



aBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2017

CORAM :

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.10746 of 2015

and

M.P (MD) Nos.1 and 2 of 2015

K.Lakshmanan

..... Petitioner

vs.

1.The Principal Secretary,
School Education (R1) Department,
Secretariat,
Chennai-600 009.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai-600 006.

3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

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

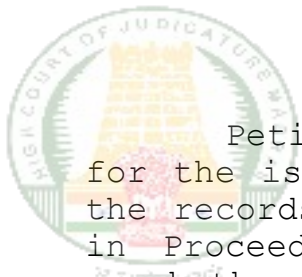
5.The Assistant Elementary Educational Officer,
Karungal,
Kanyakumari District.

6.The Headmaster,
Govt(Boys)Higher Secondary School,
Marthandam,
Kanyakumari District.

7.The Headmaster,
Govt.Primary School,
Viricode, Marthandam,
Kanyakumari District.

8.The Accountant General,
Accounts & Entitlements (A&E)
361, Anna Salai, Teynampet,
Chennai-600 018.

..... Respondents



Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first Respondent relating to the Impugned order in Proceedings No.19256/Ni.V.1(2)/2013-2 dated 17.09.2014 and to quash the same and consequently direct the 1st Respondent to sanction the petitioner's provisional pension and pensionary benefits by taking into account of 50% of the service from 01.12.1992 to 02.12.2002 as a sweeper along with his regular service from 02.12.2002 to 30.06.2012 to arrive at total qualifying service for pension and disburse the arrears thereof with interest within the time stipulated by this Court.

For Petitioner	: Mr.M.R.Sreenivasan
For R1 to R7	: Mr.S.Sathish Kumar
	Additional Government pleader
For R8	: Mr.P.Gunasekaran

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the 1st respondent in No.19256/Ni.V.1(2)/2013-2, dated 17.09.2014, and consequently direct the 1st respondent to sanction the petitioner's provisional pension and pensionary benefits, by taking into account 50% of the service from 01.12.1992 to 02.12.2002 as Sweeper along with his regular service from 02.12.2002 to 30.06.2012, to arrive at the total qualifying service for pension and to disburse the arrears thereof with interest, within a time frame to be fixed by this Court.

2.The petitioner joined the services on 01.12.1992 through the employment exchange as part time Sweeper and he has rendered service in the said capacity till 01.12.2002. Thereafter, his services have been regularised from 02.12.2002 and he retired from service on 30.06.2012.

3.The contention of the respondents is that the petitioner has not completed 10 years of service to enable him to get pension. Learned Additional Government Pleader also relied upon Rule 11(4)(i) of the Tamil Nadu Pension Rules, 1978 and contended that unless and until the person who is employed on daily wages or on consolidated pay in a 'job involving whole time employment', he would not be entitled to pensionary benefits.

4.It is relevant to extract below Rule 11(4) of the Tamil Nadu Pension Rules, 1978:-

"(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 namely:-

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

(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 basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

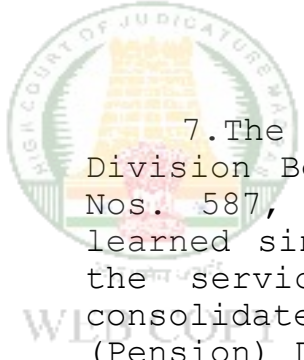
(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.

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."

5. Admittedly, the petitioner was a Sweeper. It is also not in dispute that the petitioner has not completed 10 years of service. The literal meaning of the words, "job involving whole time employment" has got to be given harmonious reading, as no Sweeper is expected to work for eight hours in a day. Whatever the work that is allotted by the employer, they have been completing the work within the time, which is the 'whole time employment'. The intention of the introduction of the Tamil Nadu Pension Rules, 1978, is to benefit the employees at the fag end of the service. It is neither gratuitous nor a bounty. Ultimately, they have to fall back upon employment or a monetary retirement benefits after the retirement. If the interpretation as contended by the respondents that the 'job involving whole time employment' should be construed as a full time work, persons like the petitioner who are employed as Sweeper, Scavenger etc., could not get any benefit muchless the pensionary benefits.

