



W.P.(MD).No.1459 of 2016

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 14.09.2022**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.1459 of 2016**

D.Santhi

... Petitioner

**Vs.**

1.The Accountant General (A & E) Tamil Nadu,  
Anna Salai, Teynampet,  
Chennai.

2.The Director of School Education,  
D.P.I. Compound,  
College Road,  
Chennai.

3.The District Educational Officer,  
Melur Education District,  
Melur,  
Madurai District.

4.The Headmaster,  
Government High School,  
Andarkottaram,  
Melur Taluk,  
Madurai District.

... Respondents



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**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order No.Nil dated 08.05.2015 issued by the first respondent and quash the same as illegal and consequently direct the first respondent to take the petitioner's contract basis service period from 25.09.1987 to 12.04.1988 and 01.06.1988 to 12.04.1989 for calculating the net qualifying service.

For Petitioner : No Appearance

For R-1 : Mr.P.Gunasekaran

For R-2 to R-4 : Mrs.D.Farjana Ghoushia,  
Special Government Pleader.

### **ORDER**

This Writ Petition has been filed for Writ of Certiorarified Mandamus, to quash the impugned order dated 08.05.2015 and for a consequential direction to direct the first respondent to take the petitioner's contract basis service period from 25.09.1987 to 12.04.1988 and 01.06.1988 to 12.04.1989 for calculating the net qualifying service.

2. The brief facts of the case are that the petitioner joined as B.T. Assistant (Tamil Pandit) in Bharathiyar Municipal High School, Tirunelveli on



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25.11.1987 under the contract agreement between the school and the petitioner with time scale of pay. The petitioner had worked there till 12.04.1989. During the petitioner's service, the said School has ousted the petitioner on the last working day in the academic year 1987-1988 that is on 12.04.1988. Thereafter, again permitted to rejoin on 01.06.1988. Subsequently, the petitioner was selected through Teacher Recruitment Board and posted as B.T. Assistant (Tamil Pandit) on 21.08.1989 in Government High School, Sirugudi, Natham Taluk, Dindigul District. During the service, the petitioner was transferred to various centers and also promoted as Headmaster on 23.12.2008. The petitioner applied for voluntary retirement on 05.09.2014 and the third respondent vide proceedings dated 29.12.2014 permitted the petitioner to retire on VRS on 14.01.2015. The contention of the petitioner is that while calculating the net qualifying service for the purpose of pensionary benefits, the first respondent calculated the service of the petitioner as 26 years 3 months and 13 days only from 21.08.1989. The petitioner's contract service was not taken into account for net qualifying service. When the petitioner sought to calculate the same, the same was rejected through the impugned order dated 08.05.2015. Aggrieved over the same, the present Writ Petition is filed.



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3. The third respondent has filed a counter stating that as per Rule 14 of the Tamil Nadu Government Pension Rules, 1978, the service on contract basis cannot be taken into account as qualifying service. When the posts are created outside the pensionable establishment, for a specific purpose, pursuant to the recommendations of the Finance Commission, the services rendered by persons on contract basis in those posts cannot count for pensionable benefits. Therefore, the petitioner is not entitled to calculate the service rendered as contract basis.

4. Heard the learned counsel for the petitioner and Mr.P.Gunasekaran, the learned counsel appearing for the first respondent and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents 2 to 4.

5. The contention of the petitioner is that he had served in Bharathiyar Municipal High School, Tirunelveli under contract basis. The said School had appointed the petitioner to serve from 25.11.1987 and allowed to work until 12.04.1988. Thereafter, again permitted to rejoin on 01.06.1988 and then ousted from service on 12.04.1989. The contention of the respondent is that the



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petitioner was appointed on 12.04.1988, then ousted on 30.04.1988. Then again joined on 01.06.1988, then ousted on 12.04.1989. The respondent further contended that the posts created outside the pensionable establishment, for a specific purpose, pursuant to the recommendations of the Finance Commission, the services rendered by persons on contract basis in those posts cannot count for pensionable benefits and relied on the Rule 14 of the Tamil Nadu Government Pension Rules, 1978, which states as under:

*“Rule 14. Counting on service on contract:*

- (1) Any person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment, without interruption of duty may opt either-*
- (2) To retain the Government contribution to the Contributory Provident Fund with interest thereon including any other compensation for that service or*
- (3) To agree to refund to the Government the monetary benefit, referred to clause (a) or to forego the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefit have payable.”*

6. The claim of the petitioner is that such break in service is because of



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the School where the petitioner was ousted from serving on last working day of the academic year. The respondents contended that the said post is only to a specific purpose and hence the petitioner cannot claim any benefits as if it is a permanent post. On perusing the records it is seen that the petitioner was not appointed in any substantive permanent post, hence the petitioner is not entitled to add the said service. In other words the petitioner was appointed in a post which was created outside the pensionable service for a specific purpose. Moreover, the petitioner has not served continuously, since there is interruption in the service. In such circumstances the petitioner is not entitled to add such service as per Rule 14 of the Tamil Nadu Government Pension Rules, 1978. It is seen from the records that the petitioner is already receiving pension by calculating the eligible service. Therefore, this Court is of the considered view that the petitioner is not entitled to add such ineligible service for the counting the pensionable service.

7. Hence, this Writ Petition stands dismissed. There shall be no order as to costs.



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Index : Yes / No

Internet : Yes/ No

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**S.SRIMATHY, J.**

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