

(2014) 04 MAD CK 0294

In the Madras High Court

Case No : W.P. (MD) No. 16771 of 2013 and W.P. (MD) Nos. 16772 of 2013, 16775, 16880 to 16882, 17000, 17001, 17859 and 17860 of 2013

V. Ramar

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) WritLR 687

Hon'ble Judges : K. Ravichandra Babu, J

Bench : Single Bench

Judgement

K. Ravichandrabaabu, J.—In all these writ petitions, the petitioners seek for a direction to the respondents to take 50% of their part time service rendered as vocational teacher along with their regular service for the purpose of calculating the pensionary benefits. The facts and the issue involved in all these writ petitions are one and the same except the relevant date of appointment and the period of their past service. Therefore, the facts projected in the first writ petition viz., W.P. (MD) No. 16771 of 2013 are narrated hereunder which warranted the petitioners to approach this Court seeking for the relief as stated supra.

2. The petitioner was appointed as a single part time vocational teacher on 8.10.1980 and he was regularised on 1.4.1990 in such capacity. Thereafter, he was promoted as P.G. Assistant (Commerce) and retired from service on 30.3.2013 on attaining the age of superannuation. The Government as well as private schools were engaging number of qualified persons as teachers for the vocational subjects either as Double part time or Single part time teachers according to their needs. All of them were employed indefinitely for years together. After repeated representations and agitations, the Government, in order to bring them under time scale of pay in a phased manner, directed to fill up 800 posts for the vocational instructors in G.O.Ms. No. 712 Education Department dated 28.5.1990 by appointing them as Double part time teachers.

Further, G.O. No. 68 dated 20.3.2007 was passed stating that the Vocational Teachers can be appointed on par with B.T. Assistants. After the retirement of the petitioner, the service rendered by him as part time vocational Teacher from 8.10.1980 to 31.3.1990 was not taken into account while calculating the pension. Under similar circumstances, this Court in W.P. No. 39177 of 2002 dated 16.4.2009 directed the respondents to count 50% of the part time service rendered by the petitioner therein for the purpose of calculating the pension. A writ appeal filed challenging the said order, in W.A. No. 1702 of 2010 was dismissed on 20.9.2010. Further appeal preferred before the Hon''ble Supreme Court also came to be dismissed. Therefore, the petitioner is also entitled to similar relief.

3. The fourth respondent filed a counter affidavit, wherein it is stated as follows:-- G.O.Ms. No. 408 Finance (Pension) Department dated 25.8.2009 and the amended Rule 11 of the Tamil Nadu Pension Rules 1978 clearly state that the service rendered in non-provincialised service, on consolidated pay, honorarium or daily wages basis should be in a job involving whole time employment and only those persons are entitled to seek the benefit of counting 50% of their past service. Thus, the petitioners who were appointed as single part time vocational instructors, are not entitled to get 50% of their past service to be counted along with their regular service for pensionary benefits. G.O. No. 39 Rural Development and Panchayat (E5) Department dated 13.11.2011 issued for counting 50% of services rendered is applicable only to part time Panchayat Clerks and not applicable to single part time vocational instructors.

4. The second respondent filed a separate counter affidavit wherein the averments are made in similar line to the one filed by the educational authorities.

5. The petitioners have filed additional affidavits, individually, wherein they have stated that though they were appointed as part time vocational teachers, they were directed to do the job in full time basis in view of G.O. No. 358 dated 18.8.1997. As the petitioners were employed in a job involving full time employment, the amended Rule 11(4), in fact, applies to the petitioners case and does not take away their rights for counting 50% of their past service.

6. Mr. Silambanan, learned Senior Counsel appearing for the petitioners submitted as follows:--The issue involved in this case is squarely covered by the decision rendered in W.P. No. 39177 of 2002 dated 16.4.2009 which came to be confirmed by the Hon''ble Division Bench in W.A. No. 1702 of 2010 dated 20.9.2010. Therefore, the respondents cannot deny the benefit to these petitioners by discriminating them especially when they are also similarly placed. Rule 11(4) of the said Rules came into force on 9.2.2010 and it only reproduced what was already stated in G.O.Ms. No. 408 which came to be considered and decided by this Court in W.P. No. 39177 of 2002 by following the order made in W.A. No. 1702 of 2010. Several orders were passed by the learned single Judges of this Court and the recent order is the one made in W.P. No. 33685 of 2013 dated 12.12.2013. Rule 11(4) of the said Rules does not take away the right of

the petitioners and on the other hand by applying the same, the petitioners' claim has to be accepted. In many of the cases, where this Court has passed similar orders, the respondent Department has implemented the same.

