

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18 .09.2015

DELIVERED ON: 22.09.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.25918 of 2015

V. Ganesan

...Petitioner

vs.

The Registrar
Office of the City Civil Court
Chennai

...Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records on the file of the respondent in Proceedings Dis No.7644/2015/E2 dated 06.06.2015 and quash the proceedings therein as illegal, incompetent, unconstitutional, irregular and without jurisdiction and further direct the respondent to take 50% of service from the earlier post and add with the current post to calculate the retirement benefits.

For Petitioner : Mr. V. Raghavachari

For Respondent : Mr. R. Suresh Kumar

ORDER

SATISH K. AGNIHOTRI, J.

Being aggrieved by the rejection of his representation dated 30 August 2013 seeking to include half of the Government service rendered by him as Noon Meal Organiser in the Government Higher Secondary School, Mandapam Camp, Ramanathapuram District, along with his present service in the City Civil Court, Chennai, vide Official

Memorandum dated 06 June 2015 issued by the respondent, the petitioner has come up with the instant writ petition.

2.1 The facts in brief, as projected by the petitioner are that before joining the post of Copy Examiner in the Judicial Department in Ramanathapuram in the Court of Additional District Judge-cum-Chief Judicial Magistrate, Ramanathapuram, pursuant to the appointment letter dated 17 December 1998, he was appointed as Noon Meal Organiser in the Mandapam Camp Higher Secondary School, Ramanathapuram.

2.2 According to the petitioner, he was duly selected for appointment on such post and accordingly, joined the post of Noon Meal Organiser on 23 March 1987 and continued there, till his resignation was accepted on 21 December 1998, to join the new post of Copy Examiner on 23 December 1998. Thereafter, he was promoted to the post of Junior Assistant on 01 August 2008 and joined the post in the City Civil Court, Chennai, on 17 September 2009 on account of district transfer effected vide proceedings dated 26 August 2009. Subsequently, on 07 November 2009, he was promoted to the post of Assistant and further to the post of Bench Clerk on 25 August 2014.

2.3 While he was working as an Assistant, he submitted a representation on 30 August 2013 to the Principal Judge, City Civil Court, Chennai, seeking inclusion of service rendered by him on temporary basis as Noon Meal Organiser in Mandapam Camp Higher Secondary School, Ramanathapuram for the period from 23 March 1987 to 21 December 1998 as per G.O. Ms.No.408, Finance (Pension) Department dated 25 August 2009 (for short "the Government Order") for calculation of pension.

2.4 The respondent rejected his application by the impugned order on the ground that the conditions laid down in the Government Order are not fulfilled. Hence, this writ petition.

3 Mr. V. Raghavachari, learned counsel for the petitioner would contend that the impugned order is not a reasoned one and it does not disclose application of mind on the part of the respondent. The petitioner's application for inclusion of his earlier service was rejected without consideration and without affording an opportunity of hearing to the petitioner and as such, the same deserves to be set aside. It is also contended that the earlier appointment of the petitioner in the post of Noon Meal Organiser was after due selection through employment exchange. The subsequent appointment as Copy Examiner in the Judicial Department was in continuation of the

earlier appointment. The resignation was made by the petitioner as it was necessary to join the post of Copy Examiner. Thus, a break of 2 days may not be treated as a break in service. Rather, it is in continuation of the petitioner's earlier service and as such, the petitioner is fully entitled to the benefits arising from the Government Order.

4.1 Per contra, Mr. R. Suresh Kumar, learned counsel for the respondent would contend that the appointment of the petitioner as a Copy Examiner was a fresh appointment. It was neither a case of absorption as required under the Government Order nor a continuation of the earlier service to entitle the petitioner to the benefit of 50% of total service for reckoning for pensionary benefits. The learned counsel would further contend that the appointment of the petitioner as a Noon Meal Organiser was temporary on payment of honorarium as the enrolment of the petitioner in the employment exchange continued even after his appointment in the Judicial Department. In normal practice, once employment is granted, the enrolment of the candidate stands struck off. The petitioner had joined the new service after having ceased to be a Noon Meal Organiser on account of his resignation submitted on 16 December 1998, which was duly accepted on 21 December 1998.

4.2 The learned counsel further urged that an employee would have benefits under the Government Order only on the following conditions:

"1 Non Provincialised Service/Consolidated Pay/Honorarium/Daily Wages should be the full time Government service.

2 Should have worked in Government Departments on monthly consolidated pay/honorarium pay/daily wages and should have absorbed in permanent Government service.

3 Should have absorbed in permanent Government service before 01.04.2003 without break in service."

4.3 In the case on hand, according to the learned counsel, none of the aforesaid three conditions is satisfied by the petitioner. Firstly, it was not a case of absorption in permanent Government service of an employee of any non-provincialised service/consolidated pay/honorarium/daily wages. Secondly, it was also not a case of continuation as there was a break in service after his tendering resignation and joining the new post. The impugned order was passed

on proper consideration and application of mind and the allegation of the petitioner that the impugned order of rejection of his representation is not a reasoned one and vague is sans any basis and deserves to be rejected.

