



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2020

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THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD) No.15350 of 2015

and

M.P.(MD) Nos.1 and 2 of 2015

T.Amirtha Bai

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary,
Department of Finance (Pension),
Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The Accountant General
O/o. The Accountant General,
261, Anna Salai
Chennai - 18.
- 4.The Commissioner,
Government Data Centre,
Guindy,
Chennai - 600 025.
- 5.The Chief Educational Officer
Kanyakumari District at Nagercoil
Kanyakumari District - 629 001.
- 6.The District Educational Officer
Thuckalay,
Kanyakumari District - 629 001.
- 7.The Headmaster
Government High School,
Thirunathikarai,
Kanyakumari District.

... Respondents



PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the second respondent Director of School Education in Na.Ka.No.86240/R1/E3/2014, dated 08.07.2015 declining to reckon the half of Service of the petitioner as Child Welfare Organiser and declining to condone one day break in Service of the petitioner i.e., on 11.12.1998, quash the same and further Direct the second Respondent Director to condone one day break in service of the petitioner i.e. on 11.12.1998 and further direct the respondents to reckon the half of service rendered by the petitioner as Child Welfare Organiser from 01.07.1982 to 10.12.1998 i.e., 8 years 2 months 20 days for pension and other retirement benefits.

For Petitioner : Mr.Xavier Rajini

For R1, R-2 & R4 to R-7 : Mrs.S.Srimathi,
Special Government Pleader

For R-3 : Mr.P.Gunasekaran
Standing Counsel

O R D E R

The order issued by the second respondent, dated 08.07.2015 declining to reckon half of the service as Child Welfare Organiser by condoning one day break in service on 11.12.1998 is sought to be quashed and further direction is sought for to the second respondent Director to condone one day breaking of service of the petitioner i.e. on 11.12.1998 and to reckon half of the services rendered by her as Child Welfare Organiser from 01.07.1982 to 10.12.1998.

2.The petitioner initially joined as Child Welfare Organiser in the Child Nutrition Centre, Mathoor, Thiruvattar Panchayat Union, Kanyakumari District. She was working on consolidated pay. While, she was working as Child Welfare Organiser, she was appointed as Tamil Pandit in Government High School, Mamsapuram, Virudhunagar District. The petitioner resigned from the post of Child Welfare Organiser on 10.12.1998 for the purpose of joining as Tamil Pandit. Accordingly, she joined as Tamil Pandit on 12.12.1998 in the Government High School, Mamsapuram, Virudhunagar District, with break of one day. The petitioner could not able to join in the School as Tamil Pandit, on the same day, due to Statewide Bandh on 11.12.1998. Thereafter, she was transferred to the Government High School, Thirunathikarai, Kanyakumari District, on 26.01.2005. The petitioner reached the age of superannuation on 31.05.2010 and now receiving the pension.



3.The grievance of the writ petitioner is that she was working as Child Welfare Organiser from 01.07.1982 onwards and resigned the job only for the purpose of joining as Tamil Pandit in Education Department. She could not able to join on the same day, in lieu of Statewide bandh on 11.12.1998. Therefore, she joined as Tamil Pandit in the Government School, Mamsapuram, Virudhunagar District, with a break of one day. However, the second respondent Director of School Education refused to condone the break in service of one day i.e. on 11.12.1998 and due to that the petitioner is unable to get pensionary benefits by counting half of the services rendered by her in the post of Child Welfare Organiser.

4.The claim of the writ petitioner was rejected by citing the Rule 23 of Tamil Nadu Pension Rules, as resignation from a service or post entails forfeiture of past service. Rule 23 is unambiguous. The proviso to Rule 23 states that "a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

5. Rule 24 of Tamil Nadu Pension Rules, enumerates that "the interruptions in service shall not entail forfeiture of past service except when a person was removed or reemployed. The actual interruptions in service shall not, however, count for pension."

6.Rule 23 proviso categorically enumerates that if the resignation is submitted in order to undertake another appointment, then the services are to be counted for grant of pension.

7. In the present case, the petitioner was working as Child Welfare Organiser. She resigned the job on 10.12.1998 and joined as Tamil Pandit on 12.12.1998. She could not able to join on 11.12.1998, due to Statewide bandh. This being the factum established the second respondent ought to have condoned the delay of one day on 11.12.1998 and calculate the qualifying service with reference to Rule 11 of the Tamil Nadu Pension Rules and accordingly, the writ petitioner was working as Child Welfare Organiser on consolidated pay and therefore, she is entitled for counting of half of the services rendered by her in the said post.

8.Under these circumstances, this Court is of the considered opinion that the writ petitioner is entitled for the relief as such sought for in the present writ petition. Consequently, the impugned order passed by the second respondent, Director of School Education, Na.Ka.No.86240/R1/E3/2014, dated 08.07.2015 is quashed and the second respondent is directed to condone one day break in service of the writ petitioner i.e. on 11.12.1998 and thereafter, count the half of the services of the services rendered by her in the post of Child Welfare Organiser for the

purpose of grant of pensionary benefits and thereafter, grant of all the pensionary and other benefits by following the procedures contemplated.

9. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar (CS)

To

- 1.The Secretary,
State of Tamil Nadu
Department of Finance (Pension),
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
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- 3.The Accountant General
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- 6.The District Educational Officer
Thuckalay, Kanyakumari District - 629 001.
- 7.The Headmaster
Government High School,
Thirunathikarai, Kanyakumari District.

+1 CC to M/s.S. XAVIER RAJINI, Advocate (SR-20006[F] dated 14/10/2020)

W.P. (MD) No.15350 of 2015
13.10.2020

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<https://hcservices.courts.gov.in/hcservices/> 4P-9C