



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

W.P. (MD) .No.17276 of 2013

and

W.M.P. (MD) .No.220 of 2017

M.Muthuramalingam

.. Petitioner

Vs.

1.State of Tamil Nadu represented by  
its Secretary to Government,  
Municipal Administration and  
Water Supply Department,  
Fort St.George, Chennai-600 009.

2.The Commissioner of Municipal Administration,  
Chepauk, Chennai-05.

3.The Commissioner,  
Madurai Corporation,  
Madurai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the 3<sup>rd</sup> Respondent in Ref.No.Ma Ni 2/018336/2012 dated 26.07.2012 and quash the same and consequently direct the respondents to regularize the temporary services rendered by the petitioner in Madurai Corporation from 06.06.1978 to 25.08.1994 and the same shall be taken into account for counting seniority, monetary and all attendant service benefits.

For Petitioner :Mr.M.Saravanakumar

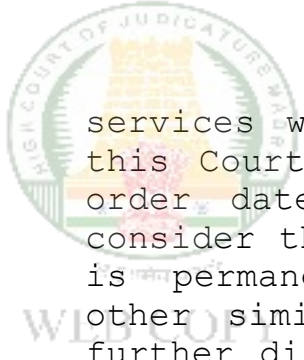
For Respondents 1 & 2 :Mr.S.Kumar,  
Additional Government Pleader.

For 3<sup>rd</sup> Respondent :Mr.R.Murali

#### ORDER

Challenging the order of the Commissioner, Madurai Corporation dated 26.07.2012 rejecting the request of the petitioner to fix seniority from 31.07.1991, namely, the date of the order passed in W.P.No.15630 of 1990 and to calculate his temporary service for grant of pension, the present writ petition has been filed.

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner was initially appointed as a Section Writer in the respondent corporation on 06.06.1978. Since the



services were not regularized for about 22 years, he approached this Court by filing W.P.No.15630 of 1990 and this Court, by an order dated 31.07.1991 directed the respondent Corporation to consider the regularization of service of the petitioner, if there is permanent vacancy to the said post and consider him along with other similarly placed persons. The respondent corporation was further directed to consider the petitioner's claim on merits and if the petitioner is found suitable, directed to absorb him on permanent basis. In compliance with the said order of this Court, the services of the petitioner were regularized on 26.08.1994 and the petitioner was appointed as a Bill Collector.

3.The petitioner is due to retire on 30.06.2017. Therefore, the petitioner had made a representation to the respondent corporation seeking to fix the seniority on the assumption that he was appointed on 31.07.1991, (i.e.) the date of the order of this Court in the earlier writ petition in W.P.No.15630 of 1990 and for grant of full pension by including his temporary services from 1978 to 1994, (i.e.) from the date of initial appointment till the date of regularization. Both the requests are negatived by the respondent corporation by the impugned order.

4.Mr.M.SaravanaKumar, learned counsel appearing for the petitioner would rely upon Rule 11 of the Tamil Nadu Pension Rules, 1978 which contemplates that services rendered by a Government servant either in temporary or officiating capacity should be counted for the purposes of qualifying service in order to determine the pension.

5.The respondent has relied upon G.O.Ms.No.437 Finance Pension Department, dated 23.06.1988 and G.O.Ms.No. 955, Finance Pension Department, dated 23.12.1991 to reject the request of the petitioner regarding pension.

6.G.O.Ms.No.437, dated 23.06.1988 deals with counting of period of services paid from contingencies only and G.O.Ms.No.955, dated 23.12.1991 is a clarification issued by the Government to G.O.Ms.No.437, dated 23.06.1988 based on the order of the Tamil Nadu Administrative Tribunal in O.A.No.1 of 1999, dated 14.11.1990. In effect clause 3 of G.O.Ms.No.437, dated 23.06.1988 which makes the benefits available only to the persons those who have retired after 23.06.1988 was deleted.