6. It has been pointed out that G.O.Ms.No.39, Rural Development and Panchayat (E5) Department dated 13.06.2011, has been superseded by G.O.Ms.No.77, Rural Development and Panchayat Raj Department, dated 12.07.2013, and that the said G.O is meant only to benefit the persons who were employed on part time basis and that the order of this Court reported in R.Ragupathy vs. State of Tamil Nadu, reported in 2012 (3) MLJ 12, pertains to G.O.Ms.No.39. De hors the abovesaid two G.Os, the Tamil Nadu Pension Rules is very clear to the effect that pension has got to be extended to the Government servant and the petitioner is also one of the Government servants to whom, the Pension Rules will apply and accordingly, pensionary benefits have got to be extended.



7.The learned Additional Government Pleader relied upon the Division Bench judgment of this Court dated 03.12.2014 in W.A(MD) Nos. 587, 605, 606 and 1024 of 2014, wherein, the order of the learned single Judge has been set aside on the ground that 50% of the service rendered by the employees worked on daily wages consolidated wages etc., was based on G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, and the plea that 50% of the services should be taken into account for the purpose of pension was not accepted and the Division Bench held that in view of the policy decision of the Government and taking note of the Pension Rules which was amended incorporating Rule 11(4), the petitioner would not be entitled to the benefits as his rendered service is non pensionable service.

8.However, in the present case, this Court is not rendering any finding based on these G.Os., as the petitioner is Government employee and that Pension Rules is applicable to him and that in view of the harmonious interpretation given to the words, "job involving whole time employment", sweepers are entitled to pension.

9.The counsel for the respondents also relied upon the judgment of the Hon'ble Supreme Court in B.Premnand and others vs. Mohan Koikal and others, reported in (2011) 4 SCC 266, and contended that it is a well settled principle that the Court cannot read anything into the statutory provision which is plain and unambiguous.

10.This Court makes it very clear that this Court is not reading any thing into the statutory provision, but only giving an interpretation to the words "job involving whole time employment". Further, when there are two ways of giving interpretation to the provision one in favour of the weaker sections of the society will have to be applied.

11.The respondents also relied upon a decision of the Apex Court in Secretary to Government, School Education Department, Chennai, vs. Thiru.R.Govindasamy and others (Civil Appeal Nos.2726-2729 of 2014, dated 21.02.2014), wherein, the decision of the Apex Court in State of Rajasthan and others vs. Daya Lal and others, reported in AIR 2011 SC 1193 was referred to, in which, it is held that part time temporary employees in Government run institutions cannot claim parity in salary with regular employees of the Government on the principle of "equal pay for equal work". It has been further held that the right to claim a particular salary against the State must arise under a contract or under a statute. In the case on hand, the petitioner is not seeking pay parity, but seeking pensionary benefits taking into account 50% of the services rendered by him.

12.At this juncture, it is relevant to consider the observations of the Hon'ble Supreme Court in the case of Padma Sundara Rao V. State of Tamil Nadu, reported in (2002) 3 SCC 533, which reads as follows:-

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



''9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.''

13.In this case, Rule 11(4) of the Tamil Nadu Pension Rules is very clear and the intention of the Rule Maker is to extend the benefits to the persons who are retiring from service and fall back upon throughout their remaining life.

14.In view of the above, the impugned order dated 17.09.2014 is set aside and the 1st respondent is directed to sanction pension, by taking into account 50% of the service rendered by the petitioner as Sweeper from 01.12.1992 to 02.12.2002 along with his regular service from 02.12.2002 to 30.06.2012.

15.The Writ Petition is allowed accordingly No costs. Consequently, M.P(MD)Nos.1 and 2 of 2015 are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Secretary,
School Education (R1) Department,
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Chennai-600 009.

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+1cc to M/s.P.GUNASEKARAN Advocate in SR. No.1102
+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.1687

NBI
JS/MSA/CM/07.03.2017/6P-11C

W.P. (MD) No.10746 of 2015

05.01.2017