present batch of cases, the employees who have not approached the Hon'ble Court will not be entitled to. We are afraid such contention cannot be entertained, since it would amount to discriminatory. Even if the said contention of the Government is accepted for the sake of argument, then the Tamil Nadu Pension Rules would be staring at the Government. Under Rule 11 and 11-A of the Tamil Nadu Pension Rules,



the persons who were rendering service in provincialized, consolidated, daily wages in the whole-time employment, thereafter, regularized in the substantive post, then the employee is entitled to calculate 50% past service. The Hon'ble Full Bench in ***W.A.No.158 of 2016 in the case of State of Tamil Nadu Vs. Kaliyamoorthy and others*** reported in ***2019 (6) CTC 705 [(2020) 2 MLJ 369]*** has held that if the employees who are employed in whole time employment in any provincialized, consolidated, daily wages, then had absorbed in the substantive post prior to 2003 are entitled to take 50% of the past service. In the present case, even if the persons are working in Single Part Time, they were serving as whole-time employment and the issue is settled in several writ petitions. All these employees were absorbed in the regular service in the sanctioned vacancy prior to 2003. In such circumstances, as per Tamil Nadu Pension Rules, the employees are entitled to calculate 50% past service, if they are regularized prior to 2003. In all these cases, the employees were regularized periodically from 1990, 1994, 1999 etc. and admittedly they were regularized prior to 2003.

15. Therefore, this Court is of the considered opinion that the claim of the Review Applicants relying on W.A.No.882 of 2017 is not



tenable. Since the amended Rule 11 and 11A of the Tamil Nadu Pension Rules is to all Departments including the Education Department. The Government cannot pick and choose and extend the benefits to the particular persons by excluding others which is discrimination and violating Article 14 of the Constitution.

16. Therefore, this Court is of the considered opinion that the Review Applications and the Writ Appeals are devoid of merits. Hence, all the Review Applications and the Writ Appeals are liable to be dismissed.

17. The learned Additional Advocate General has also submitted that the Government is financially constrained, therefore this Review Applications and Writ Appeals are filed. This Court is inclined to grant a long time to the Government to comply with the order. Therefore, the Government is directed to consider the claim of the respondents and grant the benefits by adding 50% of past service in their regular service within a period of six (6) months from the date of receipt of a copy of this order.



W.A.(MD).Nos.347 of 2020 and batch

18. With the above direction, the Review Applications and Writ

Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.]

[S.S.Y., J.]

20.04.2023

Index : Yes / No

Internet : Yes / No

Nsr

To

The Principal Accountant General (G & SSA),

LekhaParikshaBhavan,

No.361, Anna Salai,

Teynampet,

Chennai – 600 018.



WEB COPY



W.A.(MD).Nos.347 of 2020 and batch

S.S.SUNDAR, J.
AND
S.SRIMATHY, J.

Nsr

Pre-delivery Order made in
W.A.(MD).Nos.347 and 526 of 2020, 1896, 1897, 1898, 1899, 2121,
2130 and 2134 of 2021, 65, 335, 613, 697 and 868 of 2022
Review Application (MD)Nos.39, 118, 119, 120, 121, 162, 164, 165,
166, 167, 168 of 2021 of 2022

Dated:
20.04.2023