



W.P.Nos.18711, 19203 and 19236 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2025

Coram:

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.18711, 19203 and 19236 of 2023

G.George Victor	...Petitioner in W.P.No.18711 of 2023
C.Mani	...Petitioner in W.P.No.19203 of 2023
1.S.Aruna	
2.S.Soundari	
3.S.Balaji	
4.S.Dhanalakshmi	...Petitioners in W.P.No.19236 of 2023

Vs.

1. The State of Tamilnadu rep. By its
Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009
 2. The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai – 600 006
 3. The Deputy Director (Administration) of
Government Examinations,
Directorate of Government Examinations,
College Road, Chennai - 6
- ...Respondents in W.P.Nos.18711,
19203 and 19236 of 2023

Prayer in all the Petitions:

Writ Petitions filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to extend the benefits



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of G.O.(1D) No.286, School Education (GE.1) department, dated 19.07.2016 and G.O.(1D)No.238, School Education (Nee.Va.4(2)) Department dated 07.04.2017 and G.O.(pa) No.72 School Education (G.E.) department dated 28.02.2019 to the petitioner also for regularisation in the post of record clerk from the date of proposal i.e., 03.11.1998 onwards on par with junior for the purpose of pension and also based on the Writ Appeal order dated 05.12.2017 in W.A.No.1292 of 2017 and grant pension to the petitioner from the date of retirement with effect from 01.05.2011; grant family pension to the petitioner from the date of retirement of the petitioner's wife with effect from 01.04.2012; grant family pension and pensionary benefits to the petitioners from the date of retirement with effect from 01.10.2007

For Petitioners : Mr.K.Arumugam
For Respondents : Mr.S.Prabhakaran
Government Advocate (Education)

COMMON ORDER

Since the issues involved in these Writ Petitions are one and the same, they are taken up together and a common order is being passed.

2. According to the petitioner in W.P.No.18711 of 2023, the petitioner joined the service on 31.07.1987 as Section Writer on daily wage basis and brought under regular time scale of pay on 20.10.2006 and allowed to retire from service on 30.04.2011 without any pensionary benefits. However, the



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respondents did not consider the case of the petitioner for regularisation from 1998 onwards as was given to similarly placed persons and his juniors in G.O.(1D) No.286, School Education (GE1) Department dated 19.07.2016 and G.O.(1D) No.238, School Education Department dated 07.04.2017 and G.O.(Pa) No.72, School Education (G.E) Department dated 28.02.2019 and also did not count his daily wages service for the purpose of pension. Further, the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017, while dealing with a similar case has granted notional regularisation on par with juniors with monetary benefits only and not with service benefits. Therefore, the petitioner has come up with this petition seeking the aforementioned prayer.

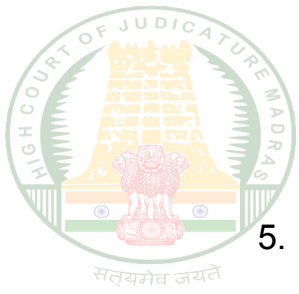
3. According to the petitioner in W.P.No.19203 of 2023, the petitioner's wife joined the service on 12.08.1988 as Section Writer on daily wage basis and brought under regular time scale of pay on 20.10.2006 and allowed to retire from service on 31.03.2012 without any pensionary benefits. However, the respondents did not consider her case for regularisation from 1998 onwards as was given to similarly placed persons and his juniors in G.O.(1D) No.286, School Education (GE1) Department dated 19.07.2016 and G.O.(1D) No.238, School Education Department dated 07.04.2017 and G.O.(Pa) No.72, School Education (G.E) Department dated 28.02.2019 and also did not count her daily wages



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service for the purpose of pension. Further, the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017, while dealing with the similar case has granted notional regularisation on par with juniors with monetary benefits only and not with service benefits. Therefore, the petitioner has come up with this petition seeking the aforementioned prayer.

