

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 11.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN**AND****THE HONOURABLE MRS. JUSTICE J. NISHA BANU****W.A. (MD) No. 1390 of 2016****and****C.M.P (MD) No. 10173 of 2016**

1. The State of Tamil Nadu,
represented by its
Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai - 600 009.

2. The Director of Government Examination,
DPI Campus,
College Road,
Nungambakkam,
Chennai - 600 006.

3. The Zonal Deputy Director of Government Examination,
Chinna Chokkikulam,
Madurai - 2. ... Appellants/Respondents 1 to 3

Vs.

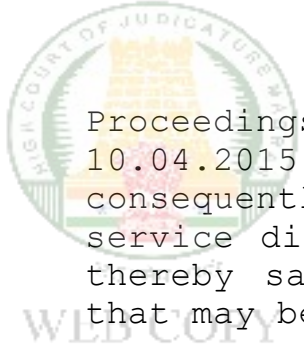
1. P. Jayalakshmi ... 1st Respondent/Writ Petitioner

2. The Principal Accountant General,
(Accounts and Establishments),
361, Anna Salai,
Teynampet,
Chennai - 600 018. ... 2nd Respondent/4th Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent,
against the order passed in W.P(MD) No. 22733 of 2015, dated
17.12.2015.

Prayer in WP(MD). 22733/ 2015 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorarified Mandamus, to call for the records on the file of
the 1st respondent in connection with the impugned Govt. Order in
G.O. No. 408, Finance (Pension) Department dated 25.08.2009 in so
far as fixing the crucial date for regularisation as 01.04.2003
and consequential impugned rejection order passed by him in his



Proceedings in Letter No. 5184/Ni.Va.4 (2) / 2015 -1 dated 10.04.2015 and quash the both as illegal and arbitrary and consequently direct the respondents 1 and 4 to count half of the service discharged from 05.02.1986 along with regular service and thereby sanction the pension and other benefits within the time that may be stipulated by this Honorable Court.

For Appellants : Mr.D.Muruganantham,
Additional Government Pleader

For Respondents : Mr.G.Thalaimutharasu for R.1

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

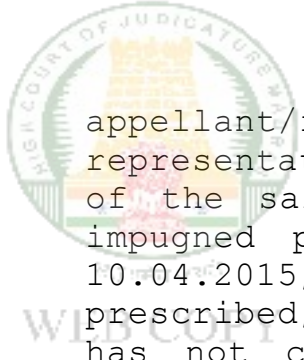
Mr.G.Thalaimutharasu, learned Counsel accepts notice on behalf of the first respondent.

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

3. The facts leading to the filing of this writ appeal would read, among other things, that the first respondent/writ petitioner had completed her S.S.L.C in the year 1972 and also passed Typewriting - both English and Tamil - Lower Grade in the Examinations conducted by the Department of Technical Education and registered her name in the District Employment Exchange and was issued with Registration No.W/3613/86. The first respondent/writ petitioner was initially discharged her duties as Junior Assistant on temporary basis between 21.12.1981 and 31.03.1982 and later on, as a Section Writer on 05.02.1986 and with an artificial break in service, she has served continuously more than 20 years in a temporary capacity in a sanctioned post and her services were regularised with effect from 25.10.2006 as Record Clerk and his probation was also successfully declared vide proceedings dated 31.10.2008 with effect from 25.10.2006.

4. According to the first respondent/writ petitioner, she had rendered 20 years of service as daily wage employee and 7 years and 5 months as regular employee and discharged her duty honestly and sincerely to the utmost satisfaction of her superior officers. The first respondent/writ petitioner had retired from service on 31.03.2014 on attaining the age of superannuation and thereafter, submitted her representation to count 50% of her services for the purpose of conferring her with pensionary benefits in terms of Rule 11(2) of the Tamil Nadu Pension Rules, 1978.

5. However, since no orders have been passed, the first respondent/writ petitioner filed W.P(MD)No.3083 of 2014 and vide order dated 24.02.2014, this Court directed the first



appellant/first respondent to consider and dispose of her representation. The first appellant/first respondent in compliance of the said order, has considered and rejected the same, vide impugned proceedings in Letter No.5184/Ni.Va.4(2)/2015-1, dated 10.04.2015, observing that in the light of the cut-off date prescribed, i.e. 01.04.2003, the first respondent/writ petitioner has not completed 10 years of service and hence, she is not entitled to pension.

6. The first respondent/writ petitioner made a challenge by filing W.P(MD)No.22733 of 2015 and the said writ petition was entertained and notices were ordered.

