

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.27765 of 2019

M.Thankam

.. Petitioner

-vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Home (Court-II) Department,
Fort St. George,
Chennai - 9.
2. The Registrar General,
High Court of Judicature at Madras,
High Court Campus,
Chennai - 104.
3. The Principal Judge,
City Civil Court,
Chennai - 104.
4. The Accountant General (A&E),
Teynampet,
Chennai - 18.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records connected in Roc.No.48/2019/E2 dated 06.03.2019 of the 3rd respondent and quash the same and direct the respondents to count the past temporary service rendered by the petitioner from 25.01.1999 to 26.04.2006 along with regular service from 28.04.2006 to 31.05.2016 by condoning one day break in service for the purpose of pension and accordingly grant pension to the petitioner with effect from 01.06.2016 with all benefits.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.S.Kamalesh Kannan
Government Advocate
for respondent No.1

Mr.S.Haja Mohideen Gisthi
for respondent Nos.2 and 3

Mr.V.Vijay Shankar
for respondent No.4

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard learned counsel for the parties.

2. This is a peculiar case, where appointment extended to the petitioner foresaw a couple of litigations, as a result whereof, the petitioner was granted appointment as a Typist but has been denied counting of the period of her services prior to regular appointment for pensionary purposes. The grievance of the petitioner is that the denial is arbitrary and violative of Article 14 of the Constitution of India and even otherwise the power of relaxation being available with the Government for counting the previous services, the denial overlooks the exercise of such power. It is further submitted that not only this, the principle of estoppel and acquiescence would come into play when in the very letter of appointment there was a clear recital that other benefits would not be available "except pensionary benefits". The submission therefore is that the impugned order is in the teeth of the aforesaid benefit to which the petitioner was entitled and which cannot be now denied under the garb of introduction of the new Contributory Pension Scheme.

3. The background in which the present writ petition has been filed assailing the rejection order dated 06.03.2019 is that the petitioner along with several others had been appointed to the post of Typist and other similar posts in the City Civil Court, Chennai. The initial appointment of the petitioner, which extended from 1999 till 2006 is clearly on temporary basis by the learned Principal Judge, City Civil Court, Chennai. The service was terminable at any time without assigning any reason and was purely temporary.

4. The petitioner along with 14 others filed W.P.No.10132 of 2005 before this Court claiming regularization of their services and for treating the service to be continuous for all purposes. The said writ petition took notice of the order passed in W.P.Nos.16321, 17630 and 18409 of 2001, decided on 07.3.2006 and in the light of the said judgment, the writ petition was disposed of with a direction to the respondents to consider the request of the petitioners and pass appropriate orders of appointment. We are extracting the said judgment for ready reference:

"The fifteen petitioners in the writ petition have sought for regularisation of their appointments to the post of Typists or any other appropriate posts with all consequential benefits.

2. The counsel for the petitioners would submit that the petitioners have been working in the respective departments for more than six to nine years and therefore their claim should be considered for regularisation.

3. While considering the case of similarly placed persons, this Court in its order dated 7.3.2006 in W.P.Nos.16321, 17630 and 18409 of 2001, passed the following order:

"In the present writ petitions, request has been made for regularisation of the post of steno-typist since the selection was not conducted by the Tamil Nadu Public Service Commission as contemplated. Obviously, it is not possible to issue any direction for regularisation of these petitioners or similarly situated persons in the post of steno-typist which is required to be filled through the Tamil Nadu Public Service Commission. However, we are given to understand that the posts of reader / examiner / copyist are lying vacant in different courts and since these people have acquired adequate experience, such persons should be absorbed as Reader/Examiner/Copyist against any available vacancies. It is also made clear that in view of the lifting of the ban order as per G.O.Ms.No.14 dated 07.02.2006, there cannot be any impediment for appointing these persons or similarly situated persons in the respective posts of Reader/Examiner/Copyist. If any application is filed by any ousted steno-

typist or steno typist who is temporarily continuing, necessary steps for giving employment in any of the posts of Reader / Examiner / Copyist shall be taken by the respective Principal District Judge and appropriate orders regarding appointment shall be issued."

4. In view of the above, if the petitioners file Applications for giving employment in any of the posts of Reader/Examiner/Copyist, the respondents concerned are directed to consider the same and pass appropriate orders of appointment as directed above.

Writ petition is disposed of accordingly. No costs. Consequently, connected WPMP is closed."

5. A perusal thereof would clearly indicate that the writ petition had been disposed of relying on the earlier judgment dated 07.03.2006, where there was a clear recital to the effect that it was not possible to issue any direction for regularization of the petitioners. However, keeping in view their experience and continuance, it was observed that they should be absorbed against the available vacancies and if any such application is filed, necessary steps would be taken by the respective Principal District Judges for issuing appropriate orders.

