

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-10-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14861 of 2014

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Petitioner

-vs-

1.The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Fort St. George,
Chennai-9.

2.The Director of School Education,
College Road,
Chennai-6.

3.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

4.The Accountant General,
(Pension), DMS,
Chennai-9.

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Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to forthwith regularise the services of the petitioner on completion of 5/10 years of casual labourer services/part-time services w.e.f. 1.12.1997/1.12.2002 and consequently confer the time scale of pay by bringing into regular establishment with effect from the

abovesaid date of completion and to grant pension by taking into account 50% of the casual labourer services/part-time services followed by regular time scale of pay upto 30.12.2011 in all making it as 14 years of qualifying services as per Rule 11 of Tamil Nadu Pension Rules, 1978 and to extend all benefits of pension and other pensionary benefits.

For Petitioner - Mr.L.Chandrakumar

For Respondents-1to3 - Mr.K.Thangapandi,
Government Advocate.

For Respondent-4 - Mr.V.Vijayshankar

ORDER

The relief sought for in this writ petition is for a direction to direct the respondents forthwith regularise the services of the writ petitioner on completion of 5/10 years of casual labourer services/part-time services w.e.f. 1.12.1997/1.12.2002 and consequently confer the time scale of pay by bringing into regular establishment with effect from the abovesaid date of completion and to grant pension by taking into account 50% of the casual labourer services/part-time services followed by regular time scale of pay upto 30.12.2011 in all making it as 14 years of qualifying services as per Rule 11 of Tamil Nadu Pension Rules, 1978 and to extend all benefits of pension and other pensionary benefits.

2. The learned counsel appearing for the writ petitioner made

a submission that the writ petitioner was initially appointed as Part-Time Sweeper on 1.12.1992 and his initial appointment was made through the District Employment Exchange. The writ petitioner was continued as Part-Time Sweeper for fairly a long period and the services of the writ petitioner were regularised on 20.6.2006.

3. However, the services rendered by the writ petitioner, as Part-time Sweeper, are not taken into account for the purpose of calculation of qualifying service and for pension. The writ petitioner was allowed to retire from service on attaining the age of superannuation on 30.12.2011 and the writ petitioner is not receiving any pension since he has not completed the minimum qualifying service period of ten years. In this view of the matter, the present writ petition is filed.

4. However, this Court is of the opinion that regularisation from the date of initial appointment, cannot be granted and counting of half of the services pursuant to the amended Rule 11 of the Tamil Nadu Pension Rules, 1978, is to be considered in favour of the writ petitioners. In this regard, in a batch of writ petitions in W.P.No.7217 of 2015 etc., batch, dated 2.8.2017, this Court held as follows:-

“6. The grievances advanced in this writ petition is the non-consideration of the amended Rule 11 of the Tamil

Nadu Pension Rules, in respect of qualifying the services and the amended Rule is extracted hereunder:

Rule 11

QUALIFYING SERVICE

1. *"Commencement of qualifying service – {(1)} Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he taken charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969,2{.....} temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.*

(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:

- *service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.*
- *Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.*
- *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.*
- *Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.*

- *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.*
- *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.

(3) These orders shall take effect from the date of this Government Order. In respect of those who retired prior to the date of this order, eligible pension or revised pension, as the case may be, shall be paid from the date of this order, and that there can be no claim for arrears in any case for the period upto the date of this order.

Note: In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore-Cochin State consequent on the reorganisation of State temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore-Cochin State shall count in full for purposes of pension:

Provided that-

(a) in the case of a Government Servant, service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity;

(b) in the case of a Government Servant whose year and month of birth are known, but not the exact date the 16th of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1st July if the year shall be taken.

(c) in the case of a Government Servant with no military service who gives on recruitment only his age, but not the year of his birth the year should be arrived at by deducting from the year of recruitment the given age and then the date of birth should be taken as the 1st July of that year:

Provided further that in the case of a Government servant with previous military service the date of birth is fixed as laid down below:

When a military employee is transferred to a civil department under the Government and assumes a civilian status, the date of birth to be entered in his service book should be the date stated by him at the time of attestation.

When the documents referring to the previous military service of an individual do not give the definite date of birth but only the age stated at the time of attestation, he should be assumed to have completed the stated age on the date of attestation e.g., if one ex-soldier was enrolled on 1st January 1910 and if, on that date, his age was stated to be 18, his date of birth should be taken as 1st January 1892. This procedure will apply to cases arising on or after 27th June 1938.

Notwithstanding anything contained above in cases where S.S.L.C. Or any other school certificate is available, the date of birth, as entered therein should be taken into account.

[Explanation.--For the purpose of date of birth, the word 'attestation' refers only to the initial records kept by the Defence Department at the time of appointment of the individual and not in the discharge certificate on discharge from the Defence Department.] '

5. While amending Rule 11(4)(iii), the Government imposed the cut-off date as 01.04.2003. It is stated that "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".

6. In view of the abovesaid judgment of this Court, the respondents are directed to consider the case of the writ petitioners in the light of the amended Rule 11 of the Tamil Nadu Pension Rules, 1978 and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

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Speaking/Non speaking Order

Index : yes/no

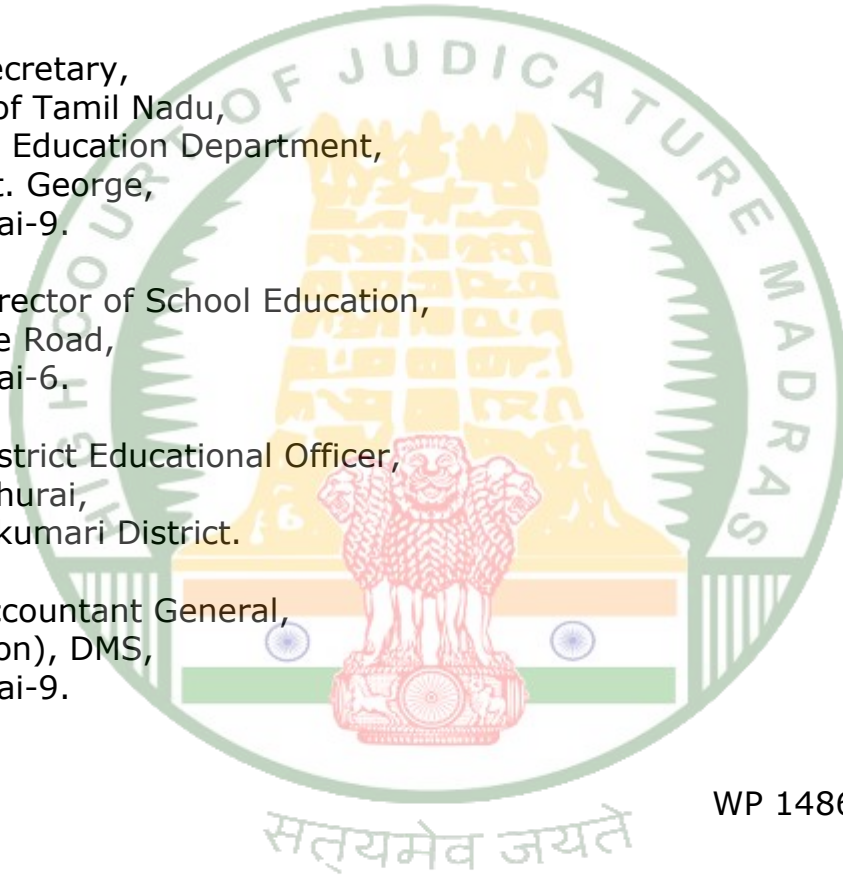
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S.M.SUBRAMANIAM, J.

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To

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