

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2018

Coram

THE HON'BLE MR.JUSTICE M.VENUGOPAL
&
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.19429 of 2017

M.Thankam

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government
Home (Court-II) Department
Fort St. George
Chennai - 9.

2.The Registrar General
High Court of Judicature at Madras
Chennai - 104.

3.The Principal Judge
City Civil Court
High Court Campus
Chennai -104.

4.The Accountant General (A & E)
Teynampet
Chennai - 18.
(R4 impleaded as per order dated
01.08.2017 in W.M.P.No.21247/2017
in W.P.No.19429/2017 सत्यमेव जयते

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the claims of the petitioner to count the petitioner's past temporary service along with regular service by condoning one day break in service for the purpose of pension and accordingly grant pension to the petitioner w.e.f. 01.06.2016 with all benefits. .

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.E.Manohar,
Additional Govt. Pleader for R1

Mr.Md.Omar for
Mr.S.Haja Mohideen Gisti for R2 & R3
Mr.Vijay Shankar for R4

O R D E R

(Order of the Court was made by M.VENUGOPAL, J.)

Heard the Learned Counsel for the Petitioner, Learned Additional Government Pleader for the First Respondent, Mr.Md.Omar, Learned Counsel for the Second and Third Respondent and the Learned Counsel for the Fourth Respondent.

2. The counter of the Second and Third Respondent is filed. However, the counter of the First and Fourth respondent is not filed.

3. According to the petitioner, she entered into the Judicial Service as temporary Typist in the year 1998-1999 through Employment Exchange and that she joined duty on 25.01.1999. Ever since from the date of her appointment as Typist, she worked as temporary Typist continuously without any break till 26.04.2006. All of a sudden, to her shock and surprise she was ousted from Judicial Service on 26.04.2006 evening. Again, she was allowed to join duty in Judicial Service in the post of 'Copyist' on 28.04.2006 F.N. on regular basis. After serving in numerous posts, she was lastly promoted as Bench Clerk Grade II in the year 2015 and she was permitted to retire from service on attaining the age of superannuation on 31.05.2016.

4. The petitioner's version is that the Tamil Nadu Public Service Commission had not conducted any special test for Typists, who were in service, as was conducted to the earlier batch. Hence, she and others filed W.P.No.10132 of 2005 before this Court for absorption as regular employee. This Court, on 24.03.2006 had disposed of W.P.No.10132 of 2005 with the following observation "in view of the above, if the petitioners files applications for giving employment in any of the posts of Reader/Examiner/Copyists, the respondents concerned are directed to consider the same and pass appropriate orders of appointment as directed above".

5. Pursuant to the order passed by this Court on 24.03.2006 in W.P.No.10132 of 2005, the petitioner submitted a representation to the concerned authority seeking an alternative employment. Based on the High Court order, she was ousted from service by the Third Respondent/Principal Judge, City Civil Court, Chennai in Roc.No.60/2006/E2, dated 26.04.2006 and further that she was provided with an alternative employment by

the third respondent on 28.04.2006. After receiving the appointment order, she joined duty as Copyist on 28.04.2006. She was promoted as Assistant on 21.05.2010. Later on 04.06.2013, she was promoted as Bench Clerk Grade-III and then promoted as Bench Clerk Grade-II on 23.12.2014. Subsequently, she retired from service on attaining the age of superannuation on 31.05.2016.

6. The petitioner and other after joining duty in the post of Copyist, addressed a representation to the Third Respondent/Principal Judge, City Civil Court, Chennai on 19.09.2014 with a request to consider and condone the one day break in her unblemished Judicial Service in the posts of Typists/Reader/Examiner/Copyists and pass suitable orders.

7. The grievance of the petitioner is that after her retirement, she was not given any kind of pension and therefore, she made a representation to the respondents on 06.06.2017 seeking grant of pensionary benefits by condoning one day break-in-service. In this connection, the learned Counsel for the Petitioner contends that as per Rule 25 of the Tamil Nadu Pension Rules, 1978, and as per the Third Respondent Proceedings dated 27.04.2006, the petitioner is entitled to count her earlier service rendered in the post of Typist by condoning one day break. Till date, she is not granted with any kind of pension and hence, has filed the present writ petition praying for passing of an order by this Court directing the respondents to consider her claim to count her past temporary service together with regular service by condoning one day break-in-service for the purpose of pension and accordingly to grant pension with effect from 01.06.2016 with all benefits.

8. The Learned Counsel for the Petitioner refers to Rule 25 of the Tamil Nadu Pension Rules 1978, under the caption "Condonation of interruption in service", which reads as under:

"(1) In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of Civil Service rendered by a Government servant shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(2) Nothing in sub-rule (1) shall apply to interruption caused by resignation, (or) removal from service or for participation in strike.

