

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.07.2016	Pronounced on 26.09.2016
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DATED: 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.1048 of 2015
against WP No.30044 of 2011
and
M.P.No.1 of 2015

- 1.Government of Tamilnadu,
Rep. by its Secretary, Social Welfare and
Nutritious Meal Programme Department,
Fort St. George, Chennai - 9.
- 2.The Director,
Elementary Education,
College Road, D.P.I. Complex,
Chennai.
- 3.The District Elementary Educational Officer,
Vellore.

Vs.

- 1.K.Damodaran
- 2.Accountant General
(Accounts and Entitlements) Tamil Nadu,
Anna Salai, Chennai - 18.
- 3.Senior Accounts Officer,
Office of the Principal Accountant General,
(Accounts and Entitlements) Tamil Nadu,
No.361, Anna Salai,
Chennai - 18. ...Respondents/Petitioners/Respondents 2&3

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 27.11.2013 made in W.P.No.30044 of 2011.

WP No.30044/2011: This writ petition filed under Article 226 of
the constitution of India for issuance of a writ of
certiorari mandamus to Calling for the concerned records
from the 3rd respondent quash the order of the 3rd Respondent
dated 20.10.2010 bearing Ref.No.Pen.16/I/11606409Rt/10-

11/ADK/475 and consequently direct the respondents to pay pension to the Petitioner from the date of his superannuation being 31.10.2010 by calculating the same in accordance with G.O. (Nilai) No.6 Social Welfare and Nutritious Welfare Programme (NMP1) Department dated 06.01.2010.

For Appellants : Mr.T.N.Rajagopalan
Special Government Pleader

For Respondents: Mr.Balan Haridas (for R1)

Mr.V.Vijay Shankar (for R2)

Mr.V.Vijayaraghavan (for R3)

JUDGMENT

Heard Mr.T.N.Rajagopalan, learned Special Government Pleader appearing on behalf of the Appellants herein, Mr.Balan Haridas, learned Counsel appearing on behalf of the first Respondent and Mr.Vijay Shankar, learned Counsel appearing for the second Respondent and Mr.Vijayaraghavan, learned Counsel for the third Respondent. The present intra Court appeal has been filed challenging the order passed by the learned Single Judge in W.P.No.30044 of 2011 dated 27.11.2013.

2.The Writ Petition was filed by the Writ Petitioner who was appointed as a Noon Meal Organiser on 26.01.1983 and was working at Irumbur Village, Vellore district. While so, vide G.O.Ms.No.64, Social Welfare and Nutritious Meal programme (NMP1) Department dated 23.04.2003, the Government decided to employ qualified staff working as Noon Meal Scheme Organiser under the Puratchi Thalaivar M.G.R. Nutritious Meal Programme possessing B.Ed. qualification as Teachers in the Government/ Corporation/ Adi Dravidar and Tribal Welfare High/Higher Secondary Schools by conducting special examinations through the Teachers Recruitment Board after relaxing registration of the Employment Exchange. The Petitioner after successful selection was appointed as B.T. Assistant Science on 01.07.2004 and was posted at Panchayat Union Middle School, Mel Nelli Village.

3.The Writ Petitioner attained the age of superannuation on 30.10.2010. Since the Petitioner retired on 30.10.2010, he sought for pension to be paid as per G.O.Ms.No.6, Social Welfare and Nutritious Meal programme (NMS2) Department dated 06.01.2010. However, his request for pension was negatived by the order passed by the second Respondent in the present appeal. On the ground that the above individual was appointed as B.T. Assistant on 15.09.2005 and since the government has introduced the contributory provident fund scheme to state Government employees appointed after 01.04.2003, no pensionary benefit is admissible to him under the Tamil Nadu Pension Rules.

4.Assailing the said order, W.P.No.30044 of 2011 was filed by the Writ Petitioner and the learned Single Judge after referring to the judgement of this Court in W.P.No.7973 of 2011 dated 20.04.2011 wherein this Court directed the authorities to forward the pension proposal of the Petitioner therein with further direction to calculate the pensionary service of the Petitioner by calculating 50% of his service along with his regular service to sanction pension.

5.By following the said order, the learned Single Judge has found that as per G.O.Ms.No.6 dated 06.01.2010, the Petitioner is entitled to get his 50% of service rendered as Noon Meal Organiser counter along with his regular service for the purpose of sanctioning his pension and the learned Single Judge has also taken note of the fact that the Writ Petitioner has worked a Noon Meal Organiser without any break from the year 1983 to 2004 and when both the services viz., Noon Meal Organiser as well as B.T. Assistant are admittedly Government Services, the reason assigned in the impugned order rejecting the claim of the Petitioner is unsustainable and accordingly, allowed the Writ Petition.

6.The learned Special Government Pleader, assailing the order of the learned Single Judge, would submit that G.O.Ms.No.6 dated 06.01.2010 will not be applicable to the first Respondent/Petitioner and it has also been submitted by him that the Writ Petitioner having been appointed and selected as a Teacher through a Special Test in the year 2003, he is not entitled to claim benefit under Rule 11(4) of the Tamil Nadu Pension Rules since the same is not applicable to the Writ Petitioner.

