



W.A(MD)No.68 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.04.2024

Pronounced on: 19.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**W.A(MD)No.68 of 2018
and C.M.P(MD)No.320 of 2018**

1.The State of Tamil Nadu,
Rep. By its Secretary,
Education Department,
Fort St.George,
Chennai – 600 009.

2.The Secretary to Government,
Finance Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

3.The Director of Elementary Education,
Chennai – 600 006.

4.The District Elementary Education Officer,
Theni, Theni District.

5. The Principal Accountant,
General (A & E),
No.261, Anna Salai, Chennai

.... Appellants/Respondents 1 to 5



W.A(MD)No.68 of 2018

WEB CO V.K.S.Balu

Vs.

... Respondent/Petitioner

Prayer:- Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 08.03.2017 in W.P(MD)No.15571 of 2013.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For Respondent : Mr.K.Appadurai

JUDGMENT

(Judgment was delivered by N.SESHASAYEE., J.)

This appeal is directed against the order of the learned single Judge dated 08.03.2017 in W.P(MD)No.15571 of 2013. It was laid for issuance of a writ of Certiorarified Mandamus to set aside the order of the Director of Elementary Education dated 26.04.2013, whereunder the authority had declined to reckon the period during which the petitioner has served as a Part-time Teacher, for the purpose of grant of pensionary benefits in terms of G.O.Ms. 408 Finance (Pension), dated 25.08.2000.

2. The facts which are relevant for the current purpose, are:

- On completing his SSLC, in 1973 the petitioner had prosecuted his higher-grade studies in Agriculture.



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- Thereafter, he had been working as a Part-time Teacher at various Schools. The details are as follows:

Period of Service	School where the petitioner served
19.08.1976	R.C. Middle School, T.Sindhalaseri, Theni District.
18.02.1981 to 31.05.1987	Seshathiri Middle School, Kambum, Anumathanpatti
18.09.1987 to 18.11.1998	Panchayat Union Middle School at Mela Sinthalaseri, Theni District

- Finally, on 19.11.1998 he was appointed as a Full Time Teacher (Agriculture) in the Panchayat Union Middle School at Melasindalaseri and thereafter was appointed as a Secondary Grade Teacher in the same school from 02.07.2001. He finally superannuated on 31.01.2007. According to the petitioner, he had been working as a part-time teacher for a total period of 17 years, 10 months and 13 days and as a Full Time Teacher in a regular post for 8 years and 8 months.



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3. In terms of Rule 11 of the Tamil Nadu Pension Rules, 1978, the minimum qualifying service for a Government employee to claim pension is stipulated as 10 years. The petitioner, however, claims benefit under G.O.(Ms.)No.408, Finance (Pension) dated 25.08.2009 (which was later replaced by Rule 11(4) of the Tamil Nadu Pension Rules, 1978) and contend that in terms thereof 50% of the period during which he has served as part-time teacher must be given credit to, and if it is done he would be eligible for pension, as the total number of period would exceed the minimum stipulated 10 years period for obtaining pension.

4. The District Elementary Education Officer, who filed a counter on behalf of the respondents, placed reliance on Rule 11(4) of the Tamil Nadu Pension Rules, 1978 and pleaded that the duration when a Government employee served as a part-time employee, would not be eligible for granting benefit under G.O.(Ms.)No.408, Finance (Pension) dated 25.08.2009 or Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

5. The objections of the authorities were rejected by the learned single



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Judge, who after referring to few authorities has held that the literal interpretation is not always mandatory and one need to interpret a provision based on the contextual setting in which the interpretation is required to be made and proceeded to hold that since the petitioner has worked as a part-time teacher for more than 17 years in a permanent post and since some of those similarly placed persons have been granted the benefit under G.O. (Ms.)No.408, Finance (Pension) dated 25.08.2009, the petitioner too would be entitled to the benefit under the said Government Order. This order of the learned single Judge is now under challenge.

6. The learned Additional Government Pleader appearing for the appellants, made the following submissions:

a) It is an admitted fact that the writ petitioner was employed only as a part-time teacher for 17 years, 10 months and 13 days. What is significant here is that, it is not a continuous service, but, there is a break in service, which the petitioner himself has admitted;

b) Neither G.O.(Ms.)No.408, dated 25.08.2009 nor Rule 11(4) of the



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Tamil Nadu Pension Rules, 1978, offer a blank gift cheque to the one who has served in a pensionary post, but without completing the minimum qualifying service. Indeed, Rule 11 of the Tamil Nadu Pension Rules, 1978, mandates that even those who have worked in a temporary post must have worked in a Full Time post and not in a Part-time post without any break in service; and that such individual should have been eventually been absorbed in a regular post on or before 01.04.2003. All these conditions must be simultaneously satisfied and not in the alternative;

c) So far as the writ petitioner's case is concerned, he had served only as a part-time Teacher, that there was break in service, that he was not absorbed into the regular post but was later appointed to the regular post only from 12.11.1998. Except the fact that he was appointed to a regular post before 01.04.2003, the other conditions stipulated for invoking Rule 11(4) of the Tamil Nadu Pension Rules, 1978, are not present in the present case;



