



W.P.No.40009 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25/7/2024
Delivered on	6/8/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.40009 of 2015

M.Ranjitham

...

Petitioner

Vs

1. The Director of School Education
College Road
Chennai 600 006.
2. The Chief Education Officer
Nagercoil
Kanniyakumari District.
3. The Accountant General (A & E)
Teynampet
Chennai 600 018.
4. The State of Tamil Nadu
rep. By Secretary
Educational Department
Fort St. George
Chennai 9.

...

Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India

for the issuance of a writ of certiorarified mandamus to call for the records relating to order of the first respondent in Moo.Mu.No.32651/V1/E3/2011 dated 12/4/2012 and quash the same and direct the respondents to pass orders regularising the services of the petitioner in the post of part time vocational Instructor with effect from 9/7/1979 as per Government Orders and consequently grant second and third incentive increments with revision in pension and pensionary benefits.

For petitioner	...	Ms.P.Shanthini
For respondent	...	Mr.S.Rajesh Government Advocate for R.R.1, 2 and 4.

ORDER

This writ petition is filed for issuance of a writ of certiorarified mandamus to quash the proceedings of the first respondent in Moo.Mu.No.32651/V1/E3/2011 dated 12/4/2012 and to direct the respondents to regularise the services of the petitioner in the post of part time Vocational Instructor with effect from 9/7/1979 and consequently grant second and third incentive increments.



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WEB COPY 2. The facts in brief as per the affidavit enclosed to the writ petition are as follows:-

The petitioner was appointed as a part time Vocational Instructor on 9/7/1979 and her appointment was approved by the second respondent vide proceeding dated 24/8/1979. As per the proceeding of the Inspector, Government Woman School, Tirunelveli, dated 22/9/1980, in Na.Ka.No.22267/A4/81, the petitioner was designated as Higher Education Commerce Teacher, at Neyoor Government Aided L.M.S.Higher Secondary School from 22/9/1980 to 31/5/1993.

3. The Government has issued G.O.Ms.No.834, Education, Science and Technology (HS – II) Department, dated 23/9/1994 directing regularization of all part time Vocational Instructors and also further directed that services rendered by those part time Vocational Instructor shall be included for all benefits.

4. The petitioner's service ought to have been regularised as the Government Order No.834 dated 23/9/1994 was upheld by the Division



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Bench of this Court in W.P.No.11389 of 2003 dated 24/6/2004, wherein directions were given to regularise the period rendered as part time Vocational Instructor. Relevant portion of the order of Division Bench is extracted hereunder for ready reference.

“22. Having regard to the facts and circumstances of the case, we feel interest of justice would be served by issuing the following directions:-

(i). The impugned G.O.Ms.No.834, Education, Science and Technology (HS.II) Department dated 23/9/1994 is quapeitionerd to the extent and so far as it takes away the vested right of regularization already conferred on the double part-time Instructors as per G.O.Ms.Nos.712 of 1990 and 967 of 1992.

(ii). Such double part-time Instructors who were regularized pursuant to the aforesaid



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G.O.Ms.Nos.712 of 1990 and 967 of 1992 shall continue to enjoy the status they had acquired, including the regular increments as per their original date of regularization.

(iii). Single part-time Instructors who were otherwise qualified, shall be deemed to have been regularized with effect from the date on which any double part-time Instructors junior to them had been regularized and their seniority and length of service would be treated as such from the deemed date of regularization for all purposes.

(iv). All such double part time instructors and single part time instructors, who are deemed to have been regularized, as per the direction contained in paragraphs 2 and 3 shall be entitled to the benefit of notional increment in the regular scale of pay applicable to them from the deemed



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date of their regularization. However, no amount shall be paid towards such notional increment.

(v). No recovery shall be made from any of the double part time teachers or single part time teachers. While realigning the seniority of the single part time teachers' vis-a-vis double part time teachers, there shall not be any reduction in scale of pay already drawn by the double part time teachers and no recovery shall be made.

23. With the above directions, the writ petitions are disposed of. No costs.”

5. The petitioner has submitted a representation dated 10/1/2011, seeking revision of her pension with applicable incentive increment and consequential pensionary benefits, but it was not considered. In similar circumstances, this Court in W.P.No.15449 and 15450 of 2006 dated 5/3/2007 has granted benefit of regularization as per G.O.Ms.No.834, however, the petitioner was not given the said benefit.