4. According to the petitioners in W.P.No.19236 of 2023, the mother of the petitioners joined in service on 08.02.1985 as Section Writer on daily wage basis and brought under regular time scale of pay on 20.10.2006 and allowed to retire from service on 30.09.2007 without any pensionary benefits. However, the respondents did not consider the case of the petitioners' mother for regularisation from 1998 onwards as was given to similarly placed persons and her juniors in G.O.(1D) No.286, School Education (GE1) Department dated 19.07.2016 and G.O.(1D) No.238, School Education Department dated 07.04.2017 and G.O.(Pa) No.72, School Education (G.E) Department dated 28.02.2019 and also did not count her daily wages service for the purpose of pension. Further, the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017, while dealing with a similar case has granted notional regularisation on par with juniors with monetary benefits only and not with service benefits. Therefore, the petitioners have come up with this petition seeking the aforementioned prayer.

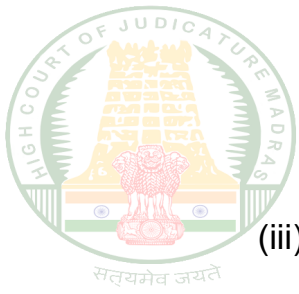


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5. Per contra, the learned Government Advocate (Education) has filed a counter affidavit, wherein it is averred as follows:-

(i) As per G.O.(Ms) No.2149 Education Science and Technology Department dated 14.11.1983, the employees were appointed temporarily as section writers for seasonal work on daily wage basis through employment office. Subsequently, in the G.O.(Ms) No.203, School Education Department dated 19.10.2006, 111 section writers were appointed as record clerk on 20.10.2006, out of 111, 19 were appointed in the existing permanent vacant post and 92 were appointed by creating supernumerary post of record clerk, as per seniority in the scale of pay of Rs.2610-60-3150-65-3540.

(ii) One Indrani had filed W.P.No.8407 of 2018 with a prayer to direct the respondents to count 50% of service rendered by her from 12.08.1988 to 19.10.2006 along with regular service from 20.10.2006 for the purpose of granting pension and consequently grant pension with all benefits and pay arrears to her and this Court by an order dated 11.04.2018 directed the respondents to reconsider the case of the said petitioner for the purpose of granting the relief of counting 50% of the services rendered on temporary basis and pass appropriate orders after verifying the service records and Rule 11 of the Tamilnadu Pension Rules, 1978.



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(iii) The petitioners were appointed as record clerk only on 20.10.2006, on regular scale post, therefore, the petitioners were covered under new contributory pension scheme and the General Provident Fund Account (GPF) cannot be opened. Further, the 50% of the service rendered by the petitioners in the post of Section Writer on consolidate pay can be taken into account for the purpose of pension provided they were absorbed into regular establishment prior to 01.04.2003, but the petitioners were appointed as record clerk in the regular time scale of pay on 20.10.2006, hence the prayer of the petitioners cannot be granted, thereby pleaded to dismiss the petitions.

6. Heard the learned counsel on either side and perused the documents placed on record carefully.

7. On a persual of the records and the submissions made on either side, it is seen that out of nearly 111 section writers, who were having 10 years of service as on 01.01.2006, 92 posts was introduced and created as supernumerary post. Only then supernumerary post came into existence and not before that. Accordingly, those persons who had completed 10 years of service on daily wages, were made permanent and as per their education and the rules and regulations, they have been appointed on 20.10.2006 by relaxing various Rules as these posts are appointed only by conducting TNPSC examinations.



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Accordingly those persons, who are in service on consolidated basis and daily wage basis shall not be hereafter recruited and accordingly, those 92 posts have been created supernumerary post and another 19 posts were given and totally (92+19) post created afresh. As it is supernumerary post, those persons who have completed SSLC examinations and have completed 35 years of age, as per the Rules existing in the State Inservice Subordinate Rules, the state has been made to relax and thereby Rule has been relaxed and accordingly GO has been issued and 111 persons were selected and appropriate orders has been passed.

8. As per the petitioners' claim, the benefits is to be extended to the petitioners on par with juniors for the purpose of pension and other things and according to the respondents, the same cannot be granted on the ground that the petitioners were engaged for seasonal works in the year 1989 on daily wages by the District Employment officer / Appointing officer at the regional, as per G.O.Ms.No.2149 dated 14.11.1983, subsequently, they were appointed as per G.O.Ms.No.203 School Education department from 20.10.2006 in permanent post. One person, namely, Paramasivam, who was not regularised filed W.P.No.11731 of 2006 and based on the Judgment, G.O.No.363 dated 11.10.2012 was issued to sanction pension including all the benefits for the



