

WP(MD) No.4407 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP(MD) No.4407 of 2019

K.Manickam

.. Petitioner

Vs.

1.The State Of Tamil Nadu

Rep. By The Principal Secretary to Government.,
Higher Education Dept.,
Secretariat, Fort St. George,
Chennai-9

2.The Director Of Collegiate Education,
DPI Campus, College Road,
Chennai-06

3.The Joint Director Of Collegiate Education,
Tirunelveli Region,
Tirunelveli-1

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorarified mandamus to call for the records in pursuant to the impugned order passed by the third respondent in proceedings Moo.Mu.No.327/U1/2018 dated 22.06.2018 and quash the same and consequently direct the respondents to include the petitioner's service period of two years three months and six days a Lecturer in the M.D.T.Hindu College, Tirunelveli for the purpose of recalculation of pension and accordingly revised the petitioner's pension and pensionary benefits and further to pay the consequential arrears with in a stipulated time may be fixed.



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For Petitioner : Mr.M.Saravanakumar
For RR1 to 3 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

Under assail is the order dated 22.06.2018 passed by the Joint Director of Collegiate Education Tirunelveli Region.

2. The case of the petitioner is that he was recruited and appointed as lecturer in regular time scale of pay in the FIP substitute vacancy in the Madura Diraviyam Thayumanavar Hindu College, Tirunelveli and relieved from duty on 04.04.2001. He was selected and appointed as lecturer in Mathematics in the permanent vacancy on 20.06.2001 in Sri Paramakalyani College, Alwarkuruchi, Tirunelveli District.

2(ii). He was awarded with associate professor salary. He was allowed to retire from service on superannuation on 28.02.2017. As per the directions issued by the Collegiate education, the break in service i.e., is from 05.04.2001 to 19.06.2001, 76 days has been condoned *vide* letter dated 02.05.2006.

2(iii).The respondents counting the qualified service of 15 years 8 months and 5 days only, and sanctioned the retirement benefits. His first



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service as lecturer in Madura Diraviyam Thayumanavar Hindu College, Tirunelveli has not been taken into account for the pensionary benefits. Even after his break in service was condoned by the competent authority. He sent a representation before the respondent on 26.07.2017 with the request, counting the period of service of calculation of pensionary benefits but the respondents have not passed any orders and therefore he filed a writ petition before this court in WP(MD).No.19766 of 2017 and this Hon'ble Court directed the first respondent to consider his representation. In compliance to the order of this Hon'ble Court the impugned order came to be passed. The period of contract and temporary service were taken into account, subject to the conditions stipulated in Rule 11 of the Tamil Nadu Pension Rules, 1978 (Rules) for the purpose of grant of pensionary benefits. The order impugned has been passed contrary to Rule 11 of the Rules. Hence this Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the order impugned passed without taking the note of the first service rendered by the petitioner as lecturer in Madura Diraviyam Thayumanavar Hindu College, Tirunelveli for the pensionary benefits, even though his break in service was condoned by the competent

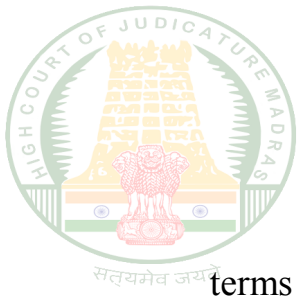


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authority. He would submit that similarly placed persons working with Government college absorbed in the permanent vacancy were made representation and the same was considered in as per G.O(Ms).No.203 Higher Education Department dated 09.12.2014 and considered his claim and granted the benefit of calculating the contract and temporary service for the purpose of grant of pensionary benefits under Rule 11 (1) of the Rules, subject to the condition that the break in service and non-salary period shall not be taken into account for qualifying service. To strengthen his contention he has relied upon the judgment of this Court in the case of **V.Ganapathy Vs. State of Tamil Nadu, represented by its Principal Secretary to the Government, Revenue Department, Chennai and Ors** reported in [(2013) 2 MLJ 399], to show that the temporary service rendered by the writ petitioner can be taken into consideration as a qualifying service for getting pensionary benefits.

4. He has also relied upon the judgement of this Court's Judgment of the Hon'ble Full Bench in the case of **The Government of Tamil Nadu Vs. R.Kaliyamoorthy** in [W.A.Nos.158 of 2016 etc. batch] dated 03.12.2019 to show that the government service/employees appointed prior to 1st of April 2003, whether on temporary or permanent basis in



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terms of Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules will be entitled to count half of their past service for the purpose of determination of Qualifying Service for pension.

5. *Per Contra*, the learned Additional Government Pleader for the respondents No.1 to 3 would submit that the writ petitioner filed WP(MD).No.19776 of 2017 with a prayer of request that the period of service rendered as Faculty Improvement Programme substitute teacher under University Grants Commission based on the agreement from the period 28.12.1998 to 04.04.2001 Madura Diraviyam Thayumanavar Hindu College, Tirunelveli to be taken into account for pensionary benefits.

6. This Hon'ble Court *vide* order dated 31.10.2017 directed the respondents to consider the representation submitted by the writ petitioner submitted therein dated 26.07.2017 to pass an order on merits. In due compliance with the aforesaid impugned order came to be passed.

7. He would submit that as per G.O.(Ms).No.320 dated 29.02.2007, the condition stipulated in S.No.3(2) enumerates that the period of paid employment during the contract period should not be taken into account for any purpose other than career advancement



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including the pension, therefore, there is no necessity to interfere with the impugned order.

