

W.A.(MD)No.646 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

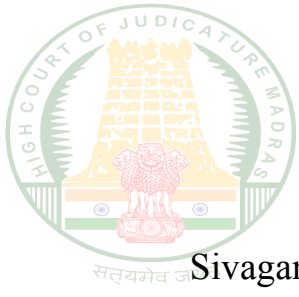
W.A(MD)No.646 of 2025
and
C.M.P.(MD)No.4604 of 2025

- 1.The Director of Elementary Education,
Chennai-06.
- 2.The Accountant General (A & E),
361, Anna Salai, Tenampettai,
Chennai.
- 3.The District Educational Officer (Elementary),
Sivagangai, Sivagangai District.
- 4.The Block Educational Officer,
Kalayarkovil, Sivagangai District.
- 5.The Principal Accountant General,
Office of the Accountant General (A& E) Tamil Nadu,
No.361, Anna Salai, Teynampet,
Chennai-600 018.

... Appellants

Vs.

- 1.S.Arputha Gnaniah
- 2.The Correspondent,
R.C.Middle School,
Pulikanmai, Kalayarkovil Taluk,



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Sivagangai District.

... Respondents

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Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.17827 of 2024, dated 31.07.2024.

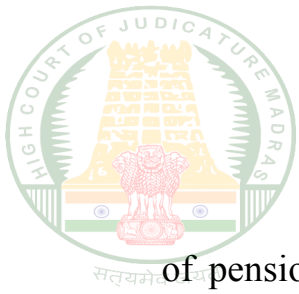
For Appellants :Mr.J.Ashok
Additional Government Pleader
For R1 :Mr.V.Panneerselvam

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed by the respondents in the writ petition challenging the order passed in Writ Petition W.P.(MD)No.17827 of 2024, dated 31.07.2024.

2. The writ petitioner was appointed as a part time Vocational instructor in the year 1989 and he was made as a full time worker in the year 1995. However, his service as a part time worker for a period of 7 years 8 months and 26 days was not taken into consideration for the purpose of pensionary benefits. Hence, the writ petitioner filed a writ petition seeking to include 50% of the part time service rendered by the petitioner for the purpose



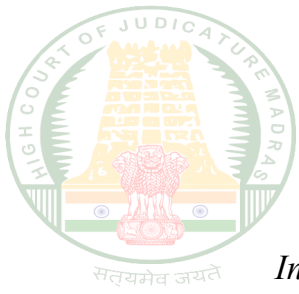
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of pensionary benefits and to confer all the consequential benefits. The writ court had considered and directed the respondents to take 50% of the said service and grant pension. Aggrieved over the said order, the Department had preferred the present appeal.

3.The issue was already considered elaborately by another Coordinated Bench in W.A.(MD)No.347 of 2021 batch wherein the government appeals and review applications were dismissed. The relevant portion of the order is extracted hereunder:

“9. The issue of regularization of Single Part Time and Double Part Time Vocational Instructors have prolonged history of litigations. Based on the orders of this Hon’ble Court, the Government had issued G.O.Ms.No.712 dated 28.05.1990, G.O.Ms.No.834 dated 23.09.1994 and G.O.Ms.No.221 dated 15.07.1999, whereby, the service of the Vocational Instructors in both Single Part Time and Double Part Time were periodically regularized during the years 1990, 1994 and 1999.

10.Again the teachers demanded to count the past service and filed several writ petitions. After considering the demand, the Government had issued G.O. to count 50% of the part time Vocational Instructor service but granted the benefits only for the “Double Part Time Instructors” and denied the benefits to “Single Part Time



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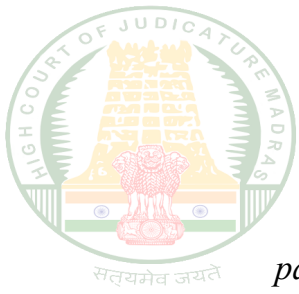
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Instructors”. The teachers who were serving as Single Part Time Instructors had preferred several writ petitions and the same was allowed. Aggrieved over, the Government had filed writ appeals. The Hon’ble Division Bench after hearing the arguments of the Government in W.A.Nos.882 of 2017 batch vide order dated 06.04.2018 had specifically held that the benefits shall be granted to the persons who had filed the writ petitions and denied the benefits for fence sitters. The said finding was rendered since the same was touching the financial implication of the State. The relevant portion of the order is extracted here under:

15.In terms of the above discussions, we dispose of the writ appeals as under:

(i)50% of the services rendered by the respondents herein, as Part Time Vocational Instructor (either as Single Part time or Double Part Time Vocational Instructor), shall be counted for the purpose of computing pension and other retiral benefits.

(ii)The above said benefit shall be extended only to the respondents in these writ appeals and for the persons similarly situated like that of the respondents herein, whose cases are pending before this Court. Thus, it is made clear that the above said benefit shall not be extended to any other future cases that may be filed on this account, on the ground of delay and laches, since all along they have not come up before this Court and remained as fence-sitters. It is also needless to point out that allowing such cases would amount to opening the



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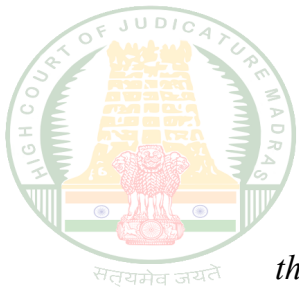
pandora's box, touching upon the financial implications of the State.

11. Based on the aforesaid judgment of the Hon'ble 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



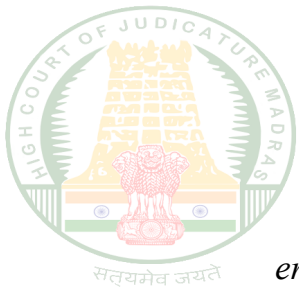
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there cannot be any straight jacket formula while considering the said issue and in the case on hand, the same cannot be put against the first respondent/writ petitioner in the light of the settled position of law that persons similarly placed have to be conferred with the same benefits without driving them to the Court.

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 cutoff 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



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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 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.



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WEB COPY 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 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.*

18. With the above direction, the Review Applications and Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

5. Following the aforesaid order, this Court is of the considered opinion that the writ appeal deserves to be dismissed and accordingly, dismissed. The order passed by the Writ Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
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