7. Per contra, the learned counsel appearing for the second respondent submitted as follows:--Till the date of regularisation, all these petitioners were doing part time service on consolidated pay. Only in G.O. No. 408 dated 25.8.2009, 50% of the service rendered on consolidated pay was directed to be counted for pensionary benefits. The service rendered by the petitioners is non-pensionable service. They were not engaged in whole time employment. The earlier orders passed by this Court in similar cases have not considered the scope of Rule 11(4) of the said Rules which clearly prohibit the grant of the benefit. In support of his contentions the learned counsel relied on the decisions reported in Union of India (UOI) and Others Vs. Braj Nandan Singh, and Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, .

8. The learned Additional Government Pleader appearing for the respondents 1, 3 and 4 adopted the arguments of the learned counsel for the second respondent and further submitted that Rule 11(4) of the said Rules has not been considered by this Court so far and therefore by applying the said Rule, relief claimed by the petitioners cannot be granted.

9. Heard the learned counsels appearing on either side and perused the materials placed before this court.

10. On analysing the entire facts and circumstances of the case, it is seen that the core issue that arises for consideration is as to whether the petitioners are entitled to get 50% of their past service rendered by them as part time vocational instructors, counted for pensionary benefits and whether such claim is barred under Rule 11(4) of the Tamil Nadu Pension Rules 1978.

11. Before going into the issue and decide the same, it is better to understand certain basic facts regarding the vocational instructors. The Government of Tamil Nadu issued G.O.Ms. No. 1719 dated 14.9.1978 for running vocational courses related to various subjects at Higher Secondary stage. The Government also decided that part time instructors may be employed for handling such vocational courses by fixing their remuneration as Rs. 150/- per month. Subsequently, the Government passed another G.O. No. 105 dated 21.1.1980 and ordered that if the workload warrants, a second part time instructor may be appointed separately on a remuneration of Rs. 150/- per month and if the situation further warrants, the same part time instructor may be allowed to handle more than 20 periods on remuneration of Rs. 300/- per month. Such part time instructors who were required to take 20 or more periods, on part time, in course of time, were known as double part time vocational instructors and others were known as single part time vocational instructors. The Government thereafter decided to regularize the services of such double part time vocational instructors through G.O.Ms. No. 712 dated 28.5.1990. Aggrieved over such regularisation only in

respect of double part time vocational instructors, challenge was made before the Administrative Tribunal by single part time vocational instructors. Thereafter, the Government issued G.O.Ms. No. 967 dated 16.10.1992 to bring all qualified single part time teachers into existing/sanctioned secondary grade posts and in so far as unqualified single part time teachers were concerned, it was decided to give training for them and thereafter absorb them as secondary grade teachers in future. On 17.12.1993 a decision was rendered by the Tribunal in O.A. Nos. 3646 of 1991 and 1999 of 1993, wherein it was observed that there was no basis for giving priority to double part time teachers over single part time teachers without reference to seniority based on the date of appointment and total service, because the appointment as double part time teachers was a matter of accident and not on the decision based on seniority or selection.

12. The Hon"ble Division Bench of this Court considered the above issue in detail in its order made in a batch of case, in W.P. No. 11389 of 2003 etc., dated 8.7.2004 (K.R. Kumar v. State of Tamil Nadu and others) and found at paragraph No. 21 as follows:--

"21. The basic concept highlighted in the orders of the Tribunal to the effect that single part time teachers and double part time teachers should be treated equally cannot be faulted. However, since double part time teachers had already been regularised and conferred a benefit, in the absence of a specific direction by the Tribunal, such benefit should not have been taken away by the Government. On the other hand, the Government should have, made endeavour to confer similar benefits on the single part time teachers." Thus, from the finding of the Hon"ble Division Bench it is clear that single part time teachers should be treated equally with double part time teachers and all the benefits that were given to the double part time teachers should have been extended to single part time teachers as well.