5 Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

6 The issue that arises for the consideration of this Court is as to whether the petitioner is entitled to reckoning of 50% of the service rendered by him as Noon Meal Organiser on temporary basis in Mandapam Camp Higher Secondary School, Ramanathapuram. In the said exercise, it would be felicitous to refer to the Government Order, which has been incorporated subsequently after Rule 11, sub-rule (3) of the Tamil Nadu Pension Rules. The said provision reads as under:

"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, 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 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."

7 On a careful appreciation of the aforesaid provision which prescribes for reckoning of half of the service rendered by a temporary employee under the State Government in non-provincialised service, on consolidated pay, honorarium or daily wages basis appointed on or after 01 January 1961 and absorbed in regular service before 01 April 2003, it is luculent that the benefit of reckoning of half of the service rendered for retirement benefits, as aforestated, is available to, firstly, the temporary employees who are absorbed in future in regular service. Such service rendered must be in a job involving a whole-time employment. Besides, the absorption should be in continuation in regular service under the State Government. Further, such service rendered shall not be with a break. However, in respect of artificial break, it was prescribed that the Head of the Department concerned shall condone the period of break.

8 In the case on hand, incontrovertibly, the petitioner was appointed by the office of the District Collector, a Government Department, as a Noon Meal Organiser in the Government Higher Secondary School, Mandapam Camp, Ramanathapuram District, on a temporary basis, vide order dated 23 March 1987. The appointment of the petitioner in the judiciary, after proper selection, was a fresh appointment and not absorption in regular service. As a sequel, the petitioner is not entitled to the benefit of reckoning of half of the service rendered by him under the State Government as a Noon Meal Organiser in the Government Higher Secondary School, Mandapam Camp, Ramanathapuram, after his employment as Copy Examiner in the judiciary.

9 As explained hereinabove, this is not one of the cases where an employee appointed in non-provincialised service or on consolidated pay or honorarium or daily wages basis under the State Government, was absorbed in regular service so as to entitle him, the benefit of the aforestated provision of law. In such view of the matter, we have no incertitude in holding that the impugned order of

the respondent is just, proper and legal, warranting no interference.

10 Resultantly, the writ petition fails and is accordingly dismissed. Costs made easy.

Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

cad

To

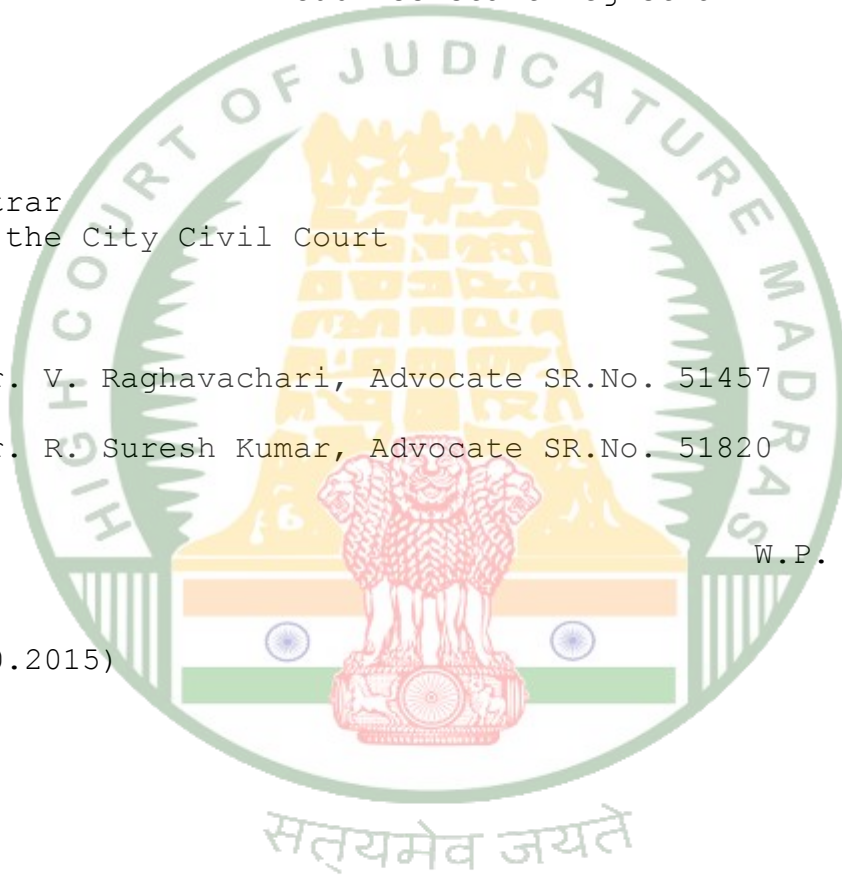
The Registrar
Office of the City Civil Court
Chennai

1 CC to Mr. V. Raghavachari, Advocate SR.No. 51457

1 CC to Mr. R. Suresh Kumar, Advocate SR.No. 51820

W.P. No.25918 of 2015

EV (CO)
PSI (01.10.2015)



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