

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 25.06.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.7289 of 2015**

K.Chockkalingam

... Petitioner

-Vs-

1. The Commissioner of Municipal Administration,
Ezhigam Annex, Chepauk,
Chennai-600 005.

2. The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai-625 002.

3. The Assistant Commissioner,
West Zonal Office of Madurai Corporation,
T.B.Road, Madurai-625 010.

4. The Deputy Director of Local Fund Audit,
Madurai Corporation,
Arignar Anna Maligai,
Madurai-625 002.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in MaNi.10/029056/2014 dated 30.03.2015 and quash the same as illegal and consequentially to direct the second respondent to count the petitioner's service in the post of Cycle Orderly from 17.03.1973 to 31.08.1974 as qualifying service for the purpose of calculation and sanction of pension in terms of Rule 11 and 25(1) & (2) of Tamil Nadu Pension Rules 1978 and in furtherance of the same, to revise and re-fix the petitioner's pension with effect from 01.08.2008 and to pay the consequential allied benefits with arrears.

For Petitioner

: Mr.A.Nawaz Khan,
For M/s.Ajmal Associates.

For R1, R3 and R4

: Mr.M.Jeyakumar,
Additional Government Pleader.

For R2

: Mr.R.Murali

**ORDER**

The order of rejection dated 30.03.2015, rejecting the claim of the writ petitioner for counting of the temporary service rendered by him in the post of Cycle Orderly during the year 1973-74, is under challenge in the present Writ Petition.

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2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was engaged as Cycle Orderly in the time scale of pay on 17.03.1973 in the Malaria Wing of the Health Department. He was relieved on 31.08.1974 and thereafter, he was appointed as Typist and awarded selection grade and special grade.

3.It is brought to the notice of this Court that the writ petitioner had already attained the age of superannuation and retired from service on 31.07.2008. After 7 years from the date of retirement, the present Writ Petition is filed by the writ petitioner, seeking relief of counting the past service rendered by him during the year 1973-74.

4.The learned Additional Government Pleader appearing for the official respondents opposed the contentions by stating that the writ petitioner was engaged as Cycle Orderly and it was not made through Employment Exchange and therefore, the same cannot be counted as qualifying service for the purpose of granting pension after so many years and further as per the rules, the writ petitioner is not entitled for counting that services.

5.The learned counsel appearing on behalf of the writ petitioner states that as per amended rule 11 of the Tamil Nadu Pension Rules, 1978, at least 50% of the services are to be counted for the purpose of reckoning the qualifying services for grant of pension.

6.However, in respect of counting of 50% of the service, terms and conditions are to be satisfied. This apart, the writ petitioner was allowed to retire from service on 31.07.2008. All along, he has not pursued his remedy. The person, who had slept over his right, cannot wake up one fine morning and knock the doors of the Court for the purpose of redressal of the remedy. However, this Court is of the considered opinion that now, the writ petitioner cannot seek such a prayer of counting of the service, in view of the fact that the writ petitioner was not regularly appointed as Cycle Orderly in the sanctioned post. However, it is left open to the writ petitioner to submit a representation for counting of the 50% of the service, if he is otherwise eligible with reference to the Rule 11 of the Tamil Nadu Pension Rules, 1978. In the event of submitting any representation, the authorities competent are empowered to consider the same strictly in accordance with the terms and conditions of the amended Rule 11 of the Tamil Nadu Pension Rules, 1978 and take a decision.



7. With these observations, this Writ Petition stands disposed of. No costs.

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Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)

Myr

To

1. The Commissioner of Municipal Administration,
Ezhigam Annex, Chepauk,
Chennai-600 005.

2. The Assistant Commissioner,
West Zonal Office of Madurai Corporation,
T.B.Road, Madurai-625 010.

3. The Deputy Director of Local Fund Audit,
Madurai Corporation,
Arignar Anna Maligai,
Madurai-625 002.

+ 1 CC to M/s.Ajmal Associates, Advocate in SR.No.71402

+ 1 CC to Mr.R.Murali, Advocate in SR.No.71449

+ 1 CC to The Special Government Pleader SR.No.71473

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