



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.38765 of 2004

M.Vasanth

... Petitioner

Vs.

1.The Collector (NMP Section),  
Kancheepuram, Kancheepuram District.

2.The Commissioner,  
Thirukazhukundram Panchayat Union,  
Thirukazhukundram,  
Kancheepuram District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records relating to the impugned order of the second respondent in Na.Ka.No.763/2004/A4 dated 11.09.2004 and quash the same and direct the respondents to count the service rendered by the petitioner from 11.09.1984 to 17.07.2003 along with the service rendered by her from 11.08.2003 onwards duly condoning the break in service from 18.07.2003 to 10.08.2003 for all service benefits including fixation of pay and grant her all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondents: Ms.R.Janaki  
Additional Government Pleader

O R D E R

The petitioner was appointed as a cook under Puratchi Thalaivar MGR Nutritious Meal Programme on 11.09.1984. She was working continuously till 17.07.2003 and she was terminated from service for want of vacancy. Thereafter, she was once again appointed on 04.08.2003 at PTVS Middle School, Thirukazhukundram and she joined duty on 11.08.2003. However, the pay scale was fixed at Rs.450/- instead of the last drawn pay of Rs.650/-. She made a representation for grant of pay scale at Rs.650/- which she was drawing previous to her termination. But the request was rejected on the ground that the subsequent appointment is treated as a fresh appointment. Hence, the petitioner is before this Court for condoning the vacant service from 18.07.2003 to 10.08.2003.



2. I have considered the submissions. It is clear that the petitioner was not terminated for misconduct or that she suffered any disqualification. She was only terminated on account for want of vacancy and within a short period she was reinstated in a new place. That means the petitioner was continuously employed with a short break in service and again she was appointed.

3. In a similar circumstances, this Court in W.P.Nos.21987 and 21988 of 2006 [R.Nagarathinam Vs. M.Jani Basha] by its order dated 26.10.2006 as held as follows:-

"12. Fundamental Rule 26(a) specifically provides that all duty in a post on a time scale counts for increments in that time scale. Note 1 issued under F.R.26(a), under G.O.Ms.No.1072 P and A.R. (FR.III) Dept., dated 31.10.1986, makes the Rule position explicit in the following words:

"Note 1.-If an officiating Government servant in a post, who has no substantive appointment is discharged from service for want of vacancy, he shall on appointment to the same post, draw the pay last drawn prior to his discharge from service. The periods prior to the discharge from service shall count for purpose of future increment in the time scale of pay of that post."

13. A reading of the above Note 1 in F.R.26(a) makes it clear that even an officiating Government servant, who has no substantive appointment, is entitled to count his past service for the purpose of pay fixation as well as future increments. While that being the case even in respect of officiating Government servants who have no substantive appointment, a similar benefit cannot be denied to the petitioners who were actually Approved Probationers in the post of Field Assistants, by virtue of their regular appointment in the year 1981.

14. Since the Government had not considered the aforesaid Rule position while fixing the pay of the petitioners, at the bottom-most stage, on reappointment in the year 1993, treating the petitioners as fresh entrants, the action of the respondents is totally illegal. Therefore, the petitioners are entitled to the relief prayed for in the Original Applications, now transferred to this Court.

15. Accordingly, the writ petitions are allowed and the respondents are directed to condone the break in service suffered by the petitioners in the year 1989 and to grant the benefit of pay fixation as well as future increments by counting the entire period of service rendered by them from the date of



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their initial appointment in the year 1981, as duty for all purposes. Such an exercise shall be done by the respondents and completed within a period of four months from the date of receipt of a copy of this order or on production of this order by the petitioner. No costs."

The present case is also identical to the case stated supra. Therefore, I am inclined to grant the relief as prayed for.

4. Accordingly, the writ petition is allowed and the respondents are directed to condone the break in service suffered by the petitioner from 18.07.2003 to 10.08.2003 and count the services for all service benefits including fixation of pay and all consequential monetary and attended benefits. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

bri

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Collector (NMP Section),  
Kancheepuram, Kancheepuram District.

2.The Commissioner,  
Thirukazhukundram Panchayat Union,  
Thirukazhukundram,  
Kancheepuram District.

+1cc to Mr.P. Rajendran, Advocate, S.R.No.2873

+1cc to the Government Pleader, S.R.No.3475

W.P.No.38765 of 2004

RJI (CO)  
EU 9.07.2020