



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2020

CORAM:

WEB COPY

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

**W.P(MD)No.3914 of 2014**

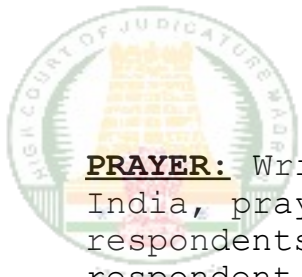
C.Saroja

:Petitioner

.vs.

- 1.The Government of Tamil Nadu,  
Rep. by its Principal Secretary,  
Social Welfare and  
Nutritious Meal Programe,  
Fort St. George,  
Chennai-600 009.
- 2.The Principal Secretary,  
Department of School Education,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai-600 009.
- 3.The Secretary to Government of Tamil Nadu,  
Finance & Pay Cell Department,  
Fort St. George,  
Chennai-600 009.
- 4.The Principal Accountant General,  
(Accounts and Entitlements),  
Tamil Nadu,  
No.361, Annasalai,  
Chennai-600 018.
- 5.The Chief Educational Officer,  
Sivagangai,  
Sivagangai District.
- 6.The District Educational Officer,  
Sivagangai,  
Sivagangai District.
- 7.The Headmaster,  
Government Higher Secondary School,  
Keelapoongudi-630 552,  
Sivagangai District.

: Respondents



**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to send immediate reply to the fourth respondent with regard to the counting of 50% services rendered by the petitioner in the non-pensionable post along with the regular service for payment of pensionary benefits as intimated by the fourth respondent in its letter dated 26.09.2013 made in PEN.10/1/11/111/iv/11010088/2013-14/ADK and pass further orders.

For Petitioner : Mr.M.Saravanan  
For Respondents : Mrs.S.Srimathy,  
1 to 3 & 5 to 6 Special Government Pleader  
For R4 : Mr.P.Gunasekaran

### ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing the respondents 1 to 3 herein to send immediate reply to the fourth respondent with regard to the counting of 50% services rendered by the petitioner in the non-pensionable post along with the regular service for payment of pensionary benefits as intimated by the fourth respondent in its letter, dated 26.09.2013 made in PEN.10/1/11/111/iv/11010088/2013-14/ADK and pass further orders.

2.The case of the Petitioner is that she was appointed as Noon Meal Organizer in the Panchayat Union Elementary School at Melavalasai on 29.01.1983 and she had continued to serve in the said School till 31.12.1995. Subsequently, from 01.01.1996 to till 02.09.2006 she had served as Full Time Noon Meal Organizer. Subsequently, by the proceedings of the Joint Director of School Education, dated 30.08.2006 in Na.Ka.No.57152/C6/C24/06 she has been absorbed and posted as B.T.Assistant. She had joined in the said post on 06.09.2006 in the Government Higher Secondary School, Natham, Dindigul District. Subsequently, she has transferred to Government Higher Secondary School, Keelapoongudi, Sivagangai District by the orders of the Chief Educational Officer, Sivagangai District in Na.Ka.No.3298/A2, dated 28.05.2008. She was retired from service on 30.06.2009 on attaining the age of superannuation.

3. The learned counsel for the petitioner submitted that the petitioner had served only few years in the regular Government Services. She came to understand that as per Rule 11(2) of Pension Rules, 50% of the Contingency Services will be taken into account for the purpose of pension, if the employee is subsequently absorbed in regular service. The Government also issued G.O.Ms.No.408, Finance Department, dated 25.08.2009 and even counted 50%



Honorarium, daily wages, consolidated pay and non-provincialized services. Thereafter, the Government issued G.O.ms.No.6, Social Welfare and Noon Meal Scheme Department, dated 06.01.2010 and ordered to count 50% of the Noon Meal Scheme/ICDS services while calculating pension. The Petitioner has submitted a representations on 15.10.2013 and 25.02.2014 to the respondents requesting the respondents 1 to 3 to send immediate reply to the fourth respondent with regard to her eligibility of pension by counting 50% of service rendered in Noon Meal Centres as informed by the Principal Accountant General Pension in its letter dated 26.09.2013. Even after receipt of the representation, the respondents have not considered the same and has not sent any reply to the fourth respondent till date. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 3 & 5 to 6 and the learned counsel appearing for the fourth respondent and perused the materials available on record.

5. From the perusal of the records, it is seen that the subject-matter issue is covered by the decision of the Larger Bench of this Court made in ***W.A.No.158 of 2016 and batch etc., decided on 03.12.2019 (The Government of Tamil Nadu, Rep. by Secretary to Government, Public Works Department, Secretariat, Chennai - 600 009 Vs. R.Kaliyamoorthy)***.

6. The Full Bench of this Court has stated that as per Rule 2 of the Tamil Nadu Pension Rules, 1978, these Rules shall apply to all Government servants appointed to services and posts in connection with the affairs of the State, which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to the persons in casual and daily rate employment, persons paid from contingencies, persons employed on contract except when the contract provides otherwise, members of the All-India Services, persons entitled to the benefit of a Contributory Provident Fund and persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Service Rules and belong to pensionable service.

7. It is further stated that the Temporary appointments are defined in Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and the same reads as follows:

'10. Temporary appointments:- Sub-Rule (a)(i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post-borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these Rules



and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualification prescribed for the post otherwise than in accordance with the said Rules.

Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission.

(2) Omitted vide G.O. Ms. No.21, P&AR Dept. dated 23.01.1996 wef 23.01.1996.

Provided further that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring.

27.Rule 2 of the Tamil Nadu Pension Rules, 1978 was amended in the year 2003 vide G.O.Ms.No.259 dated 06.08.2003. Text of the said proviso reads as under:-

[Provided that these rules shall not apply to Government servants **appointed on or after the 1<sup>st</sup> April 2003**, to services and posts in connection with the affairs of the State which are borne on pensionable establishment, whether temporary or permanent.]

28.A further amendment was introduced to the said Rules in the year 2010 whereby a new Sub-Rule (4) was added after Sub-Rule (3) to Rule 11 of the said Rules, vide G.O.No.41, Finance (Pension) Department dated 08.02.2010 which reads as follows:-

(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits **along with regular service**, subject to the following conditions, namely:-

"i) Service rendered in non-provincialised



service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break."

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1<sup>st</sup> April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.'

8. Considering the above-stated legal position pronounced by the Larger Bench of this Court, the Petitioner is not entitled for the relief as sought for in the Writ Petition and accordingly, the Writ Petition fails.

9. In the result, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar (CS)

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To

1.The Principal Secretary,  
Social Welfare and  
Nutritious Meal Programme,  
Fort St. George,  
Chennai-600 009.

2.The Principal Secretary,  
Department of School Education,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai-600 009.

3.The Secretary to Government of Tamil Nadu,  
Finance & Pay Cell Department,  
Fort St. George,  
Chennai-600 009.

4.The Chief Educational Officer,  
Sivagangai,  
Sivagangai District.

5.The District Educational Officer,  
Sivagangai,  
Sivagangai District.

6.The Headmaster,  
Government Higher Secondary School,  
Keelapoongudi-630 552,  
Sivagangai District.

+1 CC to M/s.SPL.GP ( SR-12695[F] dated 20/03/2020 )

+1 CC to M/s.R.SUBRAMANIAN, Advocate ( SR-12714[F] dated  
20/03/2020 )

+1 CC to M/s.P.GUNASEKARAN, Advocate ( SR-12859[F] dated  
23/03/2020 )

**ORDER MADE IN**  
**W.P(MD) NO. 3914 of 2014**  
**20.03.2020**

**AP(03/06/2020) 6P 10C**