

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.37448 of 2016
and
WMP.No.36287 of 2017

Mrs.K.Mythili

.... Petitioner

-Vs-

- 1.The State
Rep. By Secretary to Government,
Personnel & Administrative Department,
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Registrar,
High Court,
Chennai-600 104.
- 3.The Registrar,
Office of the City Civil Court,
Chennai-600 104.
- 4.The Principal Judge,
City Civil Court,
Chennai-600 104.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Official Memorandum dated 20.09.2016 of the 3rd respondent in Dis.No.11876/E2/2016 and quash the same and direct the respondents 2 to 4 herein to include the name of the petitioner in the regular Pension scheme taking into account of the petitioner's services as Typist from 9.6.1997.

For Petitioner : Ms.A.L.Ganthimathi

For Respondents: Mr.Sricharan Rengarajan
AGP For R1
Mr.M.Baskar
for RR2 to 4

ORDER

[Order of the Court was made by N.SATHISH KUMAR, J.]

This writ petition has been filed to call for the records relating to the Official Memorandum dated 20.09.2016 of the 3rd respondent in Dis.No.11876/E2/2016 and quash the same and direct the respondents 2 to 4 herein to include the name of the petitioner in the regular Pension scheme taking into account of the petitioner's services as Typist from 4.6.1997.

2. The brief facts in filing this writ petition is as follows:-

2.1. The petitioner was appointed as a Typist in the Court of Principal Judge, City Civil Court, Chennai on 04.06.1997. Thereafter, she was posted as Copyist, by proceedings dated 18.03.1998. Since the appointment as a Copyist was not in consonance with the Service Rules, she has challenged the same in WP.No.14324 of 2002, which was disposed of on 07.03.2006 with the observation that any application is filed by any ousted steno-typist or steno-typist, who is temporarily continuing, necessary steps for giving employment in any of the posts of Reader/Examiner/Copyist shall be taken by the respective Principal District Judge and appropriate orders regarding appointment shall be issued.

2.2. In pursuant to the above observation, the 2nd respondent, by proceedings dated 29.03.2006, issued directions, directing the authorities on their application, if any, considering them by giving employment in the posts of Reader/Examiner/Copyist, on regular basis, as fresh entrants, after one clear day from the date of their ousting and such appointment will be made subject to the condition that their appointments 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).

2.3. Pursuant to the said direction, the 4th respondent ousted the petitioner from service with effect from 26.04.2006 from the post of Typist by proceedings dated 27.04.2006 and appointed as Copyist with effect from 28.04.2006 as a fresh entrant. As per the appointment order, the petitioner's service as Typist and Copyist shall be counted for pensionary benefits. Now, the petitioner, on enquiry found that her name was included in the present Contributory Pension and not continuing the

regular pension scheme. She has made a representation to the respondents 3 and 4 to include her name in the regular pension scheme, treating her service from the date of her initial appointment, so as to eligible for pensionary benefits, as per the direction issued by the 2nd respondent. However, the above representation has not been considered by the 3rd respondent. Hence, the present writ petition.

3. In the counter affidavit filed by the respondents 3 and 4, paragraphs 2 to 10 reads as follows:-

"2. I submit that on perusal of the Service Register, it is found that the writ petitioner was appointed as Typist in the City Civil Court, Chennai through Employment Exchange and joined duty on 09.06.1997 as per the proceedings of the Principal Judge, City Civil Court, Chennai, in ROC.No.88/97/A3, dated 04.06.1997. The petitioner worked as temporary Typist from 09.06.1997 to 19.03.1998. The writ petitioner and 2 others had submitted written requisitions for their conversion as Copyists in this unit on the ground that they are over aged and in the event of their ousting they would not get Government appointment and their dependents would be put to hardship for their livelihood. The then Principal Judge considered their request sympathetically and converted them as Copyists since the scale of pay of Copyist was upgraded and made equivalent to Typist w.e.f.1.6.88. The Writ Petitioner was converted as Copyist w.ef.20.3.98 and the probation was declared in the post of Copyist on the A.N of 8.6.1999. Subsequently, other temporary Typists of this unit had also submitted similar applications for such conversion as Copyist. Their claims were rejected on 6.10.98 observing as follows:-

"There cannot be any such transposition from Typist to Copyist for a separate Roaster is maintained for Copyists. It would amount to erroneous procedure if a temporary candidate is to be regularised in a permanent substantive vacancy. Such transposition cannot be permitted and disallowed."

