

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD).No.23516 of 2015
and
W.M.P.(MD).No.11744 of 2018

Mrs.Chella Thangam

... Petitioner

Vs.

The District Educational Officer,
District Educational Office,
Thuckalai,
Kalkulam Taluk,
Kanyakumari District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondent to regularise the petitioner's service from 13.11.2000 the date on which the petitioner was appointed as full time employee and 50% of earlier service be considered for pension benefits.

For Petitioner : Mr.S.Titus

For Respondent : Mr.D.Gandhiraj

Special Government Pleader

ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus, directing the respondent to regularise the petitioner's service from the date on which he was appointed as full time employee and 50% of earlier service be considered for pension benefits.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as a part time Sweeper on 04.08.1986, by the third respondent and she joined duty on the same day. She was appointed as a full time Watchwoman on 13.11.2000 at Pudur Government High School, Kannattuvilai. Thereafter, she was transferred to various Schools. She is aged 59 years and she has only a very short service to retire, at the time of filing this writ petition. She filed this writ petition seeking the relief of regularisation of service from 13.11.2020 and to consider 50% of her past services as part time Sweeper for pensionary benefits.

3. Per contra, the learned Special Government Pleader appearing for the respondent conceded the claim of the petitioner that she was appointed as a part time Sweeper on 04.08.1986 and then appointed as a

full time Watchwoman on 13.11.2000. He further submitted that the petitioner's earlier service was only a part time service and therefore, that service cannot be considered for pensionary benefits. In this regard, he draw the attention of this Court to Rule 11 (2) (i) of the Tamil Nadu Pension Rules, 1978, in support of his submission.

4. Considered the rival submissions and perused the records.

5. From the consideration of the materials and submissions made by the counsel appearing for the parties, there is no dispute with regard to the fact that the petitioner was appointed as a part time Sweeper on 04.08.1986 and then as a full time Watchwoman from 13.11.2000. Rule 11 of the Tamil Nadu Pension Rules deals with the qualifying service. Of course, Rule 11 (2) (i) expressed that the service paid from contingencies involving whole time service alone would be considered for taking half of the service for pension and not part time service. This Court also considered the other provisions as well, especially Rule 11 (2) (i), (ii) and (iv) of the Tamil Nadu Pension Rules, 1978, which reads as follows:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a

portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

6. The petitioner's service was a continuous and followed by regular absorption employment without a break. It is the submission of the learned counsel for the petitioner that though the nomenclature was part time Sweeper, the petitioner was made to work the whole day. The petitioner was paid from contingencies from 04.08.1986. She was absorbed as a full time Watchwoman on 13.11.2000, that too without a break in service. As per Rule 11 (2) (iv) of the Tamil Nadu Pension Rules, the petitioner is entitled for taking into consideration half of her service from 04.08.1986 to 13.11.2000 for calculating the qualifying service for pension. From 04.08.1986 till 13.11.2000 the petitioner was working as a part time Sweeper and then from 13.11.2000 till her retirement, she was working as a Watchwoman and her service has to be regularised.

7. The learned counsel for the petitioner submitted that the petitioner's service was regularised with effect from 2000. This Court finds that there is no need to pass a specific order with regard to the regularisation of service of the petitioner. However, this Court directs the respondent to pass appropriate orders, in the light of Rule 11 (2) (iv) of the Tamil Nadu Pension Rules, considering the petitioner's part time service from 04.08.1986 to 13.11.2000 for calculating the qualifying service for computation of pension.

8. In the result, this Writ Petition is allowed. The respondent is directed to take half of the service of the petitioner from 04.08.1986 to 13.11.2000 for calculating the qualifying service for pension. Accordingly, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No

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