



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.4405 of 2014

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D.James

:Petitioner

.vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Social Welfare and Nutritious
Meal Programme,
Fort St. George,
Secretariat,
Chennai-600 009.

2.The Director,
Social Welfare Department,
Arunachalam Street,
Chintadripet,
Chennai-600 002.

3.The District Child Development
Project Officer,
Block Nutrition Office,
Vaiyampatti,
Trichy 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 to count 50% of the petitioner's Noon Meal services for pensionary benefits and to award pension and pass orders.

For Petitioner

: Mr.M.Saravanan

For Respondents

: Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing the respondents to count 50% of the petitioner's Noon Meal services for pensionary benefits and to award pension and pass orders.

2.The case of the Petitioner is that he was appointed as Noon Meal Organizer in the Sekkanam Anganwadi Centre on 28.06.1982 and he joined the services on 01.07.1982. Thereafter, on 21.01.2011 the Director of Social Welfare Department appointed him as Office



Assistant in Integrated Child Development Project Office, Marungapuri. He relieved from the Noon Meal Services on 24.01.2011 and joined the regular service as Office Assistant on 25.01.2011. Subsequently, on 28.02.2014 he retired from services on attaining the age of superannuation.

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3. The learned counsel for the petitioner submitted that the petitioner had served only few years in the regular Government Services. 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 representation on 09.03.2014 to the respondents requesting them to consider his request. Even after receipt of the representation, the respondents have not considered the same. 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 Additional Government Pleader appearing for the respondents 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

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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 1st 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



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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 1st 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 (CS-II)

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Sub Assistant Registrar (CS)



To

1.The Principal Secretary,
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Meal Programme,
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Chennai-600 009.

2.The Director,
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3.The District Child Development
Project Officer,
Block Nutrition Office,
Vaiyampatti,
Trichy District.

+1 CC to M/s.SPL.GP (SR-12693[F] dated 20/03/2020)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-12715[F] dated
20/03/2020)

ORDER MADE IN
W.P(MD) NO. 4405 of 2014
20.03.2020

AP(03/06/2020) 5P 6C