(3) The period of interruption referred to sub-rule (1) shall not count as qualifying service."

9. Conversely, it is the submission of Learned Counsel for the Second and Third Respondent that the petitioner was appointed as Typist under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules, in the City Civil Court, Chennai through Employment Exchange and joined on 25.01.1999 as per the proceedings of the Third Respondent in ROC.No.019/99/E3, dated 22.01.1999. She worked as temporary Typist from 25.01.1999 to 26.04.2006. In fact the petitioner and similarly placed 14 others temporary staff members were filed W.P.No.10132 of 2005, seeking the relief of regularization or to alternatively consider them for appointment to any other posts. This Court in the said writ petition, passed orders in directing the Third Respondent to consider the case of petitioner (including the writ petitioners) for appointment to the posts of Reader/Examiners/Copyist on their applications.

10. The Learned Counsel for the Second and Third Respondent brings it to the notice of this Court that pursuant to the order of this Court in W.P.No.10132 of 2005 dated 24.03.2006 and proceedings in ROC.No.588-A/2006/C3, dated 29.03.2006, the petitioner was ousted from service on the A.N. of 26.04.2006 as per the proceedings of the Third Respondent/Principal Judge, City Civil Court, Chennai dated 26.04.2006.

11. Added further, the Learned Counsel for the Second and Third Respondent points out to the service particulars of the writ petitioner, which is extracted hereunder:

S. No.	Designation	Date of Promotion F.N. (Date of Appointment)	Proceedings No. and date	Name of the Court
1	Copyist	28.04.2006 F.N. (Date of Appointment)	61/2006/E2, dt. 27.04.06	City Civil Court, Chennai
2	Assistant	02.06.2010 F.N.	133/2010/E2, dt. 01.06.10	Unit of City Civil Court, Chennai
3	Bench Clerk Grade-III	06.06.2013 F.N.	155/2013/E2, dt. 30.05.13	Unit of Metropolitan Magistrate's Court, Chennai
4	Bench Clerk Grade-II	08.01.2015 F.N.	337/2014/E2, dt. 23.12.14	Unit of City Civil Court, Chennai

S. No.	Designation	Date of Promotion	Proceedings No. and date	Name of the Court
	She retired from service on superannuation on the A.N. of 31.05.2016			

12. The Learned Counsel for the Second and Third Respondent proceeds to point out that pursuant to the order passed by this Court in W.P.No.10132 of 2005, dated 24.03.2006, the Second Respondent/High Court on the administrative side had directed in ROC.No.588-A-2006-C3, dated 29.03.2006 that on the lines of the orders of High Court in the above writ petition to extend similar benefits to the petitioners in the said writ petition and to similarly placed persons. Indeed, the High Court had issued the following guidelines for their appointment, which runs as under:

"1.The Appointing Authorities of the unites where the temporary Steno-Typists, Typists and Junior Assistants were already ousted, shall, on their application, if any, consider giving employment to them in the posts of Reader/Examiner/Copyist, on regular basis, as fresh entrants;

2.The Appointing Authorities of the units where the temporary Steno-Typists, Typists and Junior Assistants are working, shall, first oust them from service and then on their application, if any, consider giving employment to them in the posts of Reader/Examiner/Copyist, on regular basis, as fresh entrants, after one clear day from the date of their ousting.

3.The Appointing Authorities shall incorporate specifically in the appointment order that the appointment is subject to the conditions that their appointment to these posts is the first appointment in Tamil Nadu Judicial Ministerial Service and any temporary service rendered by them in any post including the post of Steno-Typist/Typist/Junior Assistant will not be considered for the purpose of the service benefits viz., Pay Protection, Increment, Seniority and Promotion. (except for pensionary benefits)

4.The Appointing Authorities shall issue the appointment order after obtaining a declaration from each individual to the effect that he/she is willing to accept any one of the posts, viz., Reader/Examiner/Copyist, subject to their

satisfying the qualifications prescribed for the post.

5.The Appointing Authorities shall make it clear in the appointment order that the candidates should take up the appointment within the time granted for joining the post and that if they failed to join the post as aforesaid there will not be further offer of appointment to them.

6.The Appointing Authorities after making the appointments shall send proposals to enable the High Court to address the Government for relaxation of age rule, wherever necessary."

13. Based on the aforesaid guidelines, it appears that the petitioner had submitted a letter of request seeking to appoint her in any of the posts of Copyist/Reader/Examiner. Accordingly, she was ousted from service on the A.N. of 26.04.2006 as per Office proceedings of the Third Respondent in ROC.No.60/2006/E2, dated 26.04.2006 and she was appointed in the post of Copyist on 28.04.2006 in the City Civil Court, Chennai on regular basis as fresh entrant as per the proceedings dated 27.04.2006. That apart, she was informed in her appointment order that her appointment to the post of Copyist is the first appointment in Tamil Nadu Judicial Ministerial Service and any temporary service rendered by her in any posts including the post of Steno-Typist/Typist/Junior Assistant will not considered for the purpose of service benefits i.e., pay protection, increment, seniority and promotion (except for pensionary benefits). She was promoted as Assistant on 02.06.2010, Bench Clerk Grade-III on 06.06.2013 and Bench Clerk Grade-II on 08.01.2015. She retired from service on superannuation on the A.N. Of 31.05.2016.

