



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
and
THE HONOURABLE MR. JUSTICE **C. SARAVANAN**

W.A. (MD) No. 214 of 2018

and

CMP (MD) No. 1140 of 2018

Against WP (MD) No. 10746 of 2015

1. The Principal Secretary,
School Education (R1) Department,
Secretariat,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Kuzhithurai,
Kanyakumari District.
5. The Assistant Elementary Educational Officer,
Karungal,
Kanyakumari District.
6. The Headmaster,
Govt. (Boys) Higher Secondary School,
Marthandam,
Kanyakumari District.
7. The Headmaster,
Govt. Primary School,
Viricode,
Marthandam,
Kanyakumari District

... Appellants /
Respondents 1 to 7



versus

1. K.Lakshmanan

... 1st respondent /
Writ Petitioner

2. The Accountant General, Accounts &
Entitlements (A&E)
361, Anna Salai,
Teynampet,
Chennai - 600 018.

... 2nd Respondents / 8th respondent

Writ Appeal filed under Clause 15 of Letter Patent against the order dated 05.01.2017 passed in W.P.(MD)No.10746 of 2015.
Prayer in WP(MD). 10746/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to the impugned order in proceedings No.19256/Ni.V.1(2) /2013-2 dated 17.9.2014 and to quash the same and consequently direct the 1st respondent sanction the petitioner s provisional pension and pensionary benefits by taking into account of 50% of the service from 01.12.1992 to 02.12.2002 as a sweeper along with his regular service from 02.12.2002 to 30.06.2012 to arrive at total qualifying service for pension and disburse the arrears thereof with interest within the time stipulated by this Honble Court.

For Appellants : Mrs.S.Srimathi,
Special Govt. Pleader

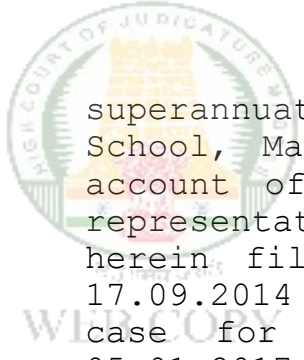
For R1 : M/s.M.R.Sreenivasan

JUDGMENT

[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

1. The first respondent in this appeal was appointed as Part-time Sweeper cum Sanitary Worker in the Government Primary School on 01.12.1992. He was on a consolidated pay of Rs.105/- p.m.

2. It is submitted that the services of similarly placed persons like the first respondent herein were regularized by applying G.O.Ms.No.22, P&AR Department, dated 28.02.2006, upon their date of completion of 10 years of service. The first respondent herein earlier filed a writ petition in W.P.(MD) No.12762 of 2010 for a direction to regularize his service and the said petition was allowed by this Court, vide order dated 13.10.2010. Thereafter, as per the direction of this Court, the service of the first respondent herein was regularized on completion of his 10 years of service, i.e.with effect from 02.12.2002. The first respondent herein thereafter attained



superannuation on 30.06.2012 from the Government Higher Secondary School, Marthandam. He also applied for pension by taking into account of 50% of his service before regularization. The said representation was turned down. Thereafter, the first respondent herein filed W.P.(MD)No.10746 of 2015 to quash the order dated 17.09.2014 passed by the first respondent therein, rejecting his case for pension. Learned Single Judge, vide order dated 05.01.2017, directed the first respondent therein to sanction pensionary benefits by taking into account 50% of the service rendered by the petitioner as Sweeper from 01.12.1992 to 02.12.2002 along with his regular service from 02.12.2002 to 30.06.2012. Aggrieved over the same, the above Writ Appeal is preferred by the Principal Secretary of School Educational Department, Secretariat, Chennai, mainly on the ground that the first respondent herein rendered his service in non-provisionalised service on consolidated pay and therefore, he is not entitled to count 50% of his past service. It is stated that as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, half of the service rendered by a person under the State Government in non-provisionalised service either on consolidated pay or honorarium or daily wages, cannot be treated as a job involving whole time employment.

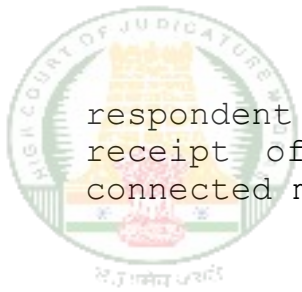
3. It is pointed out before this Court that the first respondent herein was engaged originally as a Sweeper cum Sanitary Worker in various Government establishment including School. It is the specific case of the first respondent that the nature of duty assigned to the respondent, the nature of job expected from the first respondent is not a part-time or temporary job. Hence, the learned Judge rightly allowed the writ petition, holding that the nature of job entrusted to the petitioner/first respondent herein in Educational Institution cannot be termed as part-time. As a matter of fact, the persons who are doing same work, was given permanent employment and work assigned to the first respondent was not different from the work which was allotted to the regular employees, who were engaged as Sweeper cum Sanitary Workers in Schools and other establishment.

4. With regard to the legal submission, a Full Bench of this Court, in a batch of writ appeals (reported in 2019 (6) CTC 705), answered the issue that for the Government Employees, who had rendered service in non-provisionalized services either on consolidated pay or honorarium or daily wage and whose services were regularized before 01.04.2003, it is mandatory that half of services rendered by them should be counted for the purpose of pensionary benefits.

5. In that view of the matter, there is no merit in the Writ Appeal and accordingly, the same is dismissed.

6. In view of dismissal of the Writ Appeal, the appellants are directed to disburse the pensionary benefits to the first

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respondent herein within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

+1 CC to M/s.SPL.GP (SR-11805[F] dated 16/03/2020)

+1 CC to M/s.M.R.SRINIVASAN, Advocate (SR-11821[F] dated 16/03/2020)

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