



WEB COPY

W.A. (MD) .No.982 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.982 of 2017

Against W.P(MD) .17276 of 2013

The Commissioner
Madurai Corporation
Madurai-625 002.

... Appellant/ 3rd Respondent

Vs.

1.M.Muthuramalingam ..1st Respondent/Writ Petitioner

2.The State of Tamil Nadu
Rep by its Secretary to Government,
Municipal Administration and Water
Supply Department, Fort St George,
Chennai-9.

3.The Commissioner of Municipal Administration,
Chepauk, Chennai-5. ... Respondents 2 & 3/
Respondents 1 and 2

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.17276 of 2013 dated 06.06.2017.

Prayer in WP(MD). 17276/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd respondent in Ref.No. Ma.Ni.2/018336/2012 dated 26/07/2012 and quash the same and consequently direct the respondent to regularize the temporary service rendered by the petitioner in Madurai Corporation from 06/06/1978 to 25/08/1994 and the same shall be taken into account for counting seniority, monetary and all attendant service benefits.

For Appellant	: Mr.R.Murali
For R2 and R3	: Mr.A.K.Baskara Pandian Special Government Pleader



JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

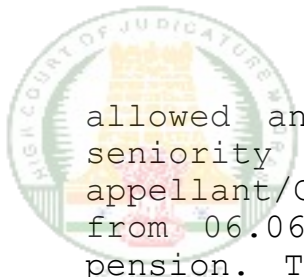
Heard Mr.R.Murali, learned counsel appearing for the appellant and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the second and third respondents.

2.This appeal filed by the Commissioner, Madurai Corporation, is directed against the order dated 06.06.2017 passed in W.P.(MD). No.17276 of 2013. The said Writ petition was filed by the first respondent/writ petitioner praying for issuance of a writ of Certiorarified Mandamus to quash the proceedings of the appellant, dated 26.07.2012 and consequently to direct the appellant/third respondent to regularize the temporary services rendered by the first respondent/writ petitioner in Madurai Corporation from 06.06.1978 to 25.08.1994 for the purpose of seniority, monetary and other attendant service benefits.

3.The first respondent/writ petitioner's case is that he was initially appointed as a Section Writer in the appellant/Corporation on 06.06.1978 and his services were not regularized for 22 years and he approached the Principal Bench of this Court in W.P.(MD).No.5530 of 1990, seeking regularization and the said writ petition was disposed of by order, dated 31.07.1991, directing the appellant/Corporation to consider the regularization of service, if there is permanent contingency in the post and consider the first respondent along with similarly placed persons. In compliance of the direction issued by the Court, the services of the first respondent was regularized by the appellant/Corporation on 26.08.1994 and he was appointed as a Bill collector. The first respondent attained the age of superannuation on 30.06.2017. While in service, the first respondent submitted a representation to fix the seniority stating that he was appointed on 31.07.1991, the date on which, the earlier writ petition filed by the first respondent was disposed of and for further direction to grant full pension by reckoning the period of temporary service ie from 1978-1990. The respondent relied upon the Rule 11 (1) of the Tamil Nadu Pension Rules 1978 and the appellant relied upon the G.O.Ms.No.437 dated 23.06.1998 and G.O.Ms.No.955 (Finance Pension) Department, dated 23.12.1991, to reject the case of the respondent.

4.The contention advanced by the appellant/Corporation was that the benefit of G.O.Ms.No.437 dated 23.06.1988 can be extended only to the persons, who have been in a job involving full time employment and not part-time for a portion of the day.

5.The Writ Court took note of the judgment of the Division Bench in W.A.(MD).No.1616 of 2009, dated 16.02.2009 and held that the temporary service should also be taken into account for the purpose of determining the qualifying service of the employee for the purpose of pension. Accordingly, the writ petition was partly



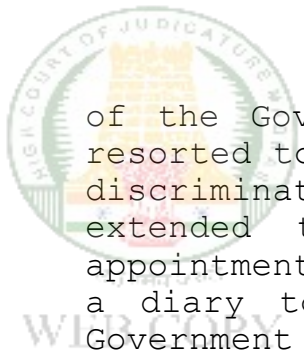
allowed and the claim of the first respondent for fixation of seniority with effect from 31.07.1991 was rejected and the appellant/Corporation was directed to include the entire service from 06.06.1978 to be taken for the purpose of calculating the pension. The appellant/Corporation is on appeal against the said order.

