



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].Nos.1095 and 1442 of 2016

P.Saroja : Appellant in Both Writ Appeals

Vs.

1. State of Tamil Nadu, rep by
The Secretary to Government,
School Education Department,
Secretariat, Chennai 9.
2. The Director of School Education,
College Road, Chennai 9.
3. The District Educational Officer,
Musiri, Musiri Taluk,
Trichy District.

: Respondents in Both Writ Appeals

PRAYER in W.A.[MD].No.1095 of 2016: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 06.06.2016 made in Review Application (MD).No.2 of 2016 in W.P.(MD).No.9044 of 2015, on the file of this Court.

PRAYER in W.A.[MD].No.1442 of 2016: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 13.10.2015 made in W.P.(MD).No.9044 of 2015, on the file of this Court.

Prayer in REV.APLC(MD). 2/ 2016 :

The review petitioners prefer this memorandum of Grounds of Review Application to review the order dated 06.06.2016 passed in WA.(MD).No.9044/2015.

Prayer in WP(MD). 9044/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to pass orders notionally regularizing the service of the petitioner s husband from 14.10.66 to 30.06.2007, the date of his retirement as regular service and pay all the retirement benefits with arrears of family pension from 01.07.2007 and continuously with 18% interest per annum including compassionate appointment.



For Appellant : Mr.R.Singaravelan
Senior Counsel for Mr.D.Selvanayagam

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

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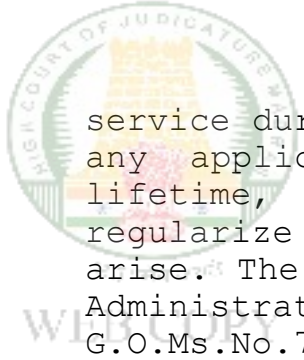
COMMON JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

The appellant herein filed W.A.(MD).No.1442 of 2016, challenging the order, dated 13.10.2015, made in W.P.(MD).No.9044 of 2015, whereby and whereunder the learned Single Judge of this Court has dismissed the Writ Petition filed by the appellant herein seeking to direct the respondents therein to pass orders notionally regularizing the service of the husband of the appellant from 14.10.1966 to 30.06.2007, the date of his retirement, as regular service and pay all the retirement benefits with arrears of family pension from 01.07.2007 and continuously with 18% interest per annum, including appointment on compassionate ground.

2. The case of the appellant before the learned Single Judge is that the appellant herein is the legally wedded wife of the deceased - A.Palanisamy, who was appointed on 14.10.1966 as Part Time Sweeper in Government Higher Secondary School, Musiri Taluk, Trichy District. He retired from service on 30.06.2007 and he died on 30.06.2008, leaving behind his aged mother, his wife, two sons and a daughter. The appellant herein, thereafter, was employed in the said school as Cook Assistant on a meagre sum of Rs.800 - Rs.1,000/-. Her husband took all out efforts, along with similarly situated persons, to get his service regularized in Class IV Post. In fact, by virtue of the orders passed by this Court in several cases, the Government issued orders, viz., G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2016, G.O.Ms.No.111, School Education, (R1) Department, dated 09.05.2012, G.O.Ms.No.247, School Education (R1) Department, dated 03.10.2012 and G.O.Ms.No.137, School Education (R1) Department, dated 27.10.2011, regularizing the Part Time Sweepers. Her husband, as on 28.02.2006, had completed 40 years of service and as such, he should have been considered for regularization. Since the claim of the appellant was not considered, she was constrained to file W.P.(MD). No.9044 of 2015, seeking to direct the respondents therein to pass orders notionally regularizing the service of the husband of the appellant from 14.10.1966 to 30.06.2007, the date of his retirement as regular service and pay all the retirement benefits with arrears of family pension from 01.07.2007 and continuously with 18% interest per annum, including appointment on compassionate ground.

3. The said Writ Petition was opposed by the respondents before the learned Single Judge by filing a counter affidavit stating that the husband of the appellant did not claim for regularization of his



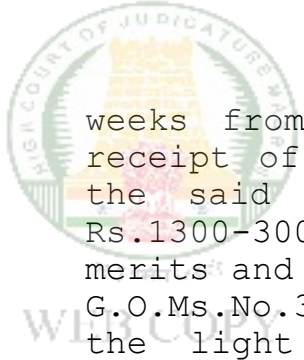
service during his lifetime. When her husband has not chosen to make any application seeking to regularize his service during his lifetime, question of considering the claim of the appellant to regularize the service of her husband, after his demise, does not arise. The Government Orders issued in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 are not applicable to the facts of the present case, since the husband of the appellant worked in a non-sanctioned post.

4. After hearing both sides, the said Writ Petition was dismissed by the learned Single Judge, by order dated 13.10.2015. Seeking to review the order dated 13.10.2015 made in W.P.(MD). No.9044 of 2015, the appellant filed Review Application (MD).No.2 of 2016, which was dismissed by the learned Single Judge, on 06.06.2016. That is how, the appellant is now before this Court with these Writ Appeals.

5. Today, when the Writ Appeals are taken up for consideration, it is submitted by the learned Senior Counsel appearing for the appellant that though the orders of the learned Single Judge are under challenge, it would suffice, if a direction is issued to the respondents to consider the claim of the appellant, in the light of the Government Order issued in G.O.Ms.No.385, [Finance Salary], Department, dated 27.10.2011 and also the order of this Court dated 24.10.2016, made in W.P.Nos.37055 to 37057 of 2016, wherein this Court has held as follows:-

"Accordingly, this Court directs the petitioners to send a fresh individual representation along with a copy of this order to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the said representation seeking Special Time scale of pay of Rs.1300-3000 + Grade Pay of Rs.300 and pass appropriate orders, on merits and in accordance with law and as per G.O.Ms.No.385, Finance (Paycell) Department, dated 1.10.2010 and in the light of G.O.(2D) No.129, School Education, (Ni.Va.4(2)), Department, dated 31.5.2016 and as per G.O.(2D) No.239, School Education (Ni.Va.4(2)) Department, dated 7.9.2016, within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the petitioners and it is for the first respondent to consider the claim of the petitioners strictly on merits and in accordance with law. All the writ petitions are disposed of accordingly. No costs."

6. In view of the above, both the Writ Appeals are disposed of, directing the appellant to send a fresh representation along with a copy of this Judgment to the first respondent within a period of two



weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the said representation seeking Special Time scale of pay of Rs.1300-3000 + Grade Pay of Rs.300/- and pass appropriate orders, on merits and in accordance with law and as per the Government Order in G.O.Ms.No.385, Finance (Paycell) Department, dated 01.10.2010 and in the light of G.O.(2D) No.129, School Education, (Ni.Va.4(2)), Department, dated 31.5.2016 and as per G.O.(2D) No.239, School Education (Ni.Va.4(2)) Department, dated 07.09.2016, within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the appellant and it is for the first respondent to consider the claim of the appellant strictly on merits and in accordance with law and pass appropriate orders. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai 9.
2. The Director of School Education,
College Road, Chennai 9.
3. The District Educational Officer,
Musiri, Musiri Taluk,
Trichy District.

NB

TE/CM-MSA : 02/03/2017 : 4P/4C

COMMON JUDGMENT MADE IN
W.A. [MD] .Nos.1095 and 1442 of 2016
01.02.2017