Subsequently, the temporary Typists working in the City Civil Court, Chennai, had filed W.P.No.20341/2000 for their absorption in this unit wherein the Registrar General, High Court, Madras was cited as one of the respondent. The said Writ Petition was dismissed on 3.7.01. Subsequently the Hon'ble High Court, Madras have raised queries as to how conversion of temporary Typist as Copyist were made when there is no specific provision in the rule for such conversion. To straighten the irregular conversion, she was re-appointed as

temporary Typist from the post of Copyist w.e.f.01.04.2002 as per the order of the Principal Judge, City Civil Court, Chennai, in ROC.No.35/2002/E3, dated 22.03.2002 as such an appointment was not in consonance with the provision of the Service Rules.

3. I submit that the Writ Petitioner has filed a Writ Petition before the Hon'ble High Court, Madras in W.P.No.14324/2002 and W.P.M.P.No.19301/2002 requesting to quash the order of re-appointment as temporary Typist and to appoint her in the regular post. The Hon'ble High Court, Madras has passed an Order in the above said Writ Petition directing this office to consider the application if any filed by the Petitioner for giving employment in any of the posts of Reader/Examiner/Copyist and to pass appropriate order of appointment.

4. Similarly, in view of the orders passed in W.P.No.10132/2005 filed by the Petitions therein/temporary Typists prayed for regularizing their services in the posts of Typist or other appropriate posts, the Hon'ble High Court has directed the appointing authorities to take necessary steps for giving employment to ousted Typist or Typist who is temporarily continuing, on their application, in any of the posts of Reader/Examiner/Copyist and issue appropriate orders of appointment.

5. In pursuance of the above writ order, the Hon'ble High Court on administrative side has stated in ROC.No.588-A/2006/C3, dated 29.03.2006 that on the lines of the orders of the Hon'ble High Court in the above Writ Petitions extending the benefits to the petitioners therein and / or similarly situated persons, the High Court has considered the representation of the temporary Steno-Typists/Typists/Junior Assistants who have not filed any writ petitions in this regard, taking into account their adequate experience in the Judicial Department and also issued the following guidelines:

1. The Appointing Authorities of the units 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.

6. Based on the above Writ Order, the individual had submitted a letter dated 31.03.2006 requesting 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 vide this office proceedings in ROC.No.60/2006/E2, dated 26.04.2006 and appointed in the post of Copyist on 28.04.2006 in the City Civil Court, Chennai vide this office proceedings in ROC.No.62/2006/E2, dated 27.04.2006, as fresh entrant, after one clear day from the date of her ousting as directed by the Hon'ble High Court. 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 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)

7. I submit that the Petitioner has already submitted an application dated 24.04.2009 requesting to condone the break-in-service occurred before regularization and to fix her pay by taking account the past services rendered by her. The requests of the individual along with similarly appointed other staff members were rejected stating that as per the High Court Proceedings in ROC.No.588-A/2006/C3, dated 29.03.2006, they will be treated as fresh entrant/fresh appointment. The facts were intimated to the individual vide this Office Official Memorandum dated 29.04.2009.

8. I submit that the petitioner has submitted an application dated 01.07.2016 through the Principal Judge (I/c), Family Court, Chennai requesting to include her name in the regular pension scheme as per the Hon'ble High Court's guidelines and the appointment order issued by this office.