13. In all these cases, the petitioners had rendered their service, before their regularisation, as single part time vocational instructors. 50% of such service rendered by them is sought to be counted for their pensionary benefits. Under similar circumstances, when such benefit was sought by similarly situated persons, it was opposed by the respondents. However, in an order made in W.P. No. 27017 of 2005 dated 2.2.2006, a learned single Judge of this Court by considering the order passed by the Tamil Nadu Administrative Tribunal dated 29.11.2002 in a batch of cases directed the Government to dispose of the representations of the petitioners therein in the light of the earlier Government Order. Considering the above said order passed by this Court, a learned single of this Court in W.P. No. 39177 of 2002 dated 16.4.2009 allowed a writ petition and directed the respondents therein to calculate the pension of the petitioner therein by adding 50% of his past service rendered on consolidated pay, for the purpose of calculating the length of service for pension purpose along with his qualifying service.

14. Subsequent to the said order dated 16.4.2009 passed by the learned single

Judge, the Government issued G.O. No. 408 dated 25.8.2009 wherein it was stated that for calculating 50% of the past service of non provincialised service, consolidated pay, Honorarium, daily wages employees, they should have worked in a full time employment. The relevant paragraph 2 of the said G.O. is extracted hereunder:--

15. Thereafter, a writ appeal in W.A. No. 1702 of 2010 came to be filed challenging the order made in W.P. No. 39177 of 2002 dated 16.4.2009. In the said writ appeal the appellants relied on G.O.Ms. No. 118 dated 14.2.1996 as one of the grounds while challenging the order of the learned single Judge. Para 2 of the said G.O. reads as follows:--

"2. The Government have examined the question of extending the concession ordered in the G.O. first read above to the case of Government employees who were born on non-pensionable establishment and have decided to count half of the service rendered under non-pensionable establishment along with service under pensionable establishment for pensionary benefits. They accordingly direct that half of the service rendered by the State Government employees under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with the regular service under pensionable establishment subject to the following conditions:--

i) Service under non-pensionable establishment should have been in a job involving whole time employment.

ii) The service under non-pensionable establishment should have been on time scale of pay.

iii) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break."

16. A perusal of the above said G.O. No. 118 would show that the service rendered should be in a job "involving whole time employment". Thus, under Ground No. 4 of the memorandum of grounds filed in the above writ appeal, the official respondents contended that the writ petitioner therein did not fall under pensionable establishment and he was working as a part time Vocational instructor and consequently, the learned single Judge was not right in directing to add 50% of the said past service for the purpose of calculating the length of service for pension purpose.

17. During the pendency of the above appeal, sub-rule (4) of Rule 11 of the Tamil Nadu Pension Rules, 1978 was introduced, by way of amendment, through G.O.Ms. No. 41 Finance (Pension) Department dated 9.2.2010. The said amended Rule 11(4) reads as follows:--"In the said Rules, in rule 11, after sub-rule (3), the following sub-rule shall be added namely:-(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of

Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:--

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break:

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003:

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break shall not count for the purpose of pensionary benefits."

18. Thereafter, the above W.A. No. 1702 of 2010 was taken up for hearing and the Hon"ble First Bench of the Principal Bench of this Court dismissed the said writ appeal on 20.9.2010 by holding that the learned single Judge was right in holding that 50% of the said consolidated service should be added for the purpose of calculating the length of service for pension purpose, Paragraphs 2 and 3 of the order of the Hon"ble Division Bench read as follows:--

"2, Admittedly, the writ petitioner was appointed as Double Part Time Teacher in the second respondent School on 7.9.1978. After the Government Order issued in 1990 for filling up 800 posts of Educational Instructors, the writ petitioner was appointed as Double Part Time Teacher in 1991 in regular time scale of pay. After putting about 11 years, 11 months and 24 days of service as consolidated Vocational Instructor and 10 years and 11 months service as regular time scale Agricultural Instructor, as the writ petitioner was superannuated, his claim for pension was refused by the impugned order passed by the second appellant/ second respondent. 3. It is evident from the records that the writ petitioner was appointed on consolidated pay from 7.9.1978 to 31.3.1990. Therefore, the learned single Judge rightly held that 50% of the said service should be added for the purpose of calculating the length of service for pension purpose. We do not find any error in the impugned judgment. Hence, the writ appeal is dismissed. There will be no order as to costs. Consequently, M.P. No. 1 of 2010 is also dismissed."