8. He would submit that as per the directions issued from the regional joint director of collegiate education *vide* letter dated 12.04.2018 that FIP service period can be considered only for career advancement purpose under the period of break in service not exceeding one year can be condoned for the same reason only as per the G.O(Ms).No.84 dated 21.03.2000 that has been informed that the writ petitioner's request cannot be considered.

9. This court considered the submissions made on either side and perused the available materials on record.

10. It is not in dispute that the petitioner had been working as associate professor of Mathematics in Sri Paramakalyani College, Alwarkuruchi, Tirunelveli District and attained the age of superannuation on 28.02.2017. It is also not in dispute that he had filed a writ petition in WP(MD).No.19766 of 2017 seeking relief to include the service for the period from 28.12.1998 to 04.04.2001 and taken into account for the calculation of pension benefits, *vide* order dated 30.10.2017. This court issued the following directions:-



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“This Writ Petition has been filed for issuance of Writ of Mandamus, directing the first respondent, namely, the Principal Secretary to Government, Higher Education Department, Chennai to pass appropriate orders on merits in accordance with law on the petitioner's representation dated 26.07.2017 regarding inclusion of the petitioner's service period of 2 years, 3 months and 6 days as Lecturer in the MDT Hindu College, Tirunelveli for the purpose of re-calculation of pension, within a specified time frame so that the petitioner can get enhanced pension in the evening of his lifetime, that may be fixed by this Court.

2. Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner and Mr.R.Velmurugan, learned Government Advocate, who takes notice on behalf of the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. Having regard to the limited nature of relief sought for by the petitioner, without expressing any view on the correctness or entitlement of the claim made, the first respondent is directed to dispassionately consider the representation dated 26.07.2017 made by the petitioner and pass reasoned orders on merits in accordance with law and communicate the same to the petitioner and file report of such compliance before the Registrar (Judicial) of this Court on or before 31.01.2018.

4. With the aforesaid direction, this Writ Petition is disposed of. No costs.”

11. In compliance of the dated 03.10.2017, the present order impugned came to be passed, in the order impugned, it has been mentioned that as per G.O(Ms).No.320 Higher Education Department dated 20.09.2007, the conditions stipulated in S.No.3(2) enumerates that the period of paid employment during the contract period should not be taken into account for any purpose other than career advancement



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including the pension benefits.

12. The learned counsel appearing for the petitioner would draw attention of this Hon'ble Full Bench judgment cited *supra* has held that the government employees appointed prior to 1st of April 2003, whether on temporary or permanent basis will be entitled to count half of service period for conferment of pensionary benefits. At this juncture, it is relevant to cite the judgment of Hon'ble Full Bench in the case of **The Government of Tamil Nadu Vs. R.Kaliyamoorthy** in [W.A.Nos.158 of 2016 etc. batch] dated 03.12.2019 in para 45 held as follows:-

“45. In the light of the above, we answer the reference as follows:-

(i) 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

(ii) 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.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.



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(iv) *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 before 01.04.2003 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.*

(v) *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 not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."*

13. A perusal of the order impugned shows that initially, the petitioner was appointed only in substituted vacancy i.e., Faculty Improvement Programme (FIP) under the University Grants Commission based agreement for the period 28.12.1998 to 04.04.2001.

14. It is pertinent to mention that as per the directions issued by the director of collegiate education, the break in service i.e., from 05.04.2001 to 19.06.2001 has been condoned by the joint director of collegiate education Tirunelveli region *vide* order dated 02.05.2006.

15. At this juncture, the learned Additional Government Pleader for the respondent would draw attention to the counter filed by the third respondent in paragraph numbers 4 and 5 which read as under:-



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“4.I submit that the petitioner filed a writ petition W.P. (MD). No.19766 of 2017 in the Madurai bench of Madras High Court with the prayer of request that the period of service rendered as FIP (Faculty Improvement Programme) substitute teacher under UGC based on agreement, for the period from 28.12.1998 to 04.04.2001 at MDT Hindu College, Tirunelveli, be taken into account for pensionary benefits. The Hon 'ble Judge has passed the order on 30.10.2017 in W.P. (MD). No.19766 of 2017 filed by the Petitioner, Thiru K.Manickam, with the following direction:

“... .. the first respondent is directed to dispassionately consider the representation dated 26.07.2017, made by the petitioner and pass reasoned orders on merits in accordance with law and communicate the same to the petitioner and file report of such compliance before the Registrar (Judicial) of this court on or before 31.01.2018”.

5. It is submitted that the then Regional Joint Director of Collegiate Education, Tirunelveli has given remarks to the Director of Collegiate Education, vide letter No.327/@_1/2018, dt.05.02.2018 for the remarks called for from the Joint Director(Finance) of Collegiate Education, Chennai, that it is not possible to consider the petitioner's request seeking to take into account service rendered as FIP substitute under UGC scheme for calculating pensionary benefits as per condition No.3 (2) mentioned in the G.O(Ms)No.320, Higher Education (F2) Department, dated 20.09.2007.”



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16. There is no quarrel in the propositions laid down by the Hon'ble Full Bench, instant case on hand, it is not the case of the writ petitioner, is that he was appointed prior to 01.04.2003, on temporary/permanent basis in terms of Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules, will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978. The petitioner was rendered service under FIP (Faculty Improvement Programme) Substitute Teacher under UGC based on agreement for the period from 28.12.1998 to 04.04.2001 at MDT College. This Court is of the view that there is no reason to interfere with the order impugned, there is no merit in this writ petition and the same is liable to be dismissed.

17. In the result the writ petition is dismissed. No costs.

18.03.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
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M.JOTHIRAMAN, J.

nst

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