9. I submit that as per the G.O.Ms.No.259 Fin. (Pension) Department dated 6.9.2003, the Government have introduced a new pension scheme based on defined contributions for the employees of the State of Tamil Nadu, who are newly recruited after 01.04.2003. The Government in G.O.Ms.No.430 Fin. (Pension) Department dated 06.08.2004 have issued further orders that the new Contributory Pension Scheme based on defined contributions for all the employees, is mandatory for all the new employees who are recruited on or after 1.4.2003 to become members of the scheme.

Since she was appointed as a fresh entrant on 28.4.2006, she was brought under Contributory Pension Scheme based on the above said G.O.s. As per the above said guidelines of the Hon'ble High Court, Madras, the request of the petitioner was not considered as she was appointed as a fresh entrant on 28.04.2006 F.N. She was informed the facts through this office Official Memorandum in Dis.No.11876/E2/2016, dated 20.09.2016."

10. It is relevant to mention at this juncture that since the Petitioner was regularized in the year 2006, she was brought under the New Pension Scheme, viz., Contributory Pension Scheme. She accepted the appointment order without any protest whatsoever. However, after 10 years,

she is indirectly challenging the order of appointment and hence the Writ Petition is hit by latches. In view of the above said facts, the Writ Petition is liable to be dismissed both on merit and as well as on latches."

4. The learned counsel appearing for the petitioner submitted that though the petitioner was appointed in the year 1997, she was re-designated as Copyist and the same was challenged by her in a writ petition in the year 2006 in WP. No.14324 of 2002. Thereafter, as per the proceedings in ROC.No.588-A/2006/C3 dated 29.03.2006, she was appointed to substantive vacancy in the year 2006. The main contention of the learned counsel is that while the petitioner was appointed on a regular basis, the following direction was given by the 2nd respondent:

"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).

5. Therefore, it is the contention of the learned counsel for the petitioner that as the petitioner is continuing in service, the above service has to be included for a pensionary benefits, whereas now she has been included in the Contributory Pension Scheme. It is against the further appointment order. The very long service of the petitioner and experience has taken away by including in the Contributory Pension Scheme. Hence, learned counsel submitted that the petitioner ought to have been included in the old Pension Scheme and not under the Contributory Pension Scheme. It is the further contention of learned counsel that as she was appointed to the substantive vacancy in the year 2006, she has made a contribution as required under law and there were deductions towards the retiring benefits, hence denying the right to continue the old pension scheme is not according to law. Therefore, learned counsel prayed for quashing the order of the respondents 2 to 4 and include the petitioner in the regular pension scheme.

6. It is the contention of learned counsel for respondents 2 to 4 that the petitioner was originally appointed under Rule 10(a) (i) of Tamil Nadu State and Subordinate Service Rule temporarily and time to time, she was ousted from service and re-appointed temporarily. Only when some of the employees filed writ petition seeking to regularize their service in WP Nos.16321, 17630 and 18409 of 2001, challenged the order of termination, this Court observed that the persons who put in

experience can be absorbed as Reader/Examiner, Copyist and Typist. Based on the orders of this Court, proceedings in ROC.No.61/2006/E2 dated 27.04.2006 was issued by the 2nd respondent to appoint the petitioner. Her appointment to the said post is the first appointment in the Tamil Nadu Judicial Ministerial Service and any Temporary Service including the post of Junior Assistant is not considered for service benefits.