19. It is seen that as against the said order of the Hon"ble Division Bench, a S.L.P was filed by the Government before the Apex Court in SLP CC 6253 of 2011 which also came to be dismissed on 15.4.2011. From these admitted facts it is clear that the contents of G.O.Ms. No. 408 dated 25.8.2009 and G.O.Ms. No. 118 dated 14.2.1996 are one and the same to the effect that the Government stipulated a condition for extending the benefit by stating that such employment must be in a job involving "whole time employment". In spite of such Government Orders having been relied on by the official respondents, the Hon"ble Division Bench refused to interfere with the order of the learned single Judge by holding that they found no error in the said order and that the learned single Judge has rightly held that 50% of the consolidated service should be added for the purpose of calculating the length of service for pension purpose. It is also to be noted at this juncture that the respondents have not sought for review of the order passed by the Hon"ble Division Bench as well. Therefore, there is no difficulty in holding that all the similarly situated persons are also entitled to the very same relief as granted in W.P. No. 39177 of 2002 as confirmed in W.A. No. 1702 of 2010 and by the Hon"ble Supreme Court of India in S.L.P No. 6253 of 2011 dated 15.4.2011.

20. No doubt G.O.Ms. No. 408 dated 25.8.2009 came into existence after the order was passed in W.P. No. 39177 of 2002 dated 16.4.2009. But, at the same time, the fact remains that a similar G.O.Ms. No. 118 dated 14.2.1996 was in force when the said decision was made by the learned single Judge. Likewise, the amended Rule 11(4) also came into existence on 9.2.2010 when the decision was made by the Hon"ble Division Bench on 20.9.2010. However, the respondents herein, as the appellants in the above writ appeal, did not press into service of the said Rule 11(4) before the Hon"ble Division Bench which ultimately dismissed the writ appeal by confirming the order of the learned single Judge.

21. However, now it is argued before this Court that Rule 11(4) was not taken into consideration by this Court while passing in any of the earlier orders and therefore the relief sought for in these writ petitions cannot be granted in view of Rule 11(4).

22. Let me consider as to whether the said contention of the respondents merits acceptance even by applying Rule 11(4) of the said Rules.

23. On a careful perusal and consideration of Rule 11(4), I am unable to appreciate the contention of the learned counsel for the respondents that there is a bar for considering the claim of the petitioners for the following reasons.

24. A careful reading of sub-rule (i) of Rule 11(4) would show that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003, shall be counted for retirement benefits along with regular service, if such service rendered was in a job "involving whole time employment."

25. The phrase "job involving whole time employment" cannot be interpreted with a narrow meaning to the effect that such benefit is to be given only to a person appointed as full time employee or on regular employment. The word "involving" which finds a place in the above phrase makes one to understand the intention of the legislation. A job may be whole time or part time, but if nature of such job involves whole time employment, or if the nature of such job requires whole time employment, then such job has to be considered as a job involving whole time employment, even if it was rendered on part time basis. For instance, the post of pump operator, sometime, is called as a part time appointment. Considering the nature of the job involved to the said post, there cannot be any doubt to the fact that such job requires only a part time service and not for the whole day. Therefore, such post is filled up as a part time appointment as it involves part time service only. On the other hand, the post of a teacher, though termed as a part time, in effect, cannot be construed as involving a part time service not requiring the full time service for the whole day. Going by the facts and circumstances with which such part time teachers were appointed, it could be seen that though they were appointed as part time teachers, in effect, they need to be in the work place through out the day by signing the attendance register etc., as like any other regular teachers. They are termed as part time teachers only for the purpose of paying a consolidated salary of meager sum of Rs. 150/- or Rs. 300/- as stated supra. In all other aspects, the work was extracted from them like any other regular teachers only.