WEB COPY

6.Mr.Murali, learned Standing Counsel appearing for the appellant/Corporation, while reiterating the submission made before the writ Court, emphasised that the service rendered by the first respondent was only a part time service and not a full time employment and the benefit of G.O.MS.No.437 cannot be extended. Further, by referring to the order of appointment issued to the first respondent, dated 26.08.1994, it is submitted that it clearly says that the first respondent was a part-time Section Writer and his services were regularized and now, the first respondent cannot seek for taking into consideration the service rendered by the first respondent on temporary basis, for the purpose of computing the length of service.

7.The learned counsel appearing for the first respondent/writ petitioner submitted that the issue raised before this Court in this appeal has been dealt with in several decisions and all decisions were rendered in favour of the employees and in this regard, the reliance was placed on the judgment of the Division Bench in W.A. (MD).No.51 of 2018, 1431 and 1432 of 2017 dated 27.03.2013 and W.A. (MD).No.844 of 2018 dated 03.07.2018. Further, it is pointed out that in respect of similarly placed persons as that of the first respondent by name is Mathiyarasu, who was also working as a Section Writer on daily wages, the appellant/Corporation has taken 50% of the service rendered on temporary basis and granted the relief and there is no reason as to why the same benefits should not be extended to the first respondent/writ petitioner.

8.We have elaborately heard the learned counsel for the parties. When a person is offered temporary appointment, he has absolutely have no bargaining power and if he does not accept the terms and conditions, he will lose the opportunity for securing employment. The test which has to be completed in the instant case, whether there is a need of the post where there was continue engagement of the service of the first respondent. Though the learned counsel for the appellant was justified in referring to certain proceedings which describe that the first respondent is a part time employee, when the same is put to challenge, it is for the appellant to establish that the first respondent is a part-time employee. There was no record placed before the writ Court to establish that the first respondent was employed as a part-time worker. Furthermore, when Mathiyarasu and others approached this Court and filed W.P.(MD).No.14164 of 1996, while disposing of the said writ petition by order dated 13.11.1999, the Court taking into consideration the nature of work which was held that unless sanction



of the Government is obtained, temporary employment could not be resorted to. We are not here to say as to why the appellant has been discriminated and the benefit extended to Mathiyarasu has not been extended to the first respondent. Furthermore, the order of appointment issued to the appellant at the first instance, mandates a diary to be maintained on daily basis by the appellant. The Government had issued orders of regularization taking into consideration the 13 years of service as Section Writer. If according to the appellant, the first respondent was employed only for few hours in the office of the Corporation, a different stand which has been taken into by the Corporation in all probabilities, the Government could not have considered his case.

9. Therefore, considering the facts and circumstances, we are of the considered view that the first respondent was on temporary basis and there is nothing to show that it was a part time employment or the first respondent was engaged for few hours. G.O.No.437, excludes the benefit to such all those persons, whose services are paid from contingency when such have those persons, who are part time employee for a portion of the day. Therefore, there could have been records produced by the appellant that the first respondent had worked only for 1 or 2 hours. Obviously, there will not be any record because the work assigned to the first respondent was pertaining to the preparation of electoral, which is a work carrying great responsibility and involving time and dedication.

10. Therefore, we are of the considered view that 50% of the part time services rendered by the respondent should be reckoned for the purpose of computing the length of service only for the grant of pension and nothing else. We do not subscribe to the view of the learned Single Bench in directing to take into consideration, the entire part time service rendered by the respondent from the date of initial appointment ie., on 06.06.1978.

11. For all the above reasons, the writ appeal filed by the appellant Corporation is partly allowed and the order issued in the writ petition stands modified by directing the appellant/Corporation to include 50% of the services rendered by the respondent from the date of his initial appointment, ie., on 06.06.1978 for the purpose of calculating pension only. Consequential orders shall be passed by the appellant/Corporation within a period of 12 weeks from the date of receipt of a copy of this order and the monetary benefits also be settled by them. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)



Ns
To

1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water
Supply Department,
Fort St George, Chennai-9.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

3.The Commissioner, Madurai Corporation,
Madurai 625 002.

+2CC TO MR.M.SARAVANA KUMAR, Advocate Sr. No.85528
+1CC TO MR.R.MURALI, Advocate Sr. No. 85696

ORDER MADE IN
W.A. (MD) .No.982 of 2017

NA (CO)
TR(14.10.2019) 5P 7C