7. We perused the materials. The petitioner was originally appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules as Typist and she has not appointed through Tamil Nadu Public Service Commission as required under Rule 16(a) (i), 16(c) and 16(e) of the Tamil Nadu Judicial Ministerial Service Rules. The said appointments were made owing to emergency, which are arising immediately in a vacancy in the post borne on the cadre of service, class or category and there would be undue delay in making such appointments. Such appointments can be made temporarily, as the person appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules shall be replaced as soon as possible a number of candidates or approved candidates selected. Many temporary appointments were made in the Judicial Department and some of them were ousted, when the regular appointments were made through Tamil Nadu Public Service Commission. In the said situations, the persons, who were not been regularly appointed are required to be ousted from service. Therefore, the challenge made by the similarly placed temporary appointees for regularization, who were ousted from service ended in failure. This Court, in WP Nos. 16321, 17630 and 18409 of 2001 declined the prayer of the writ petitioners for regularisation. However, it is observed as follows:-

"5. In the present writ petitions, request has been made for regularisation of the post of steno-typist since the selection was not conducted by the Tamil Nadu Public Service Commission as contemplated. Obviously, it is not possible to issue any direction for regularisation of these petitioners or similarly situated persons in the post of steno-typist which is required to be filled through the Tamil Nadu Public Service Commission. However, we are given to understand that the posts of reader/examiner/copyist are lying vacant in different courts and since these people have acquired adequate experience, such persons should be absorbed as Reader/Examiner/Copyist against any available vacancies. It is also made clear that in view of the lifting of the ban order as per G.O.Ms.No.14 dated 07.02.2006, there cannot be any impediment for appointing these persons or similarly situated persons in the respective posts of Reader/Examiner/Copyist. If any application is filed by any ousted steno-typist or steno typist who is temporarily continuing, necessary steps for giving employment in any of the posts of Reader/Examiner/Copyist shall be taken by the

respective Principal District Judge and appropriate orders regarding appointment shall be issued.

6. Writ petitions are disposed of accordingly. No costs. Consequently, connected WPMPs are closed."

8. Based on the above writ orders, proceedings were issued by the 2nd respondent to various appointing Authorities. Accordingly, the petitioner and others, who were ousted from service have been appointed as Copyist in the City Civil Court, Chennai and it is specifically made clear that their appointment is the first appointment in the Tamil Nadu Judicial Ministerial Service and any temporary service rendered by them in any post will not be considered for the purpose of service benefits viz., Pay Protection, Increment Seniority and Promotion (except for pensionary benefits). Petitioner was appointed as a fresh entrant on 28.04.2006. From the appointment order, we could see that the petitioner was originally ousted from temporary service before her appointment to the substantive vacancy. Therefore, we are of the view that temporary appointment would not give any right to the petitioner to claim any benefits. Temporary appointments were made to meet the emergency situations when regular appointments were not been made through the Tamil Nadu Public Service Commission. Such being the position, the person, who was appointed temporarily on condition that his service can be terminated any time, cannot claim any benefit such as her experience to include the same towards the retirement benefits when she was appointed at a later point of time.

9. Though it is the contention of the learned counsel for the petitioner that several deductions were made towards retirement benefits while the petitioner was in service, we did not find any such material in the typed set of papers filed by the writ petitioner. In fact, the pay drawn particulars available in the typed set does not show any deductions towards the retirement benefits. Admittedly, the petitioner is appointed only temporarily, the question of including in the pension scheme did not arise at all. Such view of the matter, now the petitioner cannot claim that her service as a temporary employee shall be taken into consideration to place her in the old pension scheme. Such contention cannot be countenanced at all since she has been appointed as a fresh entrant in the substantive vacancy and her appointment itself treated as first appointment. By the time, when the petitioner was appointed in the substantive vacancy, contributory pension scheme came into effect from 01.04.2003 and the above scheme will apply to all the employees, who are recruited on or after 01.04.2003. The petitioner, attempt to regularise her temporary service, also failed in WP.No.14324 of 2002. Now, the petitioner trying to

achieve indirectly what she could not be done directly. Merely because in the appointment order it was mentioned "except pensionary benefits", it cannot be construed that such employee should be included only in the old pension scheme. Such interpretation is given, it will go against the very scheme of the Contributory Pension Scheme. The petitioner having accepted her employment as a first appointment in the year 2006, now cannot contend that she should be included in the old pension scheme. Though the learned counsel relied upon the judgment of the Division Bench of this Court in Union of India Vs. K.Punniyakoti and others [2014 (2) CTC 777], the above facts are entirely different. In fact the petitioners in the above case were appointed on 31.12.1999 on condition that 50% of their service rendered under temporary status would be counted for the purpose of retirement benefits, after their superannuation. They have been appointed in the above posts on the above condition also that they could be accommodated whenever the regular vacancies arose. There was a specified scheme in that regard known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, with effect from 1993. Only under the above scheme the beneficiaries in the above case were appointed.

