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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD) No.8285 of 2019

L.Lakshmikutty

... Petitioner

vs.

- 1.The Secretary to Government,
Education Department,
Secretariat,
St.George Fort, Chennai.
- 2.The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai at Marthandam,
Kanyakumari District.
- 5.The Headmaster,
Government Middle School,
Venkanji,
Kuzhithurai,
Marthandam,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.8193 / A1 / 2013 dated 22/05/2014 on the file of the 4th respondent and quash the same and direct the respondents to regularize the service of the petitioner as Full-Time sweeper on the date of completion of ten years of part time service from 17/04/1975 and to pay time scale of pay and other benefits payable with effect from 17/04/1985 by counting the 50% of part time service for the purpose of pension.



For Petitioner : Mr.R.Maheswaran
For Respondents : Mrs.S.Srimathy
Special Government Pleader

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O R D E R

This writ petition has been filed seeking to quash the proceedings of the fourth respondent dated 22.05.2014 and to direct the respondents to regularize the service of the petitioner as full-time Sweeper on the date of completion of ten years of part time service from 27.07.1984 and to pay time scale of pay and other benefits payable with effect from 27.07.10994, by counting 50% of the part time service, for the purpose of pension.

2.Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader who takes notice for the respondents. By consent, the writ petition is taken up for final disposal at the stage of admission itself.

3.The learned Counsel appearing for the petitioner submitted that in an identical case in W.P.(MD)Nos.15808 and 15809 of 2018, dated 14.02.2019, this Court passed the following orders:

"5.In W.A.(MD)No.193 of 2018, dated 27.03.2018, the Division Bench of this Court has passed the following order:

"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

"(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 non-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



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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."

6. In S.L.P.(C)No.23980 of 2018, dated 24.09.2018, the Honourable Supreme Court has held as follows:

"We are not inclined to interfere with the impugned judgment passed by the High Court.

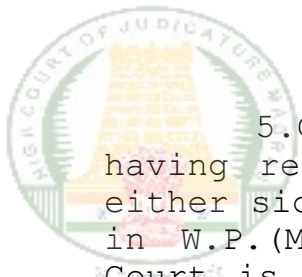
The Special Leave Petition is, accordingly, dismissed. Pending applications, if any, shall also stand disposed of."

7. In line with the judgment of the Division Bench of this Court as well as the order of the Honourable Supreme Court, the impugned orders dated 11.04.2017 are hereby set aside. The respondents are directed to pass appropriate orders in terms of the judgment passed by the Division Bench of this Court in W.A.(MD)No.193 of 2018, dated 27.03.2018, after affording an opportunity of hearing to the petitioners, within a period of eight weeks from the date of receipt of a copy of this order.

8. The Writ Petitions are disposed of with the above direction. No costs."

Hence, the learned counsel prayed for a similar order in this writ petition as well.

4. The learned Special Government Pleader appearing for the respondents has no objection in directing the respondents to consider the claim of the petitioner in the light of the earlier order of this Court.



5.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also in the light of the order passed by this Court in W.P.(MD)Nos.15808 and 15809 of 2018, dated 14.02.2019, this Court is inclined to set aside the impugned order passed by the fourth respondent dated 22.05.2014 and remit the matter to the respondents for fresh consideration.

6.In fine, this writ petition is allowed. The order passed by the fourth respondent in Na.Ka.No.8193/A1/2013 dated 22.05.2014 is set aside and the matter is remitted back to the respondents. Accordingly, the respondents are directed to pass a fresh order in respect of the relief sought by the petitioner, on the same line as observed in the order passed by this Court in W.P.(MD)Nos.15808 and 15809 of 2018, dated 14.02.2019, after affording an opportunity of hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
Education Department,
Secretariat, St.George Fort, Chennai.
- 2.The Director of School Education,
College Road, Nungambakkam, Chennai - 600 006.
- 3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai at Marthandam, Kanyakumari District.
- 5.The Headmaster, Government Middle School,
Venkanji, Kuzhithurai,
Marthandam, Kanyakumari District.

+1CC TO MR.R.MAHESWARAN, Advocate Sr. No. 59364
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 59587

W.P(MD) No.8285 of 2019

TR (29.04.2019) 5P 8C