6. On the basis of the above judgments, the High Court issued proceedings to the following effect on 29.3.2006:

"The High Court accordingly directs that,

- (1) The Appointing Authorities of the Units where the temporary Steno-typists, Typists and Junior Assistants were already ousted, shall, on their application, if any, consider giving employment to them in the posts of Reader/Examiner/Copyist, on regular basis, as fresh entrants.
- (2) The Appointing Authorities of the Units where the temporary Steno-typists, Typists and Junior Assistants are working, shall, first oust them from service and then on their application, if any, consider giving employment to them in the posts of Reader/Examiner/Copyist on regular basis, as fresh entrants, after one clear day from the date of their ousting.
- (3) The Appointing Authorities shall incorporate specifically in the appointment order that the

appointment is subject to the conditions that the appointment to these posts is the first appointment in Tamil Nadu Judicial Ministerial Service and any temporary service rendered by them on any post including the post of Stenotypist/Typist/Junior Assistant will not be considered for the purpose of the service benefits viz., Pay Protection, Increment, Seniority and Promotion (except for pensionary benefits)."

There were other conditions in the said Minutes which are not relevant for the present controversy.

7. Paragraph 3 of the direction is relevant on which heavy reliance has been placed by the petitioner contending that their previous appointment on temporary basis will not be considered for the purpose of any service benefits "except for pensionary benefits".

8. Accordingly, the petitioner and 14 others were relieved treating them to be ousted from service by the learned Principal District Judge on 26.04.2006.

9. By another order passed on the very next date i.e., 27.04.2006, the petitioner along with 14 others were offered fresh appointment and it was described as first appointment in the Tamil Nadu Judicial Ministerial Service. The same further recites that any temporary service rendered by them on any post previously will not be considered for the purpose of service benefits "except for pensionary benefits".

10. Learned counsel for the petitioner relying on the said recitals has urged that it was made clear that pensionary benefits would continue to be available in respect of the past service as well and therefore, no such embargo can be read into the benefits to which they were entitled under the terms of the appointment. Hence, the impugned order of rejection dated 06.03.2019 running counter to the same deserves to be quashed.

11. Apart from placing reliance on the recitals contained in the appointment order, learned counsel for the petitioner has relied on the judgment in the case of Mahesh Chandra Verma v. State of Jharkhand, through its Chief Secretary and others, reported in (2018) 7 SCC 270 to urge that such services deserve to be counted even if the petitioner had been treated as a fresh recruit. It is urged that in the said judgment, it has been clearly held that services rendered in the exigencies under a Scheme of Fast Track Court Judges was in the nature of continuing service and therefore, the services rendered by the Judges as Fast Track Court Judges should be counted towards

their service benefits, including pensionary benefits. It is urged that the said judgment also holds that to deny the same would be unjust and unfair and consequently, the same logic should be applied in the present case to extend the said benefit to the petitioner.

12. Responding to the said submissions, learned counsel for the High Court has invited our attention to the judgment of a Co-ordinate Bench rendered in the case of K.Mythili v. The State, rep. by Secretary to Government, Personnel & Administrative Department, Fort St. George, Secretariat, Chennai-9 and others, reported in 2018 Supreme (Mad.) 290 and it is urged that on an identical set of facts arising out of the same nature of appointment, a Division Bench of this Court has ruled otherwise and has held that merely because the letter of appointment contains recital of benefit of pensionary benefits, the same would be counter to the Contributory Pension Scheme. Hence, any computing of past services would be impermissible. Learned counsel therefore contends that a final verdict given by the Co-ordinate Bench being available, there is no reason to differ from the same and the judgment in the case of Mahesh Chandra Verma (supra) would not apply on the facts of the present case, as it was rendered on the peculiar facts of that case, where benefits had been extended by the Apex Court exercising powers under Article 142 of the Constitution of India. Learned counsel, therefore, submits that the same would not act as a precedent more so because in the said judgment the Apex Court had noted that the Fast Track Court Judges had also undergone the second process of recruitment and therefore to deny the same would be unjust and unfair in the said background. In the instant case, the petitioner or any of the said employees had not undergone any such second round process of recruitment and had been virtually extended the benefit of appointment on the observation made by the High Court in the judgment referred to above and therefore, the Division Bench judgment in the case of K.Mythili (supra) would apply on the facts of the present case.

13. Learned counsel for the petitioner, however, submitted that the ratio of the judgment in the case of Mahesh Chandra Verma (supra) has not been considered by the Division Bench while deciding the case of K.Mythili (supra). This is obvious from the fact that the judgment in the case of Mahesh Chandra Verma (supra) was rendered on 11.05.2018, whereas the Division Bench judgment had already been delivered prior to that on 13.03.2018.

14. We have considered the submissions raised and we find that the nature of appointment of the petitioner was temporary and it was not confirmed or followed by any absorption or

regularization. This, therefore, clearly ruptures the continuity of service for which no benefit can be extended and it is for this reason that the judgment delivered by this Court, as extracted in para 4 above, for consideration of the appointment of the petitioner clearly records that no regularization benefits can be extended. In such circumstances, the continuity of any such service cannot be read into against the terms and conditions of the aforesaid judgment.

