

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.23710 of 2015

Selvi G.Padmavathy

.. Petitioner

- Vs -

1. The Government of Tamil Nadu,
Represented by its Principal Secretary & Vice Chairman,
Tamil Nadu Maritime Board, The Secretariat,
Fort St.George, Chennai - 9.
2. The Principal Secretary / Deputy Chairman/
Chief Executive Officer, Tamil Nadu Maritime Board,
No.171, 3rd and 4th Floor, South Kesavaperumalpuram,
Greenways Road, R.A.Puram, Chennai - 600 028.
3. The Director,
The Employment and Training Department,
Employment Training Centre (Campus),
Guindy, Chennai - 600 032.
4. The Director,
Tamil Nadu State Treasuries and Accounts Department,
Directorate of Treasuries and Accounts Department,
No.1, Jeenis Road, Saidapet, Chennai - 600 015.

.. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records from the 2nd respondent in connection with the impugned order dated 23.07.2015 bearing Lr.No.2492/B/2013 issued by the 2nd respondent and direct the respondents to pay the superannuation pension with effect from the date of superannuation namely since 31.05.2007 taking into account the entire period of service since 26.11.1991 in accordance with G.O.Ms.No.408, dated 25.08.2009 issued by the Finance (Pension) Department within the stipulated period.

For Petitioner

: Mr.K.Krishnamoorthy

For Respondents 1,3&4

: Mr.S.Gunasekaran
Government Advocate

For Respondent 2 : Mr.N.Srinivasan
Additional Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner would state that she has passed S.S.L.C. and she was recruited as Office Assistant in the office of the third respondent on 26.11.1991 and she claims to have worked as daily wages employee till 30.09.1997 continuously without any break and her service was regularised with effect from 01.10.1997 and she continued to work in the said department till 15.06.1999. Thereafter, she was transferred from the third respondent department to the first respondent department with effect from 16.06.1999 and she continued to work there till she attained the age of superannuation on 31.05.2007. It is the specific claim of the petitioner that she has worked continuously without any break ever since 26.11.1991 and she has put in 16 years of service as an Office Assistant. The grievance now expressed by the petitioner is that on her attaining the age of superannuation on 31.05.2007, she has not been conferred with pension benefits and in this regard, she submitted a representation dated 10.04.2013, to the second respondent and it was rejected vide impugned order dated 23.07.2015, stating that she has put in only 9 years 8 months of service as against 10 years of service mandatory for getting pension benefits. Challenging the legality of the same, she has filed the present writ petition.

3. The learned counsel appearing for the petitioner would draw the attention of this Court to G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 and would submit that as per the said G.O. service rendered as daily wages employee, whose services have been regularised has to be taken into consideration and the condition imposed is that the period of temporary service should be without any break and since the petitioner fulfils all the necessary criteria prescribed in the above said G.O., she has to be conferred with pensionary benefits and prays for setting aside of the impugned order and consequently pay the pension benefits to the petitioner. The learned counsel would also rely upon an order of this Court dated 11.09.2014 made in W.P.No.4071 of 2008 to buttress his submissions.

4. Per contra, Mr.N.Srinivasan, learned Additional Government Pleader appearing for the second respondent would invite the attention of this Court to the counter affidavit filed by the second respondent and would submit that the petitioner has rendered service as daily wages employee between September 1991 to October 1997 for a period of 1089 days and as per the particulars furnished by the third respondent though it has been stated that between November 1996 to September 1997 she has performed as daily wages employee for a period of only 40 days and the relevant column has been put as '0' and

therefore she is not entitled to the benefit of G.O.Ms.No.408, dated 25.08.2009 and if the said period is taken into consideration, she has rendered qualifying service of only 9 years and 8 months and not 10 years of service in terms Rule 49 of the Pension Rules and prays for dismissal of the writ petition.

5. This Court has carefully considered the rival submissions and also perused the original records produced by the third respondent.