14. It is projected on the side of the Second and Third Respondent that the petitioner along with 14 others staff members had submitted an application dated 19.09.2014 requesting to condone the break-in-service and to regularise the service from the date of their appointments i.e., with effect from 1997-1998. The requests of the writ petitioner and other similarly appointed other staff members were rejected by the Second Respondent's proceedings in ROC.No.588-A/2006/C3, dated 29.03.2006 stating that they will be treated as fresh entrants/fresh appointment and they were informed that their appointment to the post of Examiner/Reader/Copyist is the first appointment in Tamil Nadu Judicial Ministerial Service and any temporary service rendered by them in any post (including the post of Steno-Typist/Typist/Junior Assistant) will not be considered for the purpose of service benefits viz., pay

protection, increment, Seniority and Promotion (except for pensionary benefits) and the individual duly intimated as per Official Memorandum in Dis.No.15411/2014/E2 dated 18.12.2014.

15. The Learned Counsel for the Second and Third Respondent submits that the petitioner has submitted representation dated 06.06.2017 to the Secretary to Government, Home (Courts-II) Department, Secretariat, Chennai, the Second Respondent/Registrar General, High Court, Madras, and the Third Respondent/Principal Judge, City Civil Court, Chennai, requesting to condone the one day break-in-service and count the entire service for pension and to grant the same. It transpires that her request was not acceded to and she was also informed through the Third Respondent's Official Memorandum dated 28.07.2017 that since she was appointed as a fresh entrant after one clear day break-in-service, temporary services rendered by her in the post of Typist cannot be considered for the purpose of service benefits as per the Second Respondent's proceedings in ROC.No.588-A/2006/C3, dated 29.03.2006. Furthermore, according to the Second and Third Respondents, from the date of petitioner's new service, the old pension scheme was abolished and that the 'Contributory Pension Scheme' was introduced.

16. The pith and substance of the plea of the Second and Third Respondent is that the petitioner's request to count her past temporary service along with regular service by condoning one day break-in-service for the purpose of pension cannot be considered, because of the reason that she was appointed as fresh entrant with effect from 28.04.2006 and she was coming under the Contributory Pension Scheme, which was introduced with effect from 01.04.2003.

17. By way of Reply, the Learned Counsel for the Petitioner seeks in aid of the decision of the Honourable Supreme Court in Madhukar Vs. State of Maharashtra & others reported in 2014(3) Supreme Page 353 at special page 357, whereby and whereunder, it is observed as follows:

"As per Rule 48(3) in the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a government servant under the Government, shall be treated as automatically condoned and the pre-interruption services to be treated as qualifying service."

18. Also, in the aforesaid decision, at page 357 at paragraphs 9 to 11, it is observed as follows:

"9. Admittedly, the appellant retired from Hislop College on 24-5-1983 i.e. after 1-10-1982;

therefore, the appellant is entitled to the benefits in terms of the Resolution dated 11-3-1992.

10. Rule 46 of the 1982 Rules relates to forfeiture of service on resignation. Under Rule 46 (1) "resignation from a service or a post entails forfeiture of past services". Sub-rule (4) of Rule 46 deals with the cases where the resignation shall not entail forfeiture of past services. But the said Rule 46 is not applicable to the appellant as he neither claimed the benefit of pension under the said Rules nor was he paid pension in terms of the said Rules.

11. As per Paragraph 3 of the Resolution dated 11-3-1992 the benefit of previous service by condoning break in service can be granted only if there is compliance with conditions contained in Rule 48(1) of the 1982 Rules, which reads as follows:

"48. Condonation of interruption in service.—(1) The appointing authority may, by order, condone interruptions in the service of a government servant:

Provided that—

(a)***

(b) the interruptions have been caused by reasons beyond the control of the government servant;

(c) the total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruptions, if any; and

(d) the interruption including two or more interruptions, if any, does not exceed one year.

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a government servant under the Government, shall be treated as automatically condoned and the pre-

interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service."

19. As far as the present case is concerned, the Registrar of the Third Respondent through Official Memorandum in Dis.No.9301/2017/E2, dated 28.07.2017 (with reference to the application/representation of the petitioner dated 06.06.2017) had stated that since she was appointed as a fresh entrant after one clear day break of service, temporary service rendered by her in the post of Typist cannot be considered for the purpose of service benefits, as per the proceedings of the Second Respondent cited second in the reference (High Court Proceedings in ROC.No.588-A/2006/C3, dated 29.03.2006). Further she was informed that from the date of her new service the old pension scheme was abolished and instead Contributory Pension Scheme was introduced and hence, her request cannot be considered.