26. In this case, the vocational teachers were appointed to take classes in various vocational subjects such as Agriculture, Home Science, Commerce, Science, Engineering, Technology, Health and miscellaneous course at Higher Secondary stage. I have already discussed about the scope and the idea behind the creation of such posts of vocational instructors. I have also pointed out that vocational instructors were appointed as single part time as well as double part time teachers taking note of the requirement and they were taking 20 or more periods and that the Hon'ble Division Bench of this Court in W.P. Nos. 11389 of 2003 etc., dated 8.7.2004 has held that both the single part time teachers and double part time teachers should be treated equally and the benefit conferred on the double part time teachers shall be extended to the single part time teachers also. When that being the undisputed factual position, it cannot be said that these petitioners were not doing a job "involving whole time employment", even though they were called as part time teachers. In fact, Rule 11(4) of the said Rules was carefully worded by saying that "a job involving whole time employment" instead of saying that "a job with full time employment".

27. At this juncture, it is also relevant to refer and compare Rule 11(4) with Rule 11(2)(i) and (ii) of the said Rules for the purpose of understanding the intention of the legislation. Rule 11(4) deals with non-provincialised service, consolidated pay, honorarium or daily wages basis services, while Rule 11(2)(i) deals with contingency service. Rule 11(2)(i) reads as follows.

(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:--

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar."

28. Rule 11(2)(i) excluded the part time job "for a portion of a day" whereas such phrase is specifically absent under Rule 11(4). Therefore, in my considered view, it appears that the Government, by making distinction between this contingencies service and non-provincialised service etc., as contemplated under Rule 11(4), has specifically omitted to include the phrase "not part time for a portion of the day" in Rule 11(4) though it is found in Rule 11(2)(i). Considering all these aspects, I am of the view that Rule 11(4), in fact, supports the claim of the petitioners rather than denying the same as contended by the respondents.

29. At this juncture, it is useful to refer to the decision of the Hon"ble Supreme Court reported in Surjit Singh Vs. Mahanagar Telephone Nigam Ltd., , more particularly, the observation made therein with regard to interpretation of statutes. The Hon"ble Supreme Court has observed that in exceptional cases the literal rule can be departed from and that one has to consider the context in which a statute has been made and the purpose and object which it seeks to achieve. The relevant paragraph 22 is extracted hereunder:--

"22. Though, no doubt, ordinarily the literal rule should be applied while interpreting a statute or statutory rule, but the literal rule is not always the only rule of interpretation of a provision in a statute, and in exceptional cases the literal rule can be departed from. As observed in the Constitution Bench decision of this Court in R.L. Arora Vs. State of Uttar Pradesh and Others, .

"9.... Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute, it is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made." Hence it follows that to interpret a statute one has to sometimes consider the context in which it has been made and the purpose and object which it seeks to achieve. A too literal interpretation may sometimes frustrate the very object of the statute, and such an approach should be eschewed by the court."

30. Even otherwise, when this Court has already rejected the same contention as

raised in G.O.Ms. No. 118 and G.O.Ms. No. 408, the respondents are not justified in relying on Rule 11(4) even assuming that Rule 11(4) prohibits such relief. In other words, even assuming that G.O. No. 408, G.O. No. 118 and Rule 11(4) contemplate one and the same objection, the respondents are estopped from raising such objection once again before this Court, when the said objection having been relied and got rejected by this Court in W.A. No. 1702 of 2010 dated 20.9.2010. I can even go to the extent of saying that Rule 11(4) is impliedly over-ruled by the decision of the Hon''ble Division Bench rendered in W.A. No. 1702 of 2010 dated 20.9.2010, even assuming that such rule prohibits the grant of relief claimed by the petitioners.

31. Learned counsel for the petitioners submitted that this Court has granted similar relief in W.P. Nos. 30671 and 30672 of 2013 dated 14.11.2013 in respect of 196 similarly situated teachers and in W.P. No. 33685 of 2013 dated 12.12.2013 in respect of 147 similarly situated teachers by following the earlier Judgment of the Division Bench made in W.A. No. 1702 of 2010. Those decisions of the learned single Judges dated 14.11.2013 and 12.12.2013 would go to show that the petitioners herein are also similarly situated teachers and cannot be discriminated while granting the relief.