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6. The second respondent has filed counter affidavit stating that the petitioner was part time Vocational Instructor with effect from 9/6/1979 at Government Higher Secondary School, Arumanai at Kanyakumari District. Thereafter, she was appointed as Higher Education Commerce Teacher from 22/9/1980, as per the proceeding of Inspector of Girls Schools, Tirunelveli, dated 5/3/1982 and she had a brief stint worked as the Higher Secondary Commerce Teacher at L.M.S.Higher Secondary School, Neiyur from 22/9/1980 to 31/5/1983. Subsequently, she was once again re-appointed as single Part-time Vocational Instructor on a consolidated basis with effect from 17/7/1984 as per the proceeding of the second respondent dated 15/2/1984 with a monthly consolidated payment of Rs.300/-

7. It is further mentioned in the counter affidavit that subsequently, petitioner's services were regularised with effect from 1/4/1990, retrospectively by the proceeding of the second respondent dated 31/5/2007 and as per G.O.Ms.No.712 dated 28/5/1990, the petitioner was regularised as Vocational Instructor Grade II. The petitioner was awarded Selection Grade on 1/4/2000 and finally, she has retired from service on 31/5/2007.



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8. It is further mentioned in the counter affidavit that the petitioner has worked as Higher Secondary Commerce Teacher from 22/9/1980 to 31/5/1983 and that post of single part time Vocational Instructor and Higher Secondary Commerce Teacher are different, thereby, she is not eligible to claim for regularization from the date of appointment i.e., 9/7/1979. It is further mentioned in the affidavit that since the petitioner was retired from service on 31/5/2017, much before passing of G.O.Ms.No.240 dated 18/8/2010, she is not eligible to claim any incentive increments and that since she ceased to be an employee of the Government, she cannot make any claim on par with the Government servants who are in service.

9. It is further mentioned in the counter affidavit that there was break in service of the petitioner from 13/9/1980 to 21/9/1980 and from 1/6/1983 to 16/7/1984 thereby, the service from 22/9/1980 to 31/5/1983 as Commercial Instructor cannot be taken as service rendered in Vocational Instructor post and mentioned further that there is inordinate delay in approaching this Court.



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10. Heard Ms.P.Shanthini, learned counsel for the petitioner and Mr.S.Rajesh, learned Government Advocate for the respondents 1, 2 and 4.

11. The petitioner is seeking two reliefs in this writ petition. Firstly, regularisation of her service from the date of her initial appointment as part time Vocational Instructor i.e., 9/7/1979 and secondly, to grant incentive increments for acquiring higher educational qualifications.

12. The Government has issued G.O.Ms.No.834 dated 23/9/1994, thereby the services of the petitioner were regularised with effect from 1/4/1990 instead of 9/7/1979. It is the contention of the petitioner that since she has joined as part time Vocational Instructor with effect from 9/7/1979, her services should have been regularised not from 1/4/1990 but from 9/7/1979 for the period of calculating pensionary benefit and other retirement benefits.

13. The Government of Tamil Nadu has issued G.O.Ms.No.1719 of 1978, Department of Education, dated 14/9/1978 for opening of Vocational Courses in Higher Secondary Schools, thereby, the post of



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part time Vocational Instructors were created. The Government has issued G.O.Ms.No.712 of 1990 dated 28/5/1990 to bring 800 fully qualified Double part time Vocational Instructors into regular time scale of pay with effect from 1/4/1990 and subsequently remaining 587 part time Vocational Instructors were also regularised, as per G.O.Ms.No.967 of 1992.

14. The Government has further issued G.O.Ms.No.834 dated 23/9/1994 regularising the services of the petitioner with effect from 1/4/1990 instead of 9/7/1979. The retired part time Vocational Instructors are entitled to count 50% of the part time service members educational benefits. Government has issued G.O.Ms.No.130 of 2013 and G.O.Ms.No.134 of 2013 which provides for counting of 50% of services in part time Vocational Instructor post as qualifying service towards pensionary benefits along with regular services.

15. The Division Bench of this High Court in ***1. THE GOVERNMENT OF TAMIL NADU, rep. BY ITS SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, FORT ST. GEORGE, CHENNAI 600 009 AND 2 OTHERS Vs. THE CHIEF***



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EDUCATIONAL OFFICER, VILLUPURAM DISTRICT (W.A.No.882

of 2016 dated 6/4/2018) has observed that 50% of the services rendered by the respondents therein, as part time Vocational Instructors either as Single Part time or Double Part Time Vocational Instructor) shall be counted for the purpose of computing pension and other retiral benefits.