7. The learned Judge after taking note of the earlier decision in **P.Chinniyan v. State of Tamil Nadu** reported in **(2014) 6 MLJ 316**, has granted the relief as prayed for and the official respondents in the said writ petition, aggrieved by the same, had filed this appeal.

8. Mr.D.Muruganantham, learned Additional Government Pleader appearing for the appellants would vehemently contend that the learned Judge while allowing the writ petition has placed reliance upon the decision rendered by him in **P.Chinniyan v. State of Tamil Nadu** reported in **(2014) 6 MLJ 316** and has also drawn the attention of this Court to paragraph 25 and would submit that despite the fact that Rule 11(4) of the Tamil Nadu Pension Rules, 1978, exists in the statute, the learned Judge made observation that it should be ignored and the reasons assigned for allowing the said matter, *per se*, unsustainable.

9. The learned Additional Government Pleader appearing for the appellants would further contend that if the statute prescribes a thing to be done in a particular manner, it should be done in that manner alone and in the absence of any challenge made to Rule 11 (4) of the Tamil Nadu Pension Rules, 1978, the relief sought for by the first respondent/writ petitioner ought not to have been granted and therefore, he prays for interference.

10. Per contra, Mr.G.Thalaimutharasu, learned Counsel for the first respondent/writ petitioner would contend that the persons similarly placed like that of the first respondent/writ petitioner had filed W.P.No.39645 of 2004 and vide order dated 26.03.2010, a positive direction was given to the official respondents therein to count 50% of their temporary service for the purpose of pensionary benefits and the State made a challenge by filing W.A.No.2678 of 2010 and it was dismissed on 05.11.2014 and on complaining about the non-compliance of the order, Contempt Petition No.2771 of 2015 and 1050 of 2016 were filed and in compliance of the orders passed therein, the Government Orders were passed conferring them with the pensionary benefits.



11. The learned Counsel for the first respondent/writ petitioner has further drawn the attention of this Court to the fact that the first appellant herein was arrayed as the first appellant in W.A.No.2678 of 2010 and in the light of the above, the appellants cannot take a contra stand and therefore, he prays for the dismissal of this appeal with exemplary costs.

12. This Court paid it's best attention to the rival submissions and also perused the materials available on record.

13. The learned Judge for the purpose of allowing the writ petition, has placed reliance on the decision in **P.Chinniyar v. State of Tamil Nadu** reported in (2014) 6 MLJ 316 and admittedly, the said decision has not been put to challenge. Thereafter, very many writ petitions came to be ordered based on the said decision and in respect of the persons similarly placed like that of the first respondent/writ petitioner herein, W.P.No.39645 of 2004 was filed and it came to be allowed and a challenge was made by filing W.A.No.2678 of 2010 by the official respondents which includes the first appellant herein and the said writ appeal was also dismissed and thereafter, Contempt Petition Nos.2771 of 2015 and 1050 of 2016 were filed and in compliance of the order of this Court, the first appellant has passed G.O.(1D)No.286, School Education (GE1) Department, dated 19.07.2016.

14. Though this Court finds force in the submissions made by the learned Additional Government Pleader appearing for the appellants, in the absence of a challenge to Rule 11(4) of the Tamil Nadu Pension Rules, 1978, there cannot be any observation that it should be ignored; however, not inclined to grant the relief on the ground that by applying the principles of parity, persons similarly placed like that of the first respondent/writ petitioner, were granted such a benefit.

15. In the light of the aforesaid reasons, this writ appeal is dismissed at the admission stage itself. However, there shall be no order as to costs. The first appellant/first respondent is directed to confer the benefit to the first respondent/writ petitioner in terms of the order dated 17.12.2015 passed in W.P (MD)No.22733 of 2015, within a period of eight weeks from the date of receipt of a copy of this judgment and communicate the decision taken to the first respondent/writ petitioner thereafter. Consequently, the connected civil miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department, Secretariat, Chennai - 600 009.

2.The Director of Government Examination,
DPI Campus, College Road, Nungambakkam, Chennai - 600 006.

3.The Zonal Deputy Director of Government Examination,
Chinna Chokkikulam, Madurai - 2.

4.The Principal Accountant General,
(Accounts and Establishments),
361, Anna Salai, Teynampet, Chennai - 600 018.

+1 CC to Mr.G.THALAIMUTHARASU, Advocate, SR No.68192

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.68309

W.A. (MD) No.1390 of 2016

and

C.M.P (MD) No.10173 of 2016

11.11.2016

rsb

SH/SKS-RR:23.11.2016:5P/7C