6. A careful scrutiny of the original records would go show that the petitioner has worked as daily wages employee between September 1991 to October 1997 for a period of 1089 days and the said fact is also not seriously disputed by the third respondent and the records produced by them also substantiate the same. The petitioner was transferred from the third respondent to the first respondent with effect from 16.06.1999 and she was employed in the service of the first respondent till she attained the age of superannuation on 31.05.2007. Even for the sake of argument, the services rendered by the petitioner with the third respondent, contains some artificial dates, it is not borne out by records. It is relevant to extract Section 11(2) of the Tamil Nadu Pension Rules, which reads as follows:

"11. Commencement of qualifying service:-

(1) ***

(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.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid

from contingencies shall be limited to the period after the 1st January 1961 for which authentic records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June, 1988."

7. Even if this Court eschew the period of 40 days between November 1996 to September 1997 the fact remains that the petitioner has worked as daily wages employee for a period of 1089 days and since the lack of eligibility is only four months, this Court is of the view that the said period has also to be taken into consideration for the purpose of conferment of pensionary benefits to the petitioner.

8. In the result, the writ petition is allowed and the impugned order dated 23.07.2015 is set aside and the second respondent shall taken into consideration the period of service rendered by the petitioner between September 1991 to October 1996 (1089 days) and pass appropriate orders conferring on her, pensionary benefits in the light of G.O.Ms.No.408, dated 25.08.2009 as well as Rule 49 of the Pension Rules and the said exercise has to be completed within a period of eight weeks from the date of receipt of a copy of this order and the decision taken in this regard, shall be communicated to the petitioner. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

kk

To

1. The Principal Secretary to Government & Vice Chairman,
Tamil Nadu Maritime Board, The Secretariat,
Fort St.George, Chennai - 9.
2. The Principal Secretary / Deputy Chairman/
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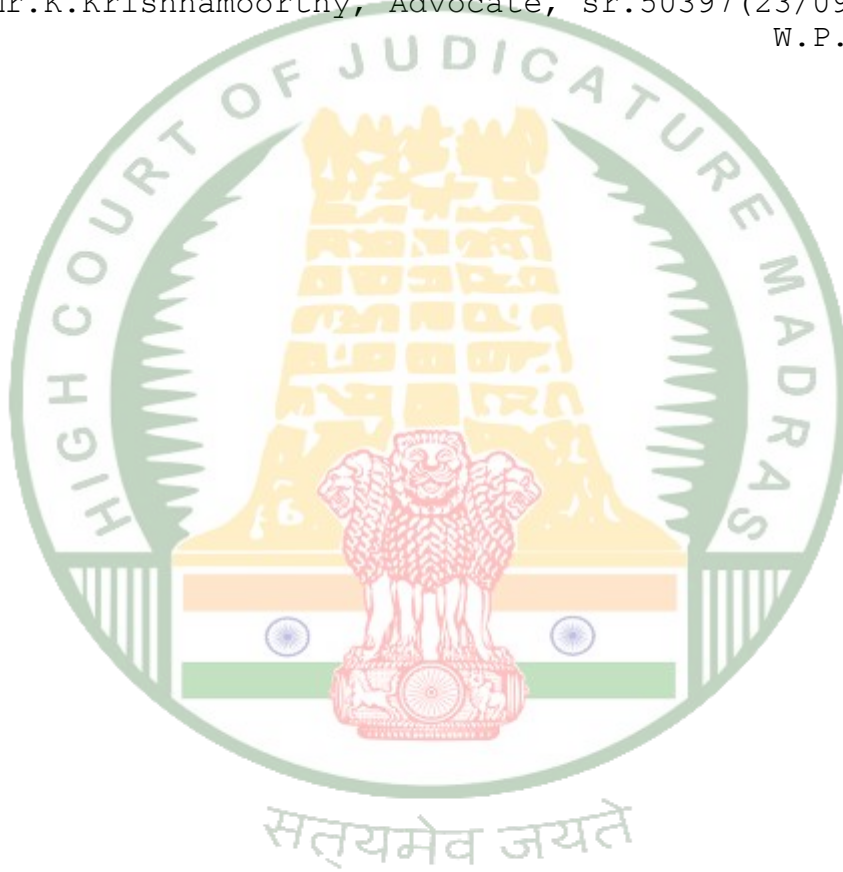
+1 cc to Mr.N.Srinivasan, Advocate, sr.48360

+1 cc to Govt.Pleader, sr.48639

+1 cc to Mr.K.Krishnamoorthy, Advocate, sr.50397(23/09/2015)

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