In the High Court of Judicature at Madras

Dated: **03.03.2015**
Coram:

The Hon'ble Mr.Justice **SATISH K. AGNIHOTRI**
and
The Hon'ble Mr.Justice **M.VENUGOPAL**

W.A.No.281 of 2015
and M.P.No.1 of 2015

The Secretary,
State of Tamil Nadu,
Education Department,
Fort St. George,
Chennai-600 009. ..Appellant /Respondent

Vs.

R.Nagasamy ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 22.08.2013 and made in W.P.No.30906 of 2006 by the learned Judge of this Court.

WP.NO.30906 OF 2006: This writ petition was originally filed as original Application in O.A.No.8851 of 197 before the Tamil Nadu Administrative Tribunal in chennai. On the abolitionof the said Tribunal, the O.A. Has been transferred to this court and renumbered as W.P.No.30906 of 2006. The prayer in the wirt petition under Article 226 of the constitution of India is to issue a writ of Mandamus, to direct the respondent to order the full pensionery benefits regarding the petitioner's previous service as Lower division Cleark in Settlement office in Andhra Pradesh, composite Madras State as qualifying service for pension i;e., from 4-3-1957 to 10-8-1961 for a period of 4 years 2 months and 25 days.

For Appellant : Mr.Karthigeyan
Government Advocate (Education)

For respondent : Mr.G.Ranganathan

J U D G E M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

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The Appellant/Respondent has preferred the instant intra-Court Writ Appeal before this Court as against the order dated 22.08.2013 in W.P.No.30906 of 2006 passed by the Learned Single Judge.

2.According to the Learned Government Advocate (Education), the Writ Court had failed to appreciate the fact that the Respondent was not an approved probationer in the composite State of Madras. That apart, the fact remains that he was appointed as Lower Division Clerk in the composite State of Madras on 04.03.1957 purely on temporary basis with salary of Rs.45/- per month in the Settlement Office. Further, the said post was temporary and he was ousted from service and again posted till his permanent ousting i.e., on 10.08.1961.

3.The Learned Government Advocate urges before this Court that the Respondent after being ousted from service in the year 1961 having joined in the service of Tamil Nadu State Government as an Elementary School Teacher and the rules governing for the post of Lower Division Clerk and Elementary School Teacher is entirely different and there is no provision to calculate the temporary service of the other State for awarding full pension.

4.The Learned Government Advocate takes a plea that the Writ Court had failed to take into account the fact that the Respondent/Petitioner had not made any representation during the course of his service in the Education Department and that he retired from service in the year 1994 and only in the year 1997, he moved the Tamil Nadu Administrative Tribunal and the Original Application was transferred to this Court.

5.Expatiating his contention, the Learned Government Advocate projects an argument that the Writ Court had not considered the fact that the Accountant General by means of reply to the Appellant through letter No.16/11/Ni-69/9495/1353 dated 16.01.1994, had stated that the Civil Services rendered by the retired official for the period from 04.03.1957 to 10.08.1961 as Lower Division Clerk in Branch Settlement Party, Nellore comes under Andhra Pradesh Government after re-organisation of State in 1956 and as such, the revision of pensionary benefits does not arise. Also that, the Director of Pension, has in his reply dated 22.06.1995, had confirmed the reply of the Accountant General. But these important facts were not taken into consideration by the Writ Court.

6.Continuing further, the Learned Government Advocate brings it to the notice of this Court that the Writ Court had not considered the Tamil Nadu Pension Rule, 1978 (amended with effect from 1979) and refers to Rule 11(2)(vi) of the Tamil Nadu Pension Rules, 1978 [Qualifying Service Act] which runs as follows:

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"11(2)(vi)Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after first January 1961 in respect of Government employees absorbed in regular service before first April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions viz.,

(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 consolidated pay, honorarium or daily wages 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 first April 2003 without a break."