16. The Government of Tamil Nadu has also issued G.O.Ms.No.408 of 2009, mentioning that half of the total service period under the non-provincialised service, after 1/1/1961 is eligible to be calculated in addition to their eligible service for pensionary benefits, subject to certain conditions.

17. Hon'ble Division Bench of this Court in W.A.No.359 of 2015, by order dated 16/3/2015 directed the authorities to count 50% of the services rendered by the respondents therein as Part time Vocational Instructor for the purpose of computing pension and other retiral benefits. Similarly, this High Court in W.P.No.11389 of 2003 dated 8/7/2004 has held that single part time Teachers should be treated equally with Double part time Teachers and all the benefits should also be extended to the Single Part time teachers as well.



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18. The objection of the respondents in so far as regularization of services of the petitioner is that the petitioner has worked for some time as non-Vocational Teacher. According to the counter affidavit from 22/9/1980 to 31/5/1983, petitioner has worked as non-vocational Commerce Teacher at LMS Higher Secondary School, at Neiyur, for some time. Therefore, her services cannot be absorbed from the date of her initial joining.

19. It is to be noted that transfer of the petitioner and her posting in any School is not the choice of the petitioner. As per the instructions of her superior Officers, the petitioner had to work in non-vocational Teacher Service for some time and subsequently, petitioner was once again appointed as single part time Vocational Instructor on consolidated pay. Therefore, as long as the petitioner has no choice to work either as a Vocational Instructor or non Vocational Teacher Services, she cannot be found fault with. Accordingly, the tenure of the petitioner working as Commerce Teacher at LMS Higher Secondary School, Neiyur cannot be a ground for declining to regularise her services.



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20. Another aspect raised by the second respondent is that there is some break in petitioner service. The petitioner was appointed as a part time Vocational Instructor. The Officers of the Education Department like Inspector of Schools, etc., will have to give the posting to the petitioner in different Schools. In case if the petitioner was not given posting for the brief period is not the fault of the petitioner thereby the same cannot be made as a ground to decline for regularising her service.

21. Further, it is not the case of the petitioner that she has refused to work for certain periods, in fact, the respondent Department has not provided work thereby, there was small brief break in service. Above all, not working for brief period is nothing to do with her regularisation, which will have to be considered basing on Government Orders. In view of the above, the petitioner is entitled for regularising her services in the post of Part Time Vocational Instructor for a period from 9/7/1979 till 31/3/1990, and that the objection raised by the respondents in respect of break in service cannot also be considered.

22. In respect of incentive increments are concerned, it is submitted by the learned counsel for the petitioner that as per G.O.Ms.No.240 dated



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18/2/2010, directions were given to extend the benefit of granting incentive increments to all the Vocational Instructors. It is also submitted that as per the orders of this Court in W.P.No.6771 of 2007, the Vocational Teachers are also entitled for incentive increments. According to the petitioner, she has acquired the higher qualifications M.C.A and M.Ed respectively and made a representation however, the incentive increments were not granted.

23. The learned Additional Government Pleader submitted that G.O.Ms.No.240 dated 18/8/2010, is applicable prospectively i.e., from the date of G.O., and since the petitioner retired from service, 3 ½ years prior to issuance of G.O., the said G.O.Ms.No.240 is not applicable to the petitioner.

24. I have gone through G.O.Ms.No.240. As per the said G.O., at para 5, it is specifically mentioned that Government Order can be implemented from the date of its publication. Therefore, the petitioner who has retired from service much earlier to the issuance of G.O., are not covered under this G.O.



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25. Madurai Bench of Madras High Court, while dealing with W.P.(MD) No.7821 of 2021 has ordered, on 19/4/2001 stating that the petitioner therein, who retired on 31/10/2008 prior to issuance of G.O.Ms.240 School Education Department dated 18/8/2010, is not entitled for incentive increment as per G.O.Ms.No.240. In the case on hand also, the petitioner was retired from service on 31/5/2007 whereas G.O.Ms.No.240 of 2010 was issued on 18/8/2010 i.e., about more than two years subsequent to retirement of the petitioner, thereby, the petitioner is not entitled for incentive increments as sought for.

26. In the result, writ petition is allowed in part, directing the respondents to regularise the service of the petitioner in the post of Part Time Vocational Instructor with effect from 9/7/1979 for the purpose of pensionary benefits. The prayer of the petitioner seeking incentive increments is hereby rejected. No costs.

6/8/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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