7.It has also been canvassed by him that the learned Single Judge ought to have noted that G.O.Ms.No.6 dated 06.01.2010 will be applicable only to persons absorbed into regular Government Service prior to 01.04.2003 and the Government has in fact issued a clarification on 14.03.2013 in G.O.Ms.No.34, Social Welfare and Nutritious Meal Programme Department wherein it has been clearly stated that Para 4 of G.O.Ms.No.6 dated 06.01.2010, it is added that absorption should be made prior to 01.04.2003. To canvass his case, he would rely upon the judgements of the Division Bench of the Madurai Bench of Madras High Court in W.A. (MD). 587 of 2014 and batch cases wherein the Division Bench has stated that the Petitioners alike the Writ Petitioner are not entitled to the benefit of counting 50% of their services rendered in the Noon Meal Programme and ICDS Services once when the appointment has been made after 01.04.2003.

8.The short issue that arises for our consideration is whether the long service rendered by the Writ Petitioner for almost 2 decades can be calculated for grant of pension or not especially once when the Petitioner has joined as a Teacher only based on G.O.Ms.No.64 dated 23.04.2003. The Division Bench of this Court in W.A.No.332 of 2013 while considering a similar case has negatived the claim of the Government based on the similar submissions that were canvassed before us by the learned

Special Government Pleader. Even in the judgement of the Division Bench of the Madurai Bench of Madras High Court that was relied upon by the Special Government Pleader, we find some factual variance from the facts of the instant case and as it is settled in law that if a judgement is factually different, then the same cannot come to the rescue of the Appellant who is fighting a case with considerably different facts.

9. Whatever said and done, the fact that a Noon Meal Organiser and a B.T. Assistant being a Government Service cannot be disputed. Even the 2013 G.O. relied upon by the Government has been passed after filing of the Writ Petition and the Appellant cannot contend that the 2 decades of service rendered as a Noon Meal Organiser should go in drain and negate pension to the Writ Petitioner. We are of the view that the view taken by the learned Single Judge is well reasoned and does not warrant any interference. Therefore, we find no merit in the instant Writ Appeal and the same fails. Accordingly, the Writ Appeal is dismissed. Connected M.P. is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

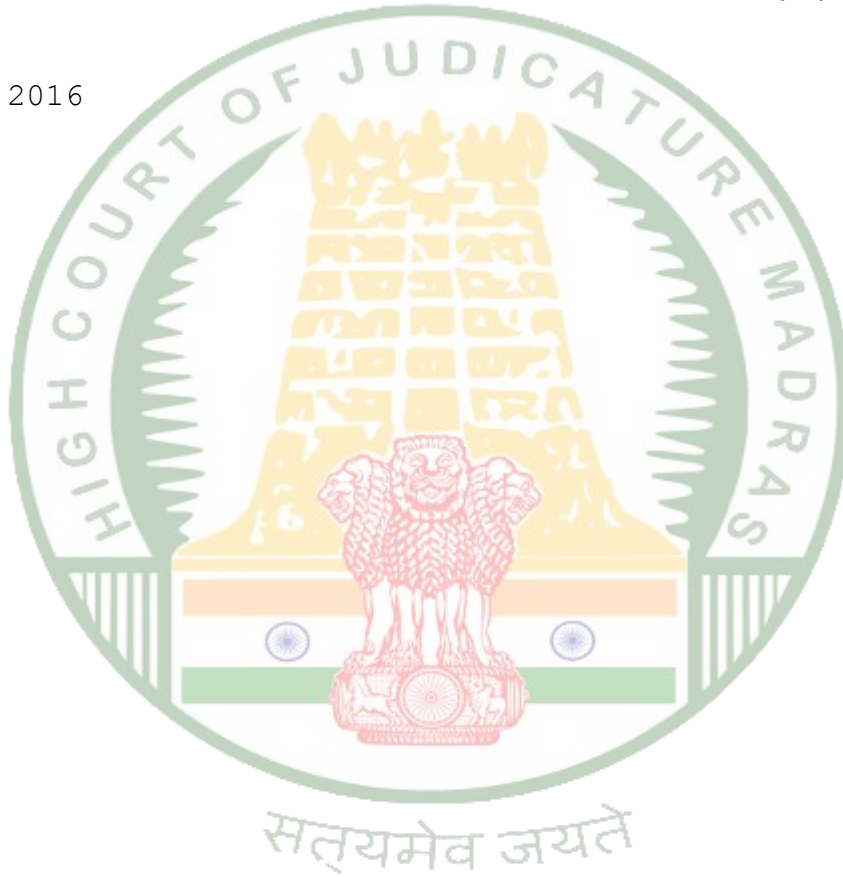
1. The Accountant General (Accounts and Entitlements) Tamil Nadu, Anna Salai, Chennai - 18.
2. The Senior Accounts Officer, Office of the Principal Accountant General (Accounts and Entitlements) Tamil Nadu, No.361, Anna Salai, Chennai - 18.
3. The Secretary, Government of Tamilnadu, Social Welfare and Nutritious Meal Programme Department, Fort St. George, Chennai - 9.
4. The Director, Elementary Education, College Road, D.P.I. Complex,

5.The District Elementary Educational Officer,
Vellore.

1 cc to Mr.V.Vijayshankar, Advocate, sr.55082
1 cc to Mr.Balan Haridoss, Advocate, sr.54666
1 cc to The Government Pleader, sr.55062

Writ Appeal No.1048 of 2015
and
M.P.No.1 of 2015

rj co
kra 07.10.2016



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