20. At this juncture, this Court, on mere running of the eye of the Second Respondent's proceedings in ROC.No.588-A/2006/C3, dated 29.03.2006, is of the considered view that the third direction in candid terms unerringly observes that any temporary service rendered by them in any post including the post of Steno-Typist/Typist/Junior Assistant will not be considered for the purpose of service benefits viz., pay protection, increment, seniority and promotion (except for pensionary benefits).

21. Continuing further, it is to be noted that Rule 24 of the Tamil Nadu Pension Rules, 1978, enjoins as follows:

"24.Effect on Interruption in service.- (1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist."

22. It is to be relevantly pointed out that in para 3 of G.O.No.259, Finance (Pension) Department, dated 06.08.2003, the Government of Tamil Nadu had issued the following orders:

"i) A new Contributory Pension Scheme based on

defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 01.04.2003.

ii) The employee's contribution and the Government contribution, if any, towards the scheme shall be spelt out separately.

Iii) After issue of detailed orders from Government of India, introducing new scheme to their employees, the State Government will, if necessary, modify these orders and issue rules and regulations for the Contributory Pension Scheme for State Government employees recruited on or after 01.04.2003."

23. Further in para 4 of the aforesaid Government Order dated 06.08.2003, it is mentioned as under:

"The following notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Articles 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amended to the Tamil Nadu Pension Rules, 1978.

2. The amendment hereby made shall be deemed to have come into force on the 1st April 2003.

AMENDMENT

In the said Rules, in Chapter I, the following provision shall be added to rule 2:-

"Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent."

24. Moreover, in G.O.No.430, Finance (Pension) Department, dated 06.08.2004 of the Government of Tamil Nadu, with a view to implement the contributory pension scheme, the following further orders were issued:

"(i) It is mandatory for all the new employees, who are recruited on or after 01.04.2003 to become members of the Scheme. Each employee will pay a monthly contribution of 10% of Basic pay and DA from his salary to the Contributory Pension Scheme.

(ii) A matching contribution will be made by the State Government for each employee, who contributes to the scheme.

(iii) The contribution towards Contributory Pension Scheme shall be recovered from the salary of the employees every months as is done now for GPF."

25. Relying upon the words "except for pensionary benefits", the Learned Counsel for the Petitioner vehemently contends that the Official Memorandum dated 28.07.2017 of the Registrar of the Third Respondent is silent about the words except for pensionary benefits and as such the said reply of the Third Respondent dated 28.07.2017 is not in requirement or fulfilment of the directions issued in the proceedings of the Second Respondent in ROC.No.588-A/2006/C3, dated 29.03.2006. As a matter of fact, the Official memorandum of the Third Respondent dated 28.07.2017, is conspicuously silent as to the term 'except for pensionary benefits' (as mentioned in High Court proceedings No.ROC.588-A/2006/C3, dated 29.03.2006). As such, this Court, without expressing any opinion on the respective stand taken by the parties and also not delving deep into the subject matter in issue, simplicitor at this stage, directs the Third Respondent/Principal Judge, City Civil Court, Chennai to look into the Application/Representation of the petitioner dated 06.06.2017 afresh and to pass necessary 'De Novo' orders, after taking into account the relevant proceedings of the Second Respondent/High Court, Madras dated 29.03.2006 as stated supra, bearing in mind the relevant Tamil Nadu Pension Rules, 1978, taking into consideration of G.O.No.259, Finance (Pension) Department, dated 06.08.2003 and the G.O.No.430, Finance (Pension) Department, dated 06.08.2004 of the Government of Tamil Nadu and other Rules and Regulations governing the subject, within a period of four weeks from the date of receipt of a copy of this order. Before parting with the case, this Court makes it lucidly clear that the Third Respondent shall pass fresh orders in question in a Fair, Free, Just, unbiased, dispassionate manner and that too with an open mind, of course, uninfluenced and untrammelled with any of the observations made by this Court in this Writ Petition. If the petitioner requires any personal hearing, then, an opportunity may be provided to her by the Third Respondent to the petitioner, by adhering to the Principles of Natural Justice and to take final call in the subject matter in issue.

26. With the aforesaid observations/directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary to Government
Home (Court-II) Department
Fort St. George
Chennai - 9.

2.The Registrar General
High Court of Judicature at Madras
Chennai - 104.

3.The Principal Judge
City Civil Court
High Court Campus
Chennai -104.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No.38356

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.38763

W.P.No.19429 of 2017

BS(CO)

GSP(02/07/2018)

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