



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.9169 of 2015

WEB COPY

G.Muthusaram

... Petitioner

Vs.

1. The State of Tamilnau
Rep by its Secretary,
Home (Prison-II)
Department, Chennai - 9.
2. The Inspector General of Prison,
Prison Department, Chennai.
3. The Additional Director General of Police,
Department of Prison, Chennai - 8.
4. The Superintendent of Police,
Sub-Jail, Nilakottai.
5. The Superintendent
Central Prison,
Madurai.

...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 pertaining to the impugned notice in letter no. 11704/EW/4/2015, dated 05.04.2015 on the file of the third respondent and quash the same as illegal and consequently directing the respondents to regularize the services rendered by the petitioner between 08.07.1998 to 15.09.2006 as a qualifying service and award all consequential benefits, within the time period stipulated by this Court.

For Petitioner

: Mr.G.Karchick

For Mr.T.Lajapathi Roy

For Respondents

: Mr.P.Mahendran

Government Advocate

O R D E R

The order rejected the claim of the writ petitioner for retrospective regularisation and to grant the benefit of old pension scheme in proceedings dated 05.04.2015 is under challenge in the present writ petition.



2.The writ petitioner was appointed as female escort warder at Sub-Jail, Usilampatti. Initially, she was appointed as daily wage employee. She was further, appointed as Female Warder Grade II on 15.09.2006.

3. The grievances of the writ petitioner is that earlier services rendered by the writ petitioner, as daily wage employee from 1998 to 2006, has not been taken into account for the purpose of calculating the qualifying service and her services were not regularised. Due to the said decision of the respondents, the petitioner is unable to get the benefits of old pension scheme.

4. This court is of the considered opinion that the daily wage services cannot be considered as qualifying services automatically. Undoubtedly, the Government issued amendment to Rule 11 wherein, terms and conditions are imposed for calculating half of the services rendered as temporary employees. Thus, the case of the writ petitioner is to be considered, with reference to the Full Bench Judgment rendered by the High Court of Madras in W.A.(MD) No.158 of 2016 etc., Batch dated 03.12.2019. The Full Bench answered the references as extracted hereunder :

"45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before



01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

5. The second respondent is directed to consider the case of the writ petitioner, in the light of the judgment passed by the Full Bench, cited supra and accordingly, pass orders as expeditiously as possible. The petitioner is permitted to submit a detailed representation setting out the facts and details to the second respondent along with the documents. The said exercise is to be done by the second respondent within a period of twelve weeks from the date of receipt of a copy of this order.

6. With these directions, the writ petition stands disposed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Secretary, State of Tamilnadu
Home (Prison-II)Department, Chennai - 9.
2. The Inspector General of Prison, Prison Department, Chennai.
3. The Additional Director General of Police,
Department of Prison, Chennai - 8.
4. The Superintendent of Police, Sub-Jail, Nilakottai.
5. The Superintendent, Central Prison, Madurai.

+1 CC to Mr.T.LAJAPATHI ROY, Advocate SR-19998.
+1 CC to the SPL GP SR-20024.

W.P. (MD) No.9169 of 2015
13.10.2020

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