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d) It may be true that some of the part-time teachers might have been granted pension by invoking G.O.(Ms.)No.408, Finance (Pension) dated 25.08.2009 that was in force prior to the advent of Rule 11(4) of the Tamil Nadu Pension Rules 1978. Indeed, even in the present case, the writ petitioner's prayer for invoking G.O.(Ms.)No.408, Finance (Pension) dated 25.08.2009 was finally favourably considered, but, only on a later review of the same, it was found that the petitioner was not eligible for the benefit under Rule 11(4) of the Tamil Nadu Pension Rules, 1978, since he had not complied with the conditions stipulated therein. It was a plain mistake, but such mistake might not be allowed to supersede what the said rule expressly mandates.

e) That apart, the petitioner had not rendered part-time services in sanctioned posts and the learned Judge has not adequately appraised all the facts and he had applied G.O.(Ms.)No.408, Finance (Pension) dated 25.08.2009 based on his impression that what was intended in the Government Order relates to the permanency of post and not



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nature of service.

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Reliance is placed on the authority in ***Government of Tamil Nadu and 2 others Vs R.Kaliyamoorthy*** [2019(6) CTC 705].

7. Per contra, the learned counsel for the respondent submitted that:

While there is a break in service before 31.05.1987, there had never been a break in service from 18.09.1987 till the writ petitioner superannuated on 31.01.2007. Indeed, he was working as a part-time teacher in a sanctioned post from 18.09.1987 to 18.11.1998, and from the very next day i.e 19.11.1998, he was appointed as a Full Time Technical Teacher in the Panchayat Union Middle School at Melasindalacheri, where he continued till his retirement. Therefore, even if about 6 years, during which period he had worked as a Part-time Teacher between 18.02.1981 to 31.05.1987, was ignored, still the petitioner had completed about 11 years of uninterrupted service. If 50% thereof was reckoned in terms of G.O.(Ms.)No.408, Finance (Pension) dated 25.08.2009 or Rule 11(4) of the Tamil Nadu Pension Rules, 1978, the petitioner would be entitled to pensionary benefits. Inasmuch as the petitioner was regularly appointed at least about 4 ½ years prior to the



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cut-off date i.e 01.04.2003, he is entitled to pensionary benefits. Reliance is placed on the judgment of this Court in [W.A(MD)No.517 of 2020 dated 13.08.2020].

8. If G.O.Ms.408, dated 25.08.2009 is carefully perused, paragraph 2 of the said G.O. prescribes the eligibility for conferring benefit. It provides: (a) The period served in non-provincialised service, of for a consolidated pay, or for honorarium or on daily wages should be in a full time government service; (b) That those who fall in the above category should have been absorbed in the Government service before 01.04.2003.

9. So far as the writ-petitioner is concerned, he had been in full time service in the Panchayat school from 19.11.1998 and till his retirement in 31.01.2007, and has been absorbed prior to 01.04.2003. This implies he has satisfied two out of three criteria prescribed for availing the benefit under G.O.408. The only issue is prior to 19.11.1998 he had worked as a part-time teacher for 11 years and 2 months from 18.09.1987 to 18.11.1998 in the same school where he was later appointed as a full time teacher.



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10. If G.O.408 is strictly construed, then the writ-petitioner might not be entitled to claim benefit under that G.O. The dictum in *Kaliyamurthy case* strictly does not deal with a situation such as the one now before this court. Issue is whether the petitioner's part-time employment from 18.09.1987 to 18.11.1998 be accommodated for the benefit of G.O.408 is the issue. Here, it may have to be stated that prior to his full time appointment, the petitioner was employed as a part time teacher in the same school. Now, the point is was the petitioner appointed as a part-time teacher in a full time post? After all it was a Panchayat Union Middle School, and it is least likely that this school in 1987 would have had both a part-time post and full-time post for its vocational course (agriculture). There is no clarity on this point. If the petitioner has been appointed as a part-time teacher in a full time post, it could be safely concluded it is a ploy to outmanoeuvre the Pension Rules.

11. It is now 17 years since he superannuated. And somewhere his anxiety should end. Therefore, this Court deems it appropriate to give the benefit of doubt to the writ-petitioner/respondent herein and treats his part-time service in vocational (agriculture) course in the Panchayat Union Middle



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School at Melasinthalaseri between 18.09.1987 to 18.11.1998 as an employment in a full time post. If so considered, then petitioner's case would be covered under G.O.408, dated 25.08.2009.

12. It is clarified that this court has arrived at the above decision on the peculiar facts of this case and hence the result of this case considered as declaring the law on the point.

13. In the result, this appeal is dismissed. The order dated 08.03.2017 passed in W.P(MD)No.15571 of 2013 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) & (P.V.M., J.)
19.07.2024

Index : Yes/No
Internet : Yes/No
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To,

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N.SESHASAYEE, J.
AND
P.VADAMALAI. J.

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Pre-delivery Judgment in
W.A(MD)No.68 of 2018
and C.M.P(MD)No.320 of 2018

19 .07.2024