7.Rule 11 of the Tamil Nadu Pension Rules, 1978 makes it clear that even temporary service should be counted for the purposes of determining qualifying service for pension.

8.In similar circumstances, this Court in **Mr.V.Ganapathy Vs. State of Tamil Nadu (2013) 2 MLJ 399** has held that the restriction to Rule 11 of Tamil Nadu Pension Rules in allowing only 50% of the service rendered in temporary basis for grant of pensionary benefits cannot stand the test of Article 14 of the Constitution of India. The relevant portion of the said order



"13.Rule 11 of the Pension Rules and the Government Order restricting the benefit of service rendered on temporary service to 50% only, therefore cannot be held to be constitutionally valid, as it is hit by Article 14 of the Constitution of India."

9.In **K.Gopinathan Vs. State of Tamil Nadu in W.P(MD) No.11807 of 2014**, dated 14.06.2016, this Court while following the order of this Court in W.P.(MD)Nos.15258 and 15468 of 2006, dated 18.07.2007 has also held that temporary service should also be taken into account for the purpose of calculating the qualifying service for pension.

10.It is also seen that the said order has been confirmed in W.A.(MD)No.16 of 2009, dated 16.02.2009. In the said judgment, it has been observed as follows:-

"8.Rule 11 of the Tamil Nadu Pension Rules, 1978, of which reference has been given by the learned Single Judge, relates to commencement of qualifying service for payment of pension. The relevant portion of which is quoted hereunder:

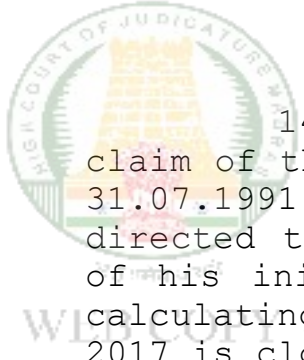
"11.Commencement of qualifying service.-(1) subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date of takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1<sup>st</sup> October, 1969, 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."

It will be evident from the above rule that for payment of pension no only the appointment in the substantive capacity to be looked into but the appointment in an officiating or temporary capacity is also to be counted for commencement of qualifying service.

11.In view of the above said judgment of this Court, the law is now settled that temporary service should also be taken into account for the purposes of determining qualifying service of the employee for the purpose of pension.

12.It is not in dispute that the petitioner was appointed on temporary basis on 06.06.1978 and therefore, his services for the purposes of pension should be deemed to be commenced on the date of temporary appointment that is from 06.06.1978. Hence, there will be a direction to the respondent corporation to calculate the pension of the petitioner on the basis that he was appointed with effect from 06.06.1978.

13. So far as the seniority is concerned, I do not think that the case of the petitioner merits acceptance. Pursuant to the order passed by this Court in W.P.No.15630 of 1990, dated 31.07.1991, the respondent corporation has appointed the petitioner in a regular basis on 26.08.1994. The petitioner having been appointed cannot now seek seniority from the date of the order of this Court.



14. In fine, the writ petition is partly allowed. The claim of the petitioner for fixation of seniority with effect from 31.07.1991 stands rejected and the respondent corporation is directed to include the services of the petitioner from the date of his initial appointment (i.e.) 06.06.1978 for the purpose of calculating pension. No costs. Consequently, W.M.P (MD) No.220 of 2017 is closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar (C.S.)

To:

1. The Secretary to Government  
State of Tamil Nadu,  
Municipal Administration and  
Water Supply Department,  
Fort St. George, Chennai-600 009.
2. The Commissioner of Municipal Administration,  
Chepauk, Chennai-05.
3. The Commissioner,  
Madurai Corporation,  
Madurai.

+1 CC TO MR. R. MURALI, ADVOCATE, SR NO. 58943

+1 CC TO MR. M. SARAVANA KUMAR, ADVOCATE, SR NO. 58641

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO. 59060

rmi/vsg

MAS/RSK/SAR1:09.06.2017:4P-7C

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