



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.193 of 2018

and

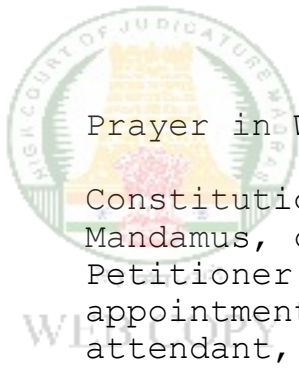
C.M.P. (MD) No.1063 of 2018

- 1.The Secretary to the Government of Tamil Nadu,  
St. Fort George, Chennai-9.
- 2.The Director of School Education,  
College Road, Chennai-6.
- 3.The Chief Educational Officer,  
Nagercoil, Kanyakumari District. ... Appellants

Vs.

- 1.N.Little Flower
- 2.K.Sumangala
- 3.C.Yesuthangam
- 4.J.Lilly Joy
- 5.T.Ponesam
- 6.A.Valliammal
- 7.P.Lakshmi
- 8.S.Lalithambika
- 9.M.Lakshmi Vasantha
- 10.K.Padmeswari ... Respondents

PRAYER: This appeal has been filed under Clause 15 of the Letters Patent, to set aside the order dated 26.10.2015 made in W.P. (MD)



Prayer in WP(MD). 856/ 2013 :

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 regularize the service of the Petitioner in the permanent post from their date of initial appointment and to pay the regular time scale pay with all attendant, monetary service benefits and terminal benefits and family pension.

For Appellants : Mr.V.R.Shanmuganathan  
Special Government Pleader  
For 1<sup>st</sup> Respondent : Mr.D.Srinivasa Ragavan  
For Respondents 2,3,  
5 to 7, 9 and 10 : Mr.S.Titus

### JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants, Mr.D.Srinivasa Raghavan, learned counsel appearing for the first respondent and Mr.S.Titus, learned counsel appearing for the respondents 2, 3, 5 to 7, 9 and 10.

2.This appeal by the State is directed against the order made in W.P.(MD)No.856 of 2013, dated 26.10.2015.

3.The writ Court, by the impugned order dated 26.10.2015, directed the appellant to regularise the services of the respondents in the permanent post from the date on which they were made as full time sanitary workers and to pay the regular time scale pay with all attendant, monetary, service benefits, terminal benefits and family pension. The second limb of the direction issued by the Writ Court was by directing the appellants to count 50% of the part time service rendered by the respondents/writ petitioners for the pension alone. The appellants are not aggrieved by the first limb of direction issuing a direction to the appellant to regularise the service of the respondents/writ petitioners from the date on which they were made as full time sanitary workers. The appellants are aggrieved by the second limb to count 50% of the part time services. The question is whether such services can be reckoned for the purpose of calculating pension. The answer to the question lies in the Rule 11 (4) of the Pension Rules which reads as under:

"(4) for half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after first January 1961 in respect of Government employees absorbed in regular service before first April shall be counted for retirement benefits along with regular service, subject to three conditions, namely:-

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

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

Provided that this sub-rule is applicable to employees rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after first January 1961 and absorbed in regular service before first April 2003.

Provided further that whatever there was break in service before their absorption in regular service before first April 2003, the same shall be specially 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."

4. The learned Special Government Pleader appearing for the appellants submitted that writ petitioners were part time employees and the Rules 11 (4) will not apply. The learned Special Government Pleader relied on the judgment in the case of the Secretary to Government Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu reported in AIR 2017 SUPREME COURT 1304 and submitted that G.O.M.s.No.22 dated 28.02.2006, by which the Government of Tamil Nadu regularised the temporary employee and the said Government order will not apply to part time employee. Therefore, it is submitted that the writ Court has erred in issuing a direction to the appellant to count 50% of the part time services rendered by the respondents/writ petitioners for the purpose of calculating the payable length of service to compute the pension. All the writ petitioners were appointed in the existing vacancies which are approved and vacancy have been caused on account of retirement or other factors. Therefore, for filling up those vacancies which had been sanctioned obviously the salary has to be disbursed on consolidated basis and the question of treating writ petitioners as part time employee is a misnomer. Two of writ petitioners namely, P. Lakshmi and M. Lakshmi Vasantha, have produced a Certificate from Head Master, where they worked last. They were full time employees, from the year 2008. The bonafide or veracity of the certificate cannot be doubted as it is being issued by the Head Master of the Government High School. In respect of the the writ petitioners viz., N. Little Flower and S. Lalithambika their services has already been regularised and 50 % of the past service has been reckoned and the pension also has been paid. All that is required is as to verify the above aspect as to appointment of the writ petitioners in a sanctioned post and that appears to have been satisfied with the case of writ petitioners.



5. For the above reasons, we find there is no error in the order passed by the writ Court. The writ appeal is dismissed. No Costs. Consequently, C.M.P.(MD)No.1063 of 2018 is closed.

Sd/-

Assistant Registrar(C.O.)

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/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,  
St. Fort George, Chennai-9.

2. The Director of School Education,  
College Road, Chennai-6.

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

+1CC to Mr.D.Srinivasaragavan , Advocate, SR.No. 58782

+1CC to Mr.S.Titus, Advocate, SR.No. 59197

W.A. (MD) .No.193 of 2018  
27.03.2018

Mrn

AM/KKR/SAR 4/30.05.2018/4P/6C