

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.Nos.4276 of 2013, 5187 and 23532 of 2014
and
2755 and 2756 of 2015
and
M.P.No.1 of 2013, M.P.Nos.1 and 1 of 2014
and
M.P.Nos.1 and 1 of 2015

P.G.Rajagopal

... Petitioner in
W.P.No.4276 of 2013

K.Anbazhagan

... Petitioner in
W.P.No.5187 of 2014

G.Savithri

... Petitioner in
W.P.No.23532 of 2014

A.S.Hassina

... Petitioner in
W.P.No.2755 of 2015

R.Radha

... Petitioner in
W.P.No.2756 of 2015

vs.

The Registrar General
High Court of Madras
Chennai.

... 1st respondent in
W.P.Nos.4276 of 2013,
5187 and 23532 of 2014
and 4th respondent in
W.P.Nos.2755 and
2756 of 2015

The Chief Secretary to Government
Government of Tamil Nadu
Fort St.George, Chennai 600 009.

... 2nd respondent in
in W.P.Nos.4276 of 2013,
5187 and 23532 of 2014

The Secretary to Government
Law Department
Secretariat, Chennai-9.

... 3rd respondent in
W.P.Nos.23532 of 2014
and 2755 and 2756 of 2015

State of Tamil Nadu
rep.by Secretary to Government
Home (Courts) Department
Fort St.George, Chennai.

State of Tamil Nadu
rep.by Secretary to Government
Public (Special-A) Department
Fort St.George, Chennai.

... Respondents 1 and 2 in
W.P.Nos.2755 and 2756
of 2015

W.P.No.4276 of 2013:

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in ROC No.11552/2010/B1 dated 13.07.2011; to quash the same and to (i) direct the respondents to pay pension, gratuity and other retiral benefits to the petitioner for the service put up by him proportionately as Additional District Judge, Fast Track Court and (ii) pass orders for encashment of earned leave surrendered by the petitioner before superannuation from service as Additional District Judge, Fast Track Court as on 31.10.2010.

W.P.No.5187 of 2014:

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent vide his proceedings in ROC No.13038/2011/B1 dated 11.10.2012; to quash the same and to (i) direct the respondents to pay pension, gratuity and other retirement benefits to the petitioner for the service put up by him proportionately as Additional District Judge, Fast Track Court and (ii) pass orders for encashment of earned leave surrendered by the petitioner before superannuation from service as Additional District Judge, Fast Track Court as on 31.05.2011.

W.P.No.23532 of 2014:

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent vide his proceedings

in ROC No.3172/2013/B1 dated 30.07.2014; to quash the same and to direct the respondents to pay pension, gratuity and other retirement benefits inclusive of encashment of accumulated earned leave to the petitioner for the service put up by her proportionately as Additional District Judge, Fast Track Court as on 25.04.2012.

W.P.Nos.2755 and 2756 of 2015:

Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the Registrar General, High Court, Madras, fourth respondent herein vide proceedings in Roc.No.10452/2014/B1 dated 06.11.2014; to quash the same as arbitrary, unreasonable being violative of rules and principles of natural justice and consequently to direct the respondents to pay pension, gratuity and other retirement benefits to the petitioners for the services rendered by them as Additional District Judge, Fast Track Court.

For Petitioners : Prof.S.Krishnaswamy
in W.P.No.4276 of 2013

Mr.S.Vijayakumar in
W.P.Nos.5187 and 23532 of 2014

Mr.N.R.Chandran, Senior Counsel
for Mr.K.J.Parthasarathy
in W.P.Nos.2755 and 2756 of 2015

For Respondents : Mr.C.T.Mohan for R1
in all writ petitions in W.P.No.4276 of 2013

Mr.B.Vijay for R1
in W.P.No.5187 of 2014

Mr.R.Ravichandran
Additional Government Pleader
for R2 in W.P.Nos.4276 of 2013
and 5187 of 2014 and
for RR1 to 3 in W.P.Nos.
2755 and 2756 of 2015

Mr.R.Tholkappian for RR1 to 3
in W.P.No.23532 of 2014
and for R4 in W.P.Nos.2755 and
2756 of 2015

COMMON ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN, J.)

The petitioners, who were appointed to man the Fast Track Courts, on contract basis, in the cadre of District Judges and whose services got terminated, after the Fast Track Courts were discontinued, have come up with the above writ petitions, challenging the order of the Registrar General, refusing to grant them pensionary benefits.

2. Heard Mr.N.R.Chandran, learned Senior counsel, Mr.S.Vijayakumar, Prof.S.Krishnaswamy learned counsel for the petitioners, Mr.C.T.Mohan, Mr.B.Vijay, Mr.R.Tholgappian, learned counsel for the High Court and Mr.R.Ravichandran, learned Additional Government Pleader for the State.

3. In pursuance of the recommendations of the 11th Finance Commission, the Government of Tamil Nadu sanctioned a few Fast Track Courts first under G.O.Ms.No.739, Home (Courts IA) Department dated 03.08.2001 and later under G.O.Ms.No.1254, Home (Courts IA) dated 18.12.2001. Persons practising as Advocates were appointed to man these Courts and these posts were created in the cadre of District Judges.

4. The contract was renewed from time to time until the Government paid heed to the demand made by the High Court for the permanent retention of these Fast Track Courts.