32. The learned counsel appearing for the second respondent relied on the decisions reported in Union of India (UOI) and Others Vs. Braj Nandan Singh, to contend that the Court cannot read anything into a statutory provision which is plain and unambiguous. There is no doubt about the said proposition. Needless to say that while interpreting Rule 11(4), this Court, in this order, has not read anything into such statutory provision but only interpreted the said rule as it is. This Court has only considered Rule 11(4) in detail and given its interpretation which in effect is in favour of the petitioners only. Therefore, the above decision of the Hon''ble Supreme Court does not improve the case of the second respondent in any manner.

33. The decision of the Apex Court reported in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, is also relied on by the learned counsel for the second respondent to contend that every decision must be read as applicable to the particular facts proved. In my considered view the decisions relied on by the learned counsel for the petitioners and the facts of the present case do not have any factual differences and on the other hand they are one and the same except the date of retirement and date of rendering past services, etc., Therefore, the above decision of the Apex Court is also not relevant to the present case.

34. Further, the denial of benefit to the writ petitioners also amounts to discrimination, as could be seen from the action of the State Government in extending such benefit to Panchayat Clerks under G.O.Ms. No. 39 Rural Development and Panchayat Department dated 13.6.2011. Para 3 of the above said G.O. reads as follows:--

35. A perusal of the said G.O. would show that the part time Panchayat Clerks

were also given the benefit of getting their past services calculated as per G.O.Ms. No. 408 dated 25.8.2009. The said fact was considered by a learned single Judge of this Court in W.P. No. 22461 of 2008 dated 21.2.2013 and the learned Judge has observed at paragraphs 13, 14 and 15 as follows:--

"13. On consideration, I find that this writ petition deserves to succeed. The averments made in the writ petition go un rebutted. The specific stand of the petitioners is that part-time Panchayat Clerks or Full-Time Panchayat Clerks were performing the same duties, whereas nomenclature of Panchayat Clerks were given based on the income of Village Panchayat and population of the Village. If that is the case, the petitioners cannot be said to be Part -Time employees not doing regular services, as it was merely a designation. It is for this reason, that the State Government issued G.O. (Rt.) No. 39 of the Rural Development and Panchayat (E5) Department, dated 13.6.2011 for counting 50% of the services rendered as Part-Time Panchayat Clerks, for being added to the Government Service for the purpose of pensionary benefits.

14. It may further be noticed, that in spite of number of judgment passed by this Court in granting the benefit of services rendered on adhoc, temporary and on contract basis, the respondents have failed in their statutory duties to consider the representation filed by the petitioners for grant of benefit of part-time services for the purpose of pensionary benefits.

15. In any case, there is no justification with the respondents to deny the benefit of services rendered on Part-Time basis as Panchayat Clerks in view of G.O. (Rt.) No. 39 of the Rural Development and Panchayat (E5) Department, dated 13.06.2011, issued by the State Government stipulating that benefit of 50% of the services rendered on Part-Time basis for the purpose of pensionary benefits."

36. When the Government has chosen to extend the benefit in respect of part time Panchayat Clerks as found in G.O. 39, the respondents herein cannot deny the same benefit to the Part time vocational instructors by saying that the said G.O is applicable only to the Panchayat Clerks and not to the vocational instructors. Needles to say that the Government having taken a decision to extend certain benefit to its employees, it cannot discriminate between similarly situated persons, though they are rendering their service in different departments. What is to be seen is as to whether the part time services is to be counted or not. Such consideration cannot be made by pick and choose and extended only to a particular department by excluding all other similarly situated persons of other departments of the same Government. If it is done, certainly it amounts to discrimination, thus violating Article 14 of the Constitution of India. Considering all these aspects, I am of the view that all the petitioners are entitled to succeed in these writ petitions. Accordingly, the writ petitions are allowed and the respondents are directed to take into account 50% of the part time service rendered by the petitioners, as sought for in the prayer in the individual writ petition, along with their regular service for pensionary benefits and pass suitable orders within a period of 12 weeks from the date of receipt of

copy of this order. No costs.