

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2015

Coram :

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

W.P.Nos.28257, 29882 and 30062 of 2012

A.Komalavalli ... Petitioner in W.P.No. 28257 of 2012

M.Mariya Selvam ... Petitioner in W.P.No. 29882 of 2012

B.Geetha ... Petitioner in W.P.No. 30062 of 2012

vs.

1. The Registrar General
High Court
Madras 600 104.

2. The Principal Judge
City Civil Court
High Court Campus
Chennai 600 104.

3. The Administrator General and
Official Trustee of Tamil Nadu
High Court Campus
Chennai 600 104.

... Respondents 1 to 3
in all the writ petitions

4. The State of Tamil Nadu rep.by
its Secretary to Government
Law and Justice Department
Fort St.George, Chennai-9.

... R4 in W.P.Nos.28257
and 29882 of 2012 and R5 in
W.P.No.30062 of 2012

The Chief Metropolitan Magistrate
Egmore, Chennai-8

... R4 in W.P.No.30062 of 2012

W.P.No.28257 of 2012:

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to consider the claims of the petitioner for counting her earlier service rendered in office of Administrator General and Official Trustee of Tamil Nadu from 05.12.1979 to 15.12.1998, along with regular service for the purpose of pensionary benefits in pursuant to the representation dated 17.02.2012 and pass orders on the same as per the rules.

W.P.No.29882 of 2012:

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to consider the claims of the petitioner for counting her earlier service rendered in office of Administrator General and Official Trustee of Tamil Nadu from 10.10.1998 to 15.03.2002 along with City Civil Court Service for the purpose of pensionary benefits in pursuant to the representation dated 26.04.2011 and pass orders on the same as per the rules.

W.P.No.30062 of 2012:

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to consider the claims of the petitioner for counting her earlier service rendered in office of Administrator General and Official Trustee of Tamil Nadu from 29.04.1982 to 19.01.1997 along with regular Service for the purpose of pensionary benefits in pursuant to the representation dated 03.02.2012 and pass orders on the same as per the rules.

For Petitioners : Mr.G.Elanchezhiyan
in all the writ petitions

For Respondents : Mr.V.Ayyadurai
in all the petitions for RR1 and 2

Mr.C.Manickam
Administrator General and Official
Trustee of Tamil Nadu for R3

Mrs.A.Srijeyanthi
Special Government Pleader
for R4 in W.P.No.28257/2012

and W.P.No.29882 of 2012
and for R5 in W.P.No.30062
of 2012

R4- No appearance in
W.P.No.30062 of 2012

COMMON ORDER

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

The petitioners in all these writ petitions were originally appointed on various dates in the Office of the Administrator General and Official Trustee of Tamil Nadu. Subsequently, they were all appointed on regular basis in various posts in the Tamil Nadu Judicial Ministerial Service.

2. Their claim for counting the period of service rendered by them in the Office of the Administrator General and Official Trustee of Tamil Nadu, was not considered favourably. Therefore, they have come up with the above writ petitions seeking the issue of writs of mandamus to direct the respondents to count the whole or part of the services rendered by them in the office of the Administrator General and Official Trustee, for the purpose of calculating the pensionary benefits.

3. Heard Mr.G.Elanchezhian, learned counsel for the petitioners, Mr.V.Ayyadurai, learned counsel appearing for the High Court and Mr.C.Manickam, learned Administrator General and Official Trustee of Tamil Nadu and Mrs.A.Srijeyanthi, learned Special Government Pleader appearing for the Government.

4. There is no dispute on fact that the petitioners in these writ petitions were appointed by the Administrator General and Official Trustee of Tamil Nadu. But, their appointments were actually charged to the various Estates and Charities managed and administered by the Administrator General and Official Trustee. The petitioners were subsequently appointed on regular basis in various Courts to the posts coming within the Tamil Nadu Judicial Ministerial Service. In other words, the petitioners entered into a pensionable service in the State of Tamil Nadu, only from the dates on which they were appointed to the posts in the Judicial Ministerial Service.

5. Taking advantage of the insertion of Sub Rule (2) under Rule 11 of the Tamil Nadu Pension Rules, 1978, it is contended by the learned counsel for the petitioners that at least half of the services rendered by the petitioners in the Office of the Administrator General and Official Trustee has to be counted along

with the other services for the purpose of pensionary benefits. Sub Rule (2) was inserted by an amendment under G.O.Ms.No.283, Finance (Pension) Department dated 15th April 1996, 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 authenticated records of service may be available.

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

[Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions:

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break."

6. Unfortunately for the petitioners, they were not engaged in any service paid from the contingencies of the State of Tamil Nadu. Unless the petitioners were engaged in any service paid from the contingencies, whether in a pensionable establishment or in a non-pensionable establishment, the benefit of Sub Rule (2) to Rule 11 will not be applicable to the case of the petitioners.

7. It is seen from the counter affidavit of the Registrar General and the Administrator General and Official Trustee of Tamil Nadu that the petitioners were appointed to assist the Administrator General and Official Trustee in the management of various charities and choultries. It should be pointed out here that the Administrator General and Official Trustee actually manages and administers all public charitable trusts, which come within the control of the Court. For the purpose of managing them, the Administrator General and Official Trustee is empowered by the Act to engage the services of persons on consolidated pay. The payment of those employees is not made either from out of the contingencies or from out of the work charged establishment or from the consolidated fund of the State. These payments are actually charged to the income derived from the respective choultries and charities.

8. In other words, instead of private individuals, managing public charitable institutions, the Administrator General and Official Trustee manages and administers them under certain circumstances. Therefore, the persons appointed by him are not persons who were paid out of the contingencies of the State.

9. Therefore, the reliefs prayed for by the petitioners cannot be granted. Hence, the writ petitions are dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Registrar General
High Court
Madras 600 104.
2. The Principal Judge
City Civil Court
High Court Campus
Chennai 600 104.
3. The Administrator General and
Official Trustee of Tamil Nadu
High Court Campus
Chennai 600 104.
4. The Secretary to Government
State of Tamil Nadu
Law and Justice Department
Fort St.George, Chennai-9.
5. The Chief Metropolitan Magistrate
Egmore, Chennai-8

+2cc's to Mr.G.Elanchezhiyan, Advocate, S.R.No.11233 & 11234
+3cc's to the Government Pleader, S.R.No.11157 to 11159

W.P.Nos.28257, 29882 and 30062 of 2012

GGK(CO)
CA(13/03/2015)

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