5. Upon the permanent retention of the Fast Track Courts, the service of all persons, who were appointed on contract basis to these Courts, were discontinued and regular appointments were made by way of promotions.

6. Some of the persons, whose services were discontinued filed writ petitions in W.P.Nos.13703 to 13705 of 2012 seeking regular absorption in the cadre of Additional District Judges. These writ petitions were dismissed by a Division Bench of this Court by an order dated 20.07.2012. As a matter of fact, three of the writ petitioners herein, were the petitioners, in those writ petitions. The order of the Division Bench of this Court rejecting their claim for regularisation attained finality.

7. Thereafter, two of the writ petitioners herein, viz., A.S.Hassina and R.Radha came up with a second round of litigation and filed W.P.Nos.19811 and 19812 of 2014 seeking a mandamus to direct the respondents to pay pension, gratuity and other retirement benefits. The said writ petitions were disposed of by a Bench, by an

order dated 24.07.2014, without expressing any opinion on the merits, but directing the Registrar General, to consider and pass orders on their representation.

8. In pursuance of the said order, the Registrar General issued a Notification dated 06.11.2014 rejecting their claim. Challenging those orders, the petitioners in W.P.Nos.2755 and 2756 of 2015 are before us. Similarly, the petitioners in W.P.Nos.4276 of 2013, 5187 of 2014 and 23532 of 2014 are challenging the rejection orders passed by the Registrar General vide Notifications dated 13.07.2011, 11.10.2012 and 30.07.2014 respectively.

9. The main argument of the learned Senior counsel for the petitioners is two fold, viz.,

(i) that Rule 11 of the Tamil Nadu Pension Rules 1978 does not distinguish between a temporary service and a permanent service or officiating service and

(ii) that this Court while rejecting their claim for absorption, had treated their appointments as ad hoc appointments and not contract appointments.

10. We have carefully considered the above submissions.

11. It is true that Rule 11 of the Tamil Nadu Pension Rules, indicates that the qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The Rule also states that in the case of a Government servant retiring on or after 01.10.1969 temporary or officiating service in a pensionable post, whether rendered in a regular capacity or not shall count in full as qualifying service, even it is not followed by confirmation.

12. But Rule 11(1) does not cover appointments on contract basis. Rule 11(1) uses the expression "qualifying service". This expression is defined in Rule 3(o) to mean permanent or officiating service including temporary service under emergency provisions rendered in a post included in a pensionable establishment.

13. The expression "pensionable establishment" is of significance.

14. If we look at the origin of the creation of the Fast Track Courts it will be clear that under the 11th Finance Commission a few Fast Track Courts were created and persons were appointed on contract basis. Under the 13th Finance Commission, this continued. Later, it was discontinued. Therefore, these Fast Track Courts cannot be said to have been created in a pensionable establishment. This is, in addition to the fact that Rule 11(1) does not cover appointments on

contract basis. Hence, the first contention based upon Rule 11 (1) of the Tamil Nadu Pension Rules, 1978 cannot be accepted.

15. Insofar as the second contention is concerned, it is seen from the decision of this Court dated 20.07.2012, in W.P.Nos.13703 to 13705 of 2012 that the Division Bench clearly recorded a finding that the appointment given to the petitioners on contract basis were neither terminated nor the petitioners were removed or dismissed. In para 16 of the decision, the Division Bench recorded as follows:

"16. In the case on hand, petitioners' services are neither dismissed nor removed or terminated. The ad hoc appointment given to the petitioners on contract basis are discontinued and they were relieved without attaching any stigma. The State Government issued an order sanctioning 49 Additional District and Sessions Courts and the Fast Track Courts were designated by the Government and High Court. The petitioners having been appointed as ad hoc FTC Judges on temporary basis, the High Court discontinued and relieved the petitioners. Thus, the arguments advanced on behalf of the petitioners that the Governor alone is competent to order discontinuation and relieve the petitioners, cannot hold good in the light of cited judgment of the Supreme Court."

Therefore, it is clear that this Court treated the appointment as a contractual appointment.

16. When posts are created outside the pensionable establishment, for a specific purpose, pursuant to the recommendations of the Finance Commission, the services rendered by persons on contract basis in those posts cannot count for pensionable benefits.

17. Therefore, we find no justification to grant the relief prayed for. Hence, the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Registrar General
High Court
Madras 600 104.
2. The Chief Secretary to Government
Government of Tamil Nadu
Fort St.George, Chennai 600 009.
3. The Secretary to Government Law Department
Secretariat, Chennai-9.
4. The Secretary to Government of Tamil Nadu
Home (Courts) Department
Fort St.George, Chennai.
5. The Secretary to Government of Tamil Nadu
Public (Special-A) Department
Fort St.George, Chennai.

+1cc to Mr.C.T.Mohan, Advocate, S.R.No.18464
+2cc's to Mr.S.Vijayakumar, Advocate, S.R.No.18438 & 18437
+2cc's to Mr.K.J.Parthasarathy, Advocate, S.R.No.18789 & 18788
+1cc to the Government Pleader, S.R.No.18517

W.P.Nos.4276 of 2013,
5187 of 2014,
23532 of 2014,
2755 and 2756 of 2015

TS (CO)
CA(25/06/2015)

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