



WEB COPY



W.P.No.13133 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.13133 of 2020

and

W.M.P.Nos.16260 & 16261 of 2020

1.Mr.V.Trinath
2.A.Meena
3.K.Nanda Kumar
4.G.Saraswathi
5.P.R.Babu Rao
6.B.Suseela
** P-6 substituted as legal heirs of the deceased, P-5 ...Petitioners

-Vs-

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
School Education Department,
Chennai – 600 009.

2.The Principal Secretary,
Finance Department,
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Director,
Directorate of Government of Examinations,
DPI Campus, College Road,
Chennai – 600 006. ...Respondents



W.P.No.13133 of 2020

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Mandamus, to the respondents to regularise the services of the petitioners in suitable post w.e.f 03.11.1998 the date on which the 3rd respondent Directorate has made a recommendation to the 1st respondent Department to regularise their services and to extend the benefits of G.O.(ID)No.286 dated 19.07.2016 passed by the 1st respondent Department and to settle all terminal benefits such as pension, DCRG, Provident Fund, leave encashment and all other benefits within a time frame to be fixed by this Court along with an interest at 18% per annum from the date of superannuation till the date of actual payment and to pass such further orders.

For Petitioners : Mr.V.Govardhanan

For Respondents : Mr.T.M.Rajangam
Government Advocate

ORDER

This writ petition is filed for issuance of a writ of mandamus, directing the respondents to regularise the services of the petitioners in suitable post w.e.f 03.11.1998 the date on which the 3rd respondent Directorate has made a recommendation to the 1st respondent Department to regularise their services and to extend the benefits of G.O.(ID)No.286 dated 19.07.2016 passed by the 1st respondent Department and to settle all terminal benefits such as pension, DCRG, Provident Fund, leave encashment and all



W.P.No.13133 of 2020

other benefits within a time frame to be fixed by this Court along with an interest at 18% per annum from the date of superannuation till the date of actual payment.

2. Learned counsel appearing for the petitioners would submit that the petitioners were initially appointed as Section Writers in the 3rd respondent Department in the year 1985-1986. The petitioners have been sponsored by the employment exchange. The qualification prescribed for the post of Section Writers was a pass in SSLC, which was the prescribed qualification for the post of Junior Assistant. The petitioners have admittedly put in more than 300 days in a calendar year and the third respondent Directorate ought to have regularised their services on putting in required years. Unfortunately, the 3rd respondent Directorate did not regularise their services under the pretext that they were recruited for the post of Section Writers.

3. The petitioners along with other persons approached the Tamil Nadu Administrative Tribunal in O.A.No.6048 of 1992 seeking to regularise their services and to grant an appropriate time scale of pay. The learned Tribunal, after considering the contention of either parties, came to a



W.P.No.13133 of 2020

conclusion that 30% of peak employment or 75 posts must be sanctioned in the first instance on regular basis pending examination of the workload in the Department. Pursuant to the orders passed by the Tribunal, the 1st respondent Department sanctioned 75 posts of section writers by G.O.Ms.No.156 dated 07.03.1994 and the same were to be filled up on the basis of seniority.

4. The petitioners were not benefited since their seniors were regularised. Some of the Section workers who did not get the benefit of regularisation due to the sanctioning of 75 posts again approached the learned Tribunal in O.A.No.1423 of 1994 to regularise their service in terms of G.O.Ms.No.156 dated 07.03.1994 as the volume of Government work had increased multifold. The Tribunal approved that the filling up of 75 posts was justified but it directed the 3rd respondent Directorate to periodically review the staff requirement and to increase the sanctioned strength. It was further observed that the petitioners who have been working for long time would be given preference. Aggrieved by the orders passed in O.A.No.1423 of 1994, the respondent Department filed S.L.P.(C) No.12103 of 1995, which was dismissed on 12.10.1995.



W.P.No.13133 of 2020

5. Since the 3rd respondent did not review the staff requirement pursuant to the order passed in O.A.No.1423 of 1994, some of the Section Writers filed Cont.P.No.11 of 1995 before the learned Tribunal. The 1st respondent Department issued G.O.Ms.No.262 dated 04.04.1996 stating that the reassessed staff requirement was 16 posts and they created 16 more posts of section writers. As the Government sanctioned only 16 posts most of the section writers did not get the benefit of regularisation and they were continued in the same capacity. It was further observed that if there was any increased need for appointment of section writers on a regular basis or if there was any vacancy in the regular capacity, the petitioners were to be considered on a priority basis. In spite of the orders passed by the Tribunal, no one was regularised in service until they were made permanent pursuant to G.O.Ms.No.203 dated 19.10.2006.

6. The 1st respondent sought certain clarifications from the 3rd respondent on 03.11.1998 and the Directorate recommended the petitioners case for regularisation of service considering plight and living conditions. It was observed that most of the employees were living in penury and they were on the verge of extinction.



W.P.No.13133 of 2020

WEB COPY

7. Some of the section writers in the 3rd respondent Directorate, approached this Court in W.P.No.39645 of 2004 seeking to regularise their service in appropriate posts and to count their service for pensionary and other benefits. During the pendency of the writ petition, all section writers were regularised and they were given the benefit of time of scale but the service on a temporary basis while posting them in service was not taken into consideration.

8. Most of them were given the post of Record clerk even though they had put in considerable years of service and they had required qualification and experience for the post of Junior Assistant. On 26.03.2010, the above writ petition was disposed of with a direction to take into consideration the past years of service rendered on a temporary basis for the purpose of pensionary and terminal benefits. It was observed that the 3rd respondent ought to have regularised their service from 03.11.1998 the date on which the Directorate made a strong recommendation for regularisation.

