



WP(MD) Nos.16594 & 16621 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) Nos.16594 & 16621 of 2024

G.Ramanathan	... Petitioner in WP(MD)No.16594/24
C.Rajkumar	... Petitioner in WP(MD)No.16621/24

Vs.

- 1.The State of Tamilnadu,
Rep. By its Principal Secretary,
School Education Department,
Fort St.George, Chennai – 09.
- 2.The Joint Director (Vocational) of School Education,
College Road, Chennai – 06.
- 3.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Pattukkottai,
Thanjavur District. ... Respondents in both petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to take 50 percentage of the part time service rendered by the petitioners i.e. from 23.11.1989 to 04.10.1996 along with the regular service for the pension benefits based on the common judgment passed



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by the Honourable Division Bench in W.A.(MD).No.347 and 526 of 2020 dated 20.04.2023 and by extending the benefits of the G.O.No.127 School Education (Pa.Ka.7(1) Department) dated 12.07.2023.

Appearance in both petitions:-

For Petitioners : Mr.R.Saravanan

For Respondents : Mr.T.Amjad Khan

Government Advocate

COMMON ORDER

The petitioners have filed this Writ Petitions seeking for a Writ of Mandamus directing the respondents to take 50 percentage of the part time service rendered by the petitioners i.e., from 23.11.1989 to 04.10.1996 along with the regular service for the pension benefits based on the common judgment passed by the Honourable Division Bench in W.A.(MD).No.347 and 526 of 2020 dated 20.04.2023 and by extending the benefits of the G.O.No.127, School Education (Pa.Ka.7(1) Department) dated 12.07.2023.



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2. Heard Mr.R.Saravanan, learned counsel for the petitioners and Mr.T.Amjad Khan, learned Government Advocate for the respondents.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The petitioners were appointed as Vocational Teacher on 12.02.1990 and 23.11.1989 respectively and their service was regularized on 05.10.1996. The grievance of the petitioners is that while calculating the pensionary benefits, the period of service rendered by the petitioners i.e., from 23.11.1989 to 04.10.1996 has not been considered. Hence, the petitioners have filed these petitions.

5. The issue in hand is no longer a *res-integra*. The issue of recovery raised in this writ petition has already been discussed in the earlier judgment of this Court, **dated 20.04.2023 in WA.(MD)No.347 of 2020** etc., batch, in which, after an elaborate discussion, it has been held as follows:-

“11. Based on the aforesaid judgment of the Hon’ble



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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 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.



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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



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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



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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. ”

6. In view of the aforestated reasons, the writ petitions stand disposed of and the respondents are directed to consider the claim of the petitioners and grant the benefits by adding 50% of past service in their regular service, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

23.07.2024

Index : Yes / No
Internet : Yes / No
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R.N.MANJULA, J.

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To

- 1.The Principal Secretary,
School Education Department,
Fort St.George, Chennai – 09.
- 2.The Joint Director (Vocational) of School Education,
College Road, Chennai – 06.
- 3.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Pattukkottai,
Thanjavur District.

Order made in
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