15. There is, however, a point to be mentioned on behalf of the petitioner viz., that the very letter of appointment and the first recruitment, as described indicates that they would not be entitled to any benefits "except pensionary benefits". This mentioning of the phrase in the appointment letter as highlighted herein-above was absolutely superfluous in our opinion, inasmuch as extending of the benefits of pensionary service under the old Pension Scheme that too even after coming into force of the Contributory Provident Fund Scheme in 2003 was absolutely impermissible in law. If the appointment of the petitioner was a fresh appointment in 2006 and the engagement that too even without there being any process of fresh recruitment having been followed, there does not appear any occasion for mentioning the said phrase in the said letter of appointment. It is for this reason that we are inclined to accept the reasoning given by the Division Bench of this Court in the case of K.Mythili (supra), which is to the following effect:

"8. Based on the above writ orders, proceedings were issued by the 2nd respondent to various appointing Authorities. Accordingly, the petitioner and others, who were ousted from service have been appointed as Copyist in the City Civil Court, Chennai and it is specifically made clear that their appointment is the first appointment in the Tamil Nadu Judicial Ministerial Service and any temporary service rendered by them in any post will not be considered for the purpose of service benefits viz., Pay Protection, Increment Seniority and Promotion (except for pensionary benefits). Petitioner was appointed as a fresh entrant on 28.04.2006. From the appointment order, we could see that the petitioner was originally ousted from temporary service before her appointment to the substantive vacancy. Therefore, we are of the view that temporary appointment would not give any right to the petitioner to claim any benefits. Temporary appointments were made to meet the emergency situations when regular appointments were not been made through the Tamil Nadu Public Service Commission. Such being the position, the person, who

was appointed temporarily on condition that his service can be terminated any time, cannot claim any benefit such as her experience to include the same towards the retirement benefits when she was appointed at a later point of time.

9. Though it is the contention of the learned counsel for the petitioner that several deductions were made towards retirement benefits while the petitioner was in service, we did not find any such material in the typed set of papers filed by the writ petitioner. In fact, the pay drawn particulars available in the typed set does not show any deductions towards the retirement benefits. Admittedly, the petitioner is appointed only temporarily, the question of including in the pension scheme did not arise at all. Such view of the matter, now the petitioner cannot claim that her service as a temporary employee shall be taken into consideration to place her in the old pension scheme. Such contention cannot be countenanced at all since she has been appointed as a fresh entrant in the substantive vacancy and her appointment itself treated as first appointment. By the time, when the petitioner was appointed in the substantive vacancy, contributory pension scheme came into effect from 01.04.2003 and the above scheme will apply to all the employees, who are recruited on or after 01.04.2003. The petitioner, attempt to regularise her temporary service, also failed in WP.No.14324 of 2002. Now, the petitioner trying to achieve indirectly what she could not be done directly. Merely because in the appointment order it was mentioned "except pensionary benefits", it cannot be construed that such employee should be included only in the old pension scheme. Such interpretation is given, it will go against the very scheme of the Contributory Pension Scheme. The petitioner having accepted her employment as a first appointment in the year 2006, now cannot contend that she should be included in the old pension scheme. Though the learned counsel relied upon the judgment of the Division Bench of this Court in Union of India Vs. K.Punniyakoti and others [2014 (2) CTC 777], the above facts are entirely different. In fact the petitioners in the above case were appointed on 31.12.1999 on condition that 50% of their service rendered under temporary status would be counted for the purpose of retirement benefits, after their superannuation. They have been appointed in the above posts on the above condition

also that they could be accommodated whenever the regular vacancies arose. There was a specified scheme in that regard known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, with effect from 1993. Only under the above scheme the beneficiaries in the above case were appointed."

16. So far as the judgment in the case of Mahesh Chandra Verma (supra) is concerned, as noted above, the said judgment was rendered on the peculiar facts of the continuity of Fast Track Court Judges, who were extended benefits on the exercise of powers under Article 142 of the Constitution of India, which is evident from a perusal of the recital contained in paragraph 16 of the report relied on by the petitioner. Apart from this, as also indicated in paragraph 15 of the said judgment, Fast Track Court Judges had undergone a selection process which was in conformity with the rules applicable. In the instant case, the appointment came only as a measure of direction issued by the High Court without following any due process of selection. This, therefore, distinguishes the ratio of the judgment in the case of Mahesh Chandra Verma (supra) to be applied on the facts of the present case. We, therefore, do not find any merit in the writ petition.

In the result, the writ petition is dismissed. No costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To:

1. The Secretary to Government,
State of Tamil Nadu,
Home (Court-II) Department,
Fort St. George,
Chennai - 9.
2. The Registrar General,
High Court of Judicature at Madras,
High Court Campus,
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3. The Principal Judge,
City Civil Court,
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4. The Accountant General (A&E),
Teynampet,
Chennai - 18.

+1 CC to Govt. Pleader sr 2716.

+1 CC to Mr.V.Vijay Shankar, Advocate sr 2640.

+1 CC to Mr. Haja Mohideen, Advocate sr 2176.

+1 CC to Mr.G.Elanchezhiyan, Advocate sr 2477(12/03/2020)

W.P.No.27765 of 2019

SSI (CO)
SP(04/02/2020)



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