9. Aggrieved by the order passed in the writ petition, the 1st and 3rd respondent preferred W.A. No. 2678 of 2010 before this Court. On



W.P.No.13133 of 2020

05.11.2014, the above writ appeal was dismissed and the Department was directed to comply with the order within a time frame. In a similar matter, the 1st respondent preferred S.L.P.(c)No.17831-17834 of 2015, which has been dismissed.

10. On 19.02.2015, the 1st respondent passed order that the service rendered by the section writers cannot be counted for the purpose of pensionary and terminal benefits. The respondents therein filed Cont.P.No.2771 of 2015 before this Court. On 19.07.2016, the respondents revised the order counting the services rendered in the 3rd respondent Directorate for the purpose of pensionary and terminal benefits.

11. It is further submitted by the learned counsel that on 03.09.2019, the petitioners made a representation to extend the benefit of the order passed to some of the section writers but the same has not evoked any response from the respondents.

12. Learned counsel appearing for the petitioners would then place reliance on the order passed by this Court in a similar case in W.P.No.22942



W.P.No.13133 of 2020

of 2021 (P.Neelaveni Vs. The State of Tamil Nadu, Rep. by its Secretary to Government, School Education Department, Secretariat, Chennai – 600 009)

dated 27.10.2021, wherein this Court held as follows:

“Considering the same, the respondents are directed to pass appropriate orders on the representation dated 06.06.2020 of the petitioner after duly considering the orders passed by the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017 vide order dated 05.12.2017 and in W.A.No.774 of 2020 vide order dated 21.09.2020. This exercise shall be carried out by the respondents within a period of sixteen weeks from the date of receipt of a copy of this order in accordance with law and on merits.”

13. Learned counsel would submit that the petitioners have given representations individually to respondents 1 and 3 on 01.09.2020 and the acknowledgments were also enclosed in the typed set of papers.

14. Learned counsel would further submit that 26 similarly placed persons filed a writ petition in W.P.No.39645 of 2004, and the same was allowed by this Court in favour of the petitioners by order dated 26.03.2010. Aggrieved by the said order, the respondents have preferred a writ appeal in W.A.No.2678 of 2010 and the Division Bench of this Court has passed the judgment dated 05.11.2014 confirming the order passed by the learned Judge



W.P.No.13133 of 2020

of this Court in W.P.No.39645 of 2004 extending benefits to the petitioner.

WEB COPY

15. Pursuant to the order of the Division Bench of this Court, the respondents rejected the claim of the petitioners. Subsequently, a contempt petition was filed. In the contempt proceedings, the respondents have complied with the judgment passed by the Division Bench of this Court in W.A.No.2678 of 2021 dated 05.11.2014 and also complied with the order passed by the learned Judge of this Court in W.P.No.39645 of 2004 dated 26.03.2010 vide G.O.(ID)No.286 dated 19.07.2016.

16. A counter affidavit was filed on behalf of the respondents dated 18.12.2020 and the relevant paragraphs are extracted hereunder:

“10. The G.O.Ms.No.363, School Education Department, dated 11.10.2012 was issued to Thiru. Paramasivan, only as a special case granting regularization of service and Pension wherein it has also been stated that this case should not be considered to others as precedent.

12. It is also submitted that the Government have introduced a new Contributory Pension Scheme based on defined contributions for all the Employees, who were recruited on or after 01.04.2003 vide G.O.(ms) No.259, Finance (Pension) Department dated 06.08.2004 that it is mandatory for all the new employee who are recruited on or after 01.04.2003 to become members of the scheme. By virtue of the above said GO's those who have been appointed or or after 01.04.2003 ar not entitled for any pensionary benefits but they are made to become members of Contribution Pension Scheme. Since the services of the



WEB COPY



W.P.No.13133 of 2020

petitioners were regularized only with effect from 20.10.2006, (except Thiru.P.R.Babu Rao the Temporary Section Writer who has left his office before regularisation) the petitioner's will come under the contributory pension scheme and they are not be entitled to pensionary benefits available under the Tamil Nadu Pension rules 1978.

13. It is submitted in the context that the three Bench has delivered a judgement in several cases (W.A. Nos. 158,314,315 and 1235 of 2016) on 03.12.2019 and it states as follows:

1. 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.
2. 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.
3. In case, Government employee/servant had also rendered service in non-provincialized service, or on consolidated pay or honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of service rendered shall be counted for the purpose of conferment of pensionary benefits.
4. 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 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.
5. 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 be notentitled to count half of their past service for the purpose of determination of qualifying service for pension.”

17. Heard both sides and perused the materials available on record.



W.P.No.13133 of 2020

18. In view of the above ratio laid down by this Court in W.P.No.22942 of 2021 by following the judgments of the Division Bench of this Court in W.A.No.1292 of 2017 and W.A.No.774 of 2020, the respondents are directed to consider the representation of the petitioners dated 01.09.2020 and pass appropriate orders on merits, in accordance with law preferably within a period of three months from the date of receipt of a copy of this order.

In the result, the writ petition stands disposed of with the above observations and direction. No costs. Consequently, connected miscellaneous petitions are closed.

13.12.2024

cda
Index : Yes/No
Speaking/Non Speaking order

To

1. The Principal Secretary,
The Government of Tamil Nadu,
School Education Department,
Chennai – 600 009.



WEB COPY



W.P.No.13133 of 2020

J.SATHYA NARAYANA PRASAD, J.

cda

2.The Principal Secretary,
Finance Department,
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Director,
Directorate of Government of Examinations,
DPI Campus, College Road,
Chennai – 600 006.

W.P.No.13133 of 2020

13.12.2024