10. Therefore, we are of the view that the above judgment is noway helpful to the present case as discussed above. The right of the petitioner for permanent vacancy is crystallized only in the year 2006. Her service as temporary appointment, cannot be counted for any benefit without any specific Rules. Therefore, the contention of the learned counsel cannot be countenanced and the petitioner cannot be included in the oral pension scheme. We find no merits in this case. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

kmi

To:

1. The Secretary to Government,
Personnel & Administrative Department,
Fort St. George, Secretariat,
Chennai-600 009.

2.The Registrar,
High Court,
Chennai-600 104.

3.The Registrar,
Office of the City Civil Court,
Chennai-600 104.

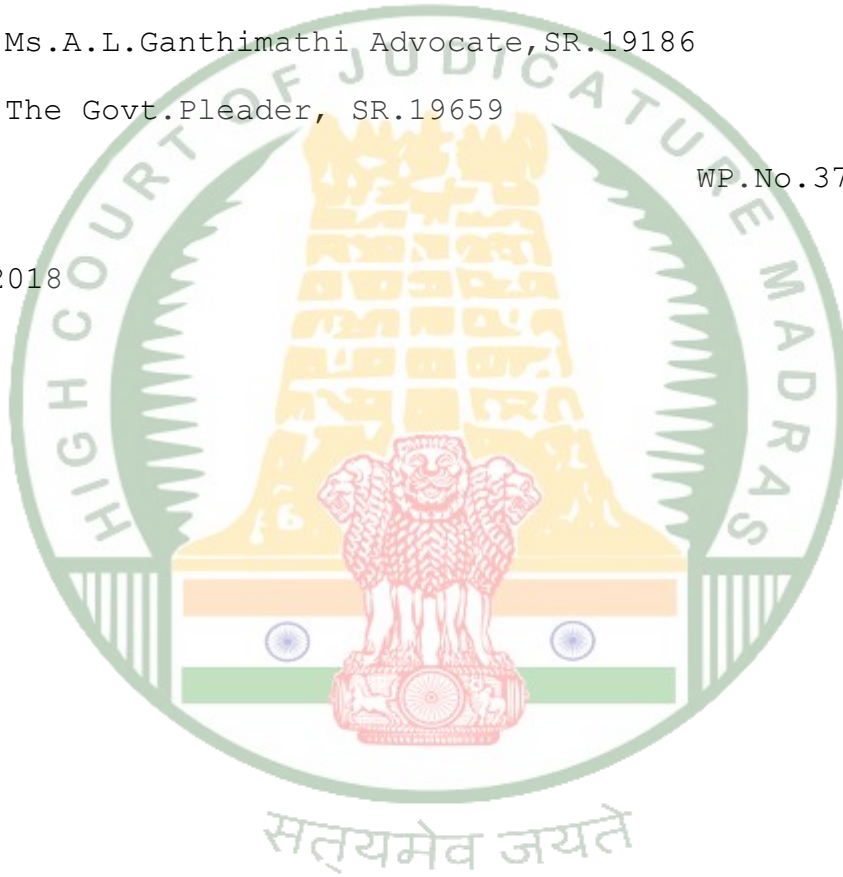
4.The Principal Judge,
City Civil Court,
Chennai-600 104.

+ 1 cc to Ms.A.L.Ganthimathi Advocate, SR.19186

+ 1 cc to The Govt.Pleader, SR.19659

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