

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.22951 of 2015 and
M.P.No.1 of 2015

K.Elangovan

...Petitioner

vs.

1.The Commissioner,
Social Welfare,
Chintadripet, Chennai - 600 002.

2.The District Collector,
Ariyalur.

3.The Revenue Divisional Officer,
Udayarpalayam, Ariyalur District.

4.The Tahsildar,
Udayarpalayam, Ariyalur District.

5.The Secretary,
Social Welfare and Noon Meal Scheme Department,
Fort St.George,
Chennai - 600 009.

...Respondents

(R5 suo motu impleaded by this Court vide order
dated 29.07.2015 by DHPJ)

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified mandamus, calling for the records of the impugned order passed by the first respondent in Roc.No.50222/N.M.P.-1/2013 dated 20.06.2014 and to quash the same and consequently direct the respondents herein to count the 50% services of the petitioner rendered as Noon Meal Organizer along with his regular service as VAO and to grant pension with arrears arising thereof and other retirement benefits.

For Petitioner : Mr.K.Shanmugam

For Respondents : Mr.S.Navaneethan
Addl. Govt.Pleader

O R D E R

The petitioner initially served as part-time Village Officer and due to abolition of the said post, he lost his appointment. Thereafter, he joined as Noon Meal Organizer and rendered 16 1/2 years of service.

2. While so, he applied for the post of Village Administrative Officer. The petitioner was selected for the said post. The District Collector by proceedings, dated 28.11.2000 appointed the petitioner as Village Administrative Officer. The petitioner was relieved from the post of Noon Meal Organizer by the Block Development Officer, Tha.Pazhur Panchayat Union on 30.11.2000. The petitioner joined duty on 19.12.2000 as Village Administrative Officer. He retired from service on 30.06.2008.

3. The petitioner sought to count 50% of service rendered as Noon Meal Organizer along with regular service to pay terminal benefits. The request of the petitioner was rejected by the first respondent by order dated 20.06.2014. The reason given in the impugned order is that since the petitioner resigned from service on 30.11.2000 as Noon Meal Organizer and joined as Village Administrative Officer, he will not be given the benefit of counting 50% of service rendered as Noon Meal Organizer. The said order is challenged in this writ petition.

4. Heard both sides.

5. The learned counsel for the petitioner placed reliance on Rules 21, 23, 24 of Tamil Nadu Pension Rules and the same may be usefully extracted:-

"21. Forfeiture of service on dismissal or removal.-
Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.
23. Forfeiture of service on resignation.- (1)
Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1) due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which

the period is not covered by leave due to the Government servant.

24. Effect on interruption in service. - (1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist."

6. In the facts and circumstances of the case, the Secretary, Social Welfare and Noon Meal Scheme Department is suo motu impleaded as 5th respondent.

7. A reading of Rule 21 of Tamil Nadu Pension Rules, makes makes it clear that only dismissal or removal, results in forfeiture of past service of Government Servant.

8. Likewise, Rule 23 of Tamil Nadu Pension Rules makes it very clear that resignation from a service shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment.

9. It is not the case of the first respondent that the petitioner took up the appointment of Village Administrative officer without permission. He resigned the post of Noon Meal Organiser only to take up the appointment of Village Administrative Officer. If that be so, I am of the view that Rule 23 of the said Rules is attracted and the past service rendered by him as Noon Meal Organizer shall be taken into account.

10. Rule 24(2) of Tamil Nadu Pension Rules also makes it clear that except cases of removal and re-employment, interruption in service shall not entail forfeiture of past service.

11. In view of the aforesaid Rules as well as Rule 11(2) of Tamil Nadu Pension Rules and also the judgments of this Court reported in (2012) 3 MLJ 12 [R.Ragupathy v. State of Tamil Nadu, rep. by its Secretary to Government, School Education Department] and 2014 (6) MLJ 316 [P.Chinniyar v. The State of Tamil Nadu, Rep.by its Secretary to Government, Forest and Environment Department and others], the impugned order is liable to be set aside.

12. Accordingly, the impugned order is set aside and a direction is issued to the 5th respondent to count half of the service rendered by the petitioner as Noon Meal Organiser with his regular service for the purpose of terminal benefits. The 5th respondent is also directed to condone the interruption in service between 30.11.2000 and 19.12.2000 i.e, the date of relieving in the post of Noon Meal

Organiser and the date of joining in the post of Village Administrative Officer, by exercising his power under the relevant Rules. It is made clear that such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

The writ petition stands allowed to the extent indicated above. No costs. Consequently connected miscellaneous petition is closed.

svki

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner,
Social Welfare,
Chintadripet, Chennai - 600 002.
2. The District Collector,
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4. The Tahsildar,
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+ 1 cc to Mr. K. Shanmugam, Advocate SR 38843

+ 1 cc to Govt. Pleader SR 39315

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