

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.773 of 2015

N. Chandra

..Petitioner

Vs

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.
 2. The Director of Medical Education,
Kilpauk, Chennai-600 010.
 3. The Director Cum Superintendent,
Government Maternity Hospital,
Egmore, Chennai - 600 008.
 4. The Principal Accountant General,
(Accounts and Entitlements)
Tamil Nadu, Chennai- 600 018.
- ..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings issued in Na.Ka.No.6967/Ne.2/2014 dated 15.09.2014 (served on 16.10.2014) passed by the 3rd respondent and quash the same and consequently direct the respondents 1 to 3 to count the eligible service rendered by the petitioner from 03.04.1991 to 03.06.2007 along with her regular service rendered from 04.06.2007 to 31.01.2012 and sanction pension to her with effect from 01.02.2012 in the light of the Government Order issued in G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009.

For Petitioner : Mr.S. Ilamvaludhi

For RR 1 to 3 : Mr.J. Ramesh
Additional Government Pleader

For R4 : Mr.V. Murali

ORDER

This writ petition has been filed by the petitioner seeking to call for the records connected with the proceedings issued in Na.Ka.No.6967/Ne.2/2014 dated 15.09.2014 (served on 16.10.2014) passed by the 3rd respondent and quash the same and thereby direct the respondents 1 to 3 to count the

eligible service rendered by the petitioner from 03.04.1991 to 03.06.2007 along with her regular service rendered from 04.06.2007 to 31.01.2012 and sanction pension to her with effect from 01.02.2012 in the light of the Government Order issued in G.O.(Ms)No.408, Finance (Pension) Department, dated 25.08.2009.

2. The writ petitioner was appointed as Basic Servant in the Government Hospital for Women and Children, Egmore, Chennai-600 008, by the 3rd respondent/Director cum Superintendent on 03.04.1991. Thereafter, her service was regularised with effect from 04.06.2007 by the proceedings of the Director and Superintendent of Government Hospital for Women and Children issued in Na.Ka.No.2305/Ne.2/06. According to her, as per the order of the Government issued in G.O.(Ms).No.408, Finance (Pension) Department, dated 25.08.2009, she is eligible to get her service regularized on completion of 10 years from the date of her initial appointment.

3. But pursuant to the order of the Government, the 3rd respondent issued a proceedings in Ref.No.2060/E2/1/08, dated 19.03.2009 and allotted an account number by the Accountant General Office for the Contribution Pension Scheme (CPS) to the petitioner. On 31.01.2012 the petitioner retired from service. Thereafter, the writ petitioner had submitted a representation to the third respondent on 27.08.2014, but the third respondent has rejected her request, by order dated 15.09.2014 issued in Na.Ka.No.6967/Ne.2/2014 by stating that the Government Order in G.O.(Ms).No.408, Pension (Finance) Department, dated 25.08.2009 is not applicable to the writ petitioner herein. Hence, the writ petitioner has come forward with the present writ petition before this Court.

4. Counter affidavit has been filed on behalf of the respondents 1 and 2 by stating that the writ petitioner was appointed as "Substitute Worker" on daily wages basis vide Ref.No.6978/R5/90-91, dated 03.04.1991 by the third respondent. Pursuant to the Government Order, the writ petitioner was regularly appointed as "Sweeper" with effect from 08.05.2007 vide appointment order Ref.No.2305/E2/2/2006, dated 18.05.2007 of the third respondent in the scale of pay of Rs.2550-55-2660-60-3200. It is submitted that the writ petitioner retired from service on 31.01.2012 on attaining the age of superannuation and as per the Government Order issued in G.O.(Ms).No.408, Finance (Pension) Department, dated 25.08.2009, half of the service rendered by the writ petitioner under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 01.01.1961 in respect of Government employees absorbed in regular service before 01.04.2003 alone shall be counted for retirement benefits with the regular service and the aforesaid Government Order will be applicable only to the Government servants whose services are regularized on or before

5. The Government Order passed in G.O.(Ms).No.408, Finance (Pension) Department, dated 25.08.2009 will not be applicable to the petitioner herein since the writ petitioner was absorbed into regular Government Service only with effect from 08.05.2007. It is further submitted that the writ petitioner comes under the Contributory Pension Scheme (CPS), she made her contribution from February 2011 to January 2012 in view of necessary proposals already been sent to the Accountant General, Chennai vide letter Ref.No.189/E2/1/2012, dated 08.06.2012 of the third respondent. However, the aforesaid Government Order is applicable to those who have been absorbed prior to 01.04.2003 into regular Government Services. But, the writ petitioner had been absorbed into regular Government service only on 08.05.2007. Therefore, the aforesaid Government Order will not be applicable to the petitioner herein, because after 01.04.2003 the Old Pension Scheme has been abolished by the Central and State Governments and a new Contributory Pension Scheme (CPS) comes into force. It is further submitted that the writ petitioner is a subscriber in the Contributory Pension Scheme and she made contribution towards the CPS only from February 2011 to January 2012. Though the writ petitioner has worked as Substitute Worker for the past 17 years and she was absorbed into regular service on 08.05.2007 only, the total number of service rendered by her in the regular establishment is only 4 years, 8 months, 23 days. Therefore, the request of the writ petitioner has not been considered for counting her past service as hospital worker with effect from 08.05.2007 vide Revised order Ref.No.2305/E2/2006, dated 04.06.2007 of the third respondent. Hence, the respondents pray to dismiss the above writ petition.

6. Heard Mrs.S.Ilamvaludhi, the learned counsel appearing for the petitioner as well as Mr.J. Ramesh, the learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.V. Murali, the learned counsel appearing for the 4th respondent and perused the materials available on record.

7. According to the writ petitioner, she was temporarily appointed on 03.04.1991 under 10 (a) (1) basis in the regular vacancies through Employment Exchange. The Full Bench of this Court in the case of The Government of Tamil Nadu v. R. Kaliyamoorthy reported in 2019 (5) LW 673 = 2019 (6) CTC 705, held in para no.45, which reads as follows:-

45. (i) ...

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

8. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that as per the

statement in the impugned order passed by the third respondent dated 27.02.2012, the service of the writ petitioner was regularised with effect from 08.05.2007. If the petitioner satisfies the criteria in para no.45(ii) of the Full Bench decision, her claim for counting the past service will be considered.

9. In the light of the aforesaid submissions of the learned counsel appearing on either side and the decision of the Full Bench of this Court cited supra, the respondents are directed to consider the claim of the petitioner afresh and pass appropriate orders on merits and in accordance with law, notwithstanding the order which is impugned in this writ petition as expeditiously as possible within a period of twelve weeks (12) from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is disposed of. No cost.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.
2. The Director of Medical Education,
Kilpauk, Chennai-600 010.
3. The Director Cum Superintendent,
Government Maternity Hospital,
Egmore, Chennai - 600 008.
4. The Principal Accountant General,
(Accounts and Entitlements)
Tamil Nadu, Chennai- 600 018.

+1cc to Mr.V.Murali, Advocate, S.R.No. 106378
+1cc to Mr.S.Ilamvaludhi, Advocate, S.R.No. 105844
+1cc to the Government Pleader, S.R.No. 106704

W.P.No.773 of 2015

PP(CO)

GN(03/03/2020)

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