

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 04.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.2443 of 2013**

Abraham

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai.

2.The Account General,
Principal Accountant & Entitlement Office,
361, Anna Salai, Chennai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the impugned letter in proceeding No.Pr.AG (A &E) / Legal Cell /WP(MD) 7070/2011/1519/164561, dated 10.12.2012 and to quash the same and further direct the respondents herein to fix the pension taking into account the petitioner's 50% service in Noon Meal Scheme and his entire service as Typist, Copyist and Assistant in the Court and to pay pension and other terminal benefits in the light of the G.O.Ms.No.6, dated 06.01.2010, Social Welfare and Nutritious Meal Department.

For Petitioner : Mr.K.R.Laxman
For R1 : Mrs.S.Srimathy,
Special Government Pleader.
For R2 : Mr.P.Gunasekaran

ORDER

The order of rejection dated 10.12.2012, rejecting the claim of the writ petitioner for counting 50% of services with reference to G.O.Ms.No.6, Social Welfare and Nutritious Meal Department, dated 06.01.2010, is under challenge in the present Writ Petition.

2.The writ petitioner was initially appointed temporarily as Mid-day Meals Organizer on 25.01.1983 and thereafter, brought under regular establishment. The writ petitioner was appointed as temporary Typist through Employment Exchange and subsequently, ousted for want of vacancy, thereafter, he was appointed as Typist on regular basis through Tamil Nadu Public Service Commission. The



writ petitioner set out the claim to count 50% of services rendered by him on temporary basis for the purpose of calculating qualifying service with reference to G.O.Ms.No.6, Social Welfare and Nutritious Meal Department, dated 06.01.2010.

3.The learned counsel appearing on behalf of the Accountant General as well as the learned Special Government Pleader appearing on behalf of the first respondent made a submission that the issues regarding G.O.Ms.No.6, as well as counting of 50% services were settled by the Hon'ble Division Bench of this Court in W.A.(MD) No.587 of 2014 etc., dated 03.12.2014. The relevant paragraphs are extracted hereunder:-

"21.The issue to be decided is whether 50% of the services of the employees, who worked in Noon Meal Scheme and ICDS for number of years, has to be taken into account for calculating pensionary benefits, even when they are appointed in regular Government Service after 01.04.2003?

22.By G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009, 50% of the services rendered by the employees worked in honorarium, daily wages, consolidated pay and in Government non-provincialised services, are permitted to be added to their Government Service, provided, they should have been regularised before 01.04.2003 and ought to have rendered the said service between 01.01.1961 and 01.04.2003. In view of the said policy decision, Rule 11 of the Pension Rules was amended by including Rule 11(4). As per this amended Rule, 50% of the services rendered by an employee in non-pensionable service, is included to calculate the eligibility and quantum of pensionary benefits, if he was absorbed in regular Government Service before 01.04.2003. The persons working in Noon Meal Nutritious Programme and ICDS, who were subsequently appointed as Teachers, made representations to extend the said benefit to them also. The first appellant considering the representations and recommendations of Director of Social Welfare, took a policy decision and extended the said benefit to the employees working in Noon Meal Programme and ICDS, subsequently who were appointed as Teachers, Rural Welfare Officer (Women), Supervisor Grade-II. Accordingly, G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, was issued in this regard. In the said Government Order, no condition or cut off date was mentioned. Therefore, the persons similarly placed like the respondents, contended that the persons, who were appointed in regular Government service after 01.04.2003 are also entitled to 50% of the services rendered in Noon Meal Programme and ICDS services. This proposal for pension was sent to the sixth appellant, who returned the same stating that the persons appointed after 01.04.2003, are not entitled to the benefit of counting



50% of services rendered by them in Noon Meal Programme and ICDS services. The respondent in W.A.(MD) Nos.587, 605 and 606 of 2014 and others filed W.P.(MD) Nos.8287, 7070, 7529 and 8425 of 2011 respectively, to quash the order of the sixth appellant and for issuance of a direction to take into account 50% of their services rendered in Noon Meal programme and ICDS services, for calculating the pensionary benefits.