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individual. Again one E.Palani and S.Abdul Rahiman, who were regularised on 01.06.2005, were sanctioned pension as per government order in G.O.(1D) No.238 School Education Department dated 07.04.2017, which was issued based on the Judgment in W.P.No.40323 and 40324 of 2015 dated 21.12.2015. Further, one K.Santhanakrishnan and 25 others were all sanctioned pensionary benefits as per the aforesaid government orders based on the W.P.Nos.39645/2004 dated 26.03.2010 (W.A.No.2678 of 2010 dt. 05.11.2014), W.P.No.26882 to 26885 of 2009 dated 28.06.2013 and W.P.(MD) No.22733 of 2015 dated 17.12.2015, W.P.No.41279 of 2016 dated 24.11.2016, W.P.No.39601 to 39609 of 2016 dated 23.11.2016.

9. The representation of the petitioner in W.P.No.18711 of 2023 was given only on 27.05.2020 to calculate the service rendered by him from the year 1998 to 2011 for the purpose of granting pension. Further, one Lalitha filed W.P.No.25409 of 2017 with the prayer to direct the respondents to count 50% of service rendered by her from 12.08.1988 to 19.10.2006 along with regular service from 20.10.2006 for the purpose of granting pension to her. The order was passed on 21.09.2017 to consider the case and the same was considered and accordingly, in the event of counting 50% of past services, GPF Account has to be opened before the cut off date of 01.04.2003, since the cut off date was



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already quashed by this Court, there was no appeal against the said order by the petitioner.

10. The petitioner in W.P.No.18711 of 2023 was appointed as Record Clerk on 20.10.2006; the petitioner's wife in W.P.No.19203 of 2023 was appointed as record clerk on 20.10.2006 and the petitioners' mother in W.P.No.19236 of 2023 was appointed as Record clerk on 20.10.2006, which is after 01.04.2003, in regular time scale. The services in consolidated pay cannot be taken into account for availing the benefit under G.O.Ms.No.408 Finance Department dated 25.08.2008 and they are governed by the new contributory pension scheme. According to G.O.Ms.No.259 Personnel department dated 06.08.2009, proviso to rule 2 of Tamilnadu Pension Rules, 1978, the Rule shall not apply to government servant appointed after 01.04.2003. Also, the General Rule 14 shall not apply to Government Servant appointed after 1st April 2003 with respect to the services and posts in connection with the affairs of the State, whether it is temporary or permanent. Further, the service of 50% for the purpose of pension shall be provided, only if the concerned persons were absorbed prior to 01.04.2003, here, the petitioner in W.P.No.18711 of 2023, the petitioner's wife in W.P.No.19203 of 2023 and the petitioners' mother in W.P.No.19236 of 2023 were appointed in the year 2006, therefore, they not entitled for consideration, as



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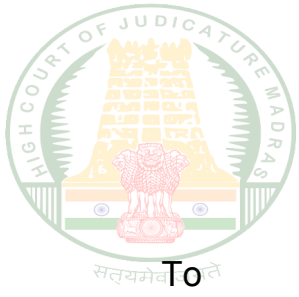
per the Hon'ble Full Bench Judgment of this Court in W.A.No.158 of 2016 etc.,
batch dated 03.12.2019.

11. Accordingly, the prayer of the petitioners cannot be considered. Further, according to the petitioners a recommendation has been sent by the authorities concerned to the Government and the same was considered in Letter No.23096/A.Thi/2021-5 dated 20.09.2022. However, the claim of the petitioners has been rejected based on the Judgment of this Court. Hence in view of the above said claim, the prayer sought for by the writ petitioners cannot be considered and the same has to be rejected. Further, the petitioners have sought for only a Writ of Mandamus in these petitions and seeks this Court's indulgence to challenge the said rejection order. Acceding to the said request, it is left open to the petitioners to challenge the said rejection order and proceed with the case in the manner known to law.

In the result, these petitions are dismissed. It is left open to the petitioners to challenge the rejection order before the appropriate authorities. No costs.

01.04.2025

Index : Yes / No
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd



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To

WEB COPY

1. The State of Tamilnadu rep. By its
Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009
2. The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai – 600 006
3. The Deputy Director (Administration) of
Government Examinations,
Directorate of Government Examinations,
College Road, Chennai - 6



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V.BHAVANI SUBBAROYAN, J.

ssd

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