7.That apart, it is represented on behalf of the Appellant to the effect that the aforesaid sub rule would be applicable to all the employees provided that they had rendered service under the State Government in non provincialised service, consolidated pay, honorarium or daily wages basis are absorbed in regular service before 01.04.2003. Also that, wherever, there is break in service before absorption in regular service before 01.04.2003, the same shall be specifically condoned by the orders of the Head of the Department and such period of break shall not count for the purpose of pensionary benefits.

8.The primordial stand taken on behalf of the Appellant is that service of the Respondent/Petitioner differs from the rule in question and he was working as teacher and therefore, his period of service rendered in other State could not be taken into account. Moreover, in the case of the Respondent/Petitioner, in the previous service rendered by him as Lower Division Clerk in the composite State of Madras for 4 years, 2 months and 25 days, if half of the service for the purpose of pension along with the service rendered by him after year 1961 is taken into account, for the purpose of pension together with service already rendered by the Respondent for the period of 29 years, 10 months and 5 days as per Tamil Nadu Pension Rules, 1978 and as per the Pension Rules 11(2)(vi) the Respondent/Petitioner is presently receiving pension which does not have any difference.

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9.Apart from the above, it is the plea of the Appellant that the Writ Court had mis-constructed the ambit of Section 43 of the Andhra Pradesh and Madras (Alternation of Boundaries) Act, 1959, which provides for allotment of persons serving the newly constituted State of Andhra Pradesh being allotted to the State of Madras. Further in the present case, the Respondent/Petitioner was ousted from service in the year 1961 and was not allotted to the State of Madras so as to entitle him to safeguard provided by Section 43 of the Act.

10.The Learned Government Advocate for the Appellant contends that the Respondent/Petitioner was appointed as a Secondary Grade Teacher in the then Panchayat service after undergoing a selection process. Besides this, the ingredients of Section 43 of the aforesaid Andhra Pradesh and Madras (Alternation of Boundaries) Act, 1959, is not attracted to the present case as the Respondent/Petitioner is not fulfilled the requirements of the Section. Also that, the service of the Respondent was taken into account for the purpose of Pension and the same runs as under:

The period of service as Teacher from 25.08.1964 to 30.06.1994	29.10.2005
The period of service rendered by the Individual after 1961, 8 months, 10 days (Half of the service taken into Count for Full pension)	00.04.2005
	30.02.2010

therefore, the period of service rendered by the Respondent/Petitioner in the composite State of Madras for a period from 04.03.1957 to 10.08.1961 should not be considered as qualifying service for the purpose of calculating pension.

11.At this stage, on going through the impugned order of the Writ Court dated 22.08.2013 in W.P.No.30906 of 2006 it is clear that in para 9 among other things observed that "... As per G.O.Ms.530 Finance (Pension) Department, dated 28.06.1994, the interruption period shall be treated as automatically condoned and the pre-interruption service shall be treated as qualifying service. That is what the petitioner wants to have in this case. Therefore, as per the above Rule, half of the service rendered by the petitioner between 04.03.1957 and 10.08.1961, should be treated as qualifying service and the same should be counted fro the purpose of pension. Thus, the petitioner is entitled for the relief as prayed for" and consequently, the Writ Petition filed by the Respondent/Petitioner

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was allowed by giving direction to the Appellant/Respondent to count half of the service rendered by the Respondent/Petitioner between 04.03.1957 and 10.08.1961 as qualifying service for the purpose of pension and accordingly, revised pensionary benefits to him and pay the arrears of pension within four months from the date of receipt of copy of the order and the said observations of the Writ Court in the considered opinion do not suffer from any material irregularity or patent illegality in the eye of law. Further, this Court is in complete agreement with the view taken by the Writ Court. Viewed in that perspective, the Writ Appeal fails.

12.In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

DP

To

The Secretary,
State of Tamil Nadu,
Education Department,
Fort St. George,
Chennai-600 009.

W.A.No.281 of 2015
and
M.P.No.1 of 2015

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