23.The learned Judge considering G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, rejected the contentions of the appellants that the persons absorbed after 01.04.2003 are not entitled to the benefit of 50% of their services rendered in Noon Meal Programme and ICDS. The learned Judge also held that the sixth appellant ought to have waited for clarification from the first appellant as a clarification is sought for in this regard. We find that the learned Judge erred in the said conclusion.

24.A reading of G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, reveals that in the first paragraph itself, the benefit of G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009, has been extracted and in paragraph No.2, it has been mentioned that the persons similarly placed like the respondents in the writ appeals have sought for the said benefit being extended to them also. The Director of Social Welfare recommended their request. Based on the representation and the recommendation of the Director of Social Welfare, the first appellant had extended the said benefits to the respondents and similarly placed persons like them. As the benefit contained in G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009, has been extended to the respondents and others, the conditions contained in G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009 would also apply to G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010. By G.O.No.41, Finance (Pension) Department, dated 09.02.2010, the first appellant amended Rule 11 of the Rules and thereby included the benefit rendered in G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009. Further, by G.O.(Ms) No.34, Social Welfare and Nutritious Meals Scheme Department, dated 14.03.2013, the first appellant clarified that the persons, who got appointed before 01.04.2003 only are entitled for counting 50% of their services rendered in Noon Meal Organizers and ICDS, for pensionary benefits.

25.The Judgments referred to by the learned counsel for the respondents are not applicable to the



facts of the present case. Various Judgments of this Court referred to by the learned counsel for the respondents only related to the regularization of persons, who were initially appointed in the same Department, and therefore, this Court held that their regularization relates to their original date of appointment. In the present case, concession was granted to the persons, who worked in Noon Meal Programme as well as in ICDS services to be appointed as Teachers/Supervisor Grade-II and Rural Welfare Officers. They were directed to write a test and only successful persons were appointed as Teachers/Supervisor Grade-II and Rural Welfare Officers. Therefore, the Judgments relied on by the learned counsel for the respondents relating to regularization of persons, who worked for number of years in the same Department, cannot be applied to the facts of the present case.

26.The learned Additional Advocate General appearing for the appellants contended that the respondents do not have any vested right for taking into account 50% of their services rendered earlier. According to the learned Additional Advocate General, the respondents retired long before 25.08.2009, when G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009 came into force. We could see considerable force in the said contention. He further argued that the reason for fixing the cut off date before 01.04.2003, is that from 01.04.2003, new pension scheme (CPS) was introduced. The Pension Rules are not applicable to the persons appointed on or after 01.04.2003.

27.A combined reading of G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009; G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010; G.O.No.41, Finance (Pension) Department, dated 09.02.2010; and G.O.(Ms) No.34, Social Welfare and Nutritious Meals Scheme Department, dated 14.03.2013 and Rule 11 (4) of the Pension Rules would clearly reveal that the respondents are not entitled to the benefit of counting of 50% of their services rendered in Noon Meal Programme and ICDS services. Accordingly, we are of the considered opinion that the orders passed by the learned Single Judge, warrant interference at the hands of this Court.

28.In the result,

(i) all the Writ Appeals in W.A.(MD) Nos.587, 605, 606 and 1024 of 2014 are allowed and orders of the learned Judge are set aside and the writ petitions are dismissed; Consequently, connected miscellaneous petitions are closed;



(ii) In view of the same, W.P.(MD) No.12689 of 2014 also fails and the same is dismissed; and
(iii) There shall be no order as to costs, in all the cases."

4. In view of the fact that the Writ Appeals filed by the Government as well as the Accountant General are allowed, the present claim set out in the Writ Petition, deserves no further consideration. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai.

2. The Account General,
Principal Accountant & Entitlement Office,
361, Anna Salai, Chennai.

+1CC TO MR.P.GUNASEKARAN, Advocate Sr. No.73775
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.74012

W.P(MD)No.2443 of 2013
04.07.2019

NS(CO)

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