



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.03.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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W.P.(MD)No.3102 of 2016
and
W.M.P.(MD)No.2734 of 2016

Y.Devasahayam

... Petitioner

vs

1. The Government of Tamil Nadu,
represented by its
Department of School Education, Fort St. George,
Chennai.
2. The Principal Secretary
Social Welfare and Nutritious Meal Programme,
Fort St. George, Chennai.
3. The Director of School
Education, College Road, Nungambakkam,
Chennai-600 006.
4. The Chief Educational Officer
Theni, Theni District.
5. The Headmaster,
Government Higher Secondary School,
Kullapuram-625 562, Theni District.
6. The Principal Accountant General,
(Accounts and Entitlements), Tamil Nadu,
No.361, Anna Salai,
Chennai-600 0018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Proceedings of the 6th Respondent in Pen20/IV/22009422/RTD/13-14/ADK dated 02.01.2014 and quash the same and direct the 6th respondent to fix the pension taking into account the petitioner s 50% of service rendered as Noon Meal Organizer along with and the petitioners entire service as B.T.Assistant and to pay pension and other terminal benefits.



For Petitioner : Mr.M.R.Sreenivasan
For Respondents : Mr.V.Omprakash
Government Advocate (Civil side)
for R1 to R5
Mr.P.Gunasekaran, ACG SC
for R6

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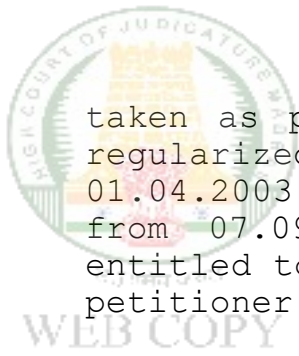
O R D E R

This Writ Petition is filed to set aside the impugned order dated 02.01.2014 with the consequential prayer to direct the sixth respondent to fix the pension taking into account the petitioner's 50% of service rendered as Noon Meal Organizer along with and the petitioner's entire service as B.T.Assistant and to pay pension and other terminal benefits.

2. The brief facts of the case are that the petitioner was qualified with M.A., (History), B.Ed., and waiting for the Teacher post. In the meanwhile, the State Government has filled the Noon Meal Organizers through Employment Exchange. The petitioner's name was sponsored by the Employment Exchange and the District Collector, Kanyakumari, vide proceedings, dated 01.10.1995 has appointed as Noon Meal Organizer in the St.Antonys, High School, Kappukad, Kanyakumari District. The petitioner was discharging his duty and he has served as Noon Meal Organizer for 21 years. In the meanwhile, the Government has conducted a Special Test for the persons who have been serving as Noon Meal Organizer with B.Ed., qualifications. The petitioner appeared for the Special Test conducted by the Teachers Recruitment Board and was appointed as B.T. Assistant on 07.09.2006 at Government Higher Secondary School, Kallipatti, Erode District. The petitioner attained superannuation on 28.02.2013.

3. The claim of the petitioner is to include the Noon Meal Organizer service along with the B.T.Assistant service and grant pension. The petitioner submitted that he had served as Noon Meal Organizer for 21 years and was appointed as B.T. Assistant and has served as B.T.Assistant for the period of 6 years 3 months and 21 days. If both the services are taken together the petitioner will come with the eligibility of 27 years of service. But the petitioner is claiming to include 50% service rendered as Noon Meal Organizer.

4. The contention of the petitioner is that the Government of Tamil Nadu has issued G.O.Ms.No.6, Social Welfare and Nutrition Scheme Department, dated 06.01.2010. As per the said Government Order, the persons who have served in the Noon Meal Organizer with B.Ed., qualification, absorbed as B.T. Assistant. Therefore their 50% service rendered in Nutrition Scheme should be taken into account. The contention of the petitioner is that the sixth respondent without considering the past service of 21 years as Noon Meal Organizer, rejected the proposal, vide communication, dated 02.01.2014 by stating that as per G.O.Ms.No.6 and 408, dated 25.08.2009, 50% of the consolidated pay/fixed the service and be



taken as per the Government Order provided the service has to be regularized and brought in regular establishment prior to 01.04.2003. Since the petitioner was absorbed as B.T. Assistant from 07.09.2006 i.e., after 01.04.2003, the petitioner is not entitled to pensionary benefits. Aggrieved over the said order, the petitioner has filed this writ petition.

5. The fourth respondent has filed a counter affidavit stating that as per the G.O.Ms.No.6, dated 06.01.2010, it has been amended by G.O.Ms.No.34 Social Welfare and Nutritious Meals Scheme, Department, dated 14.03.2013. The petitioner has been absorbed in Government service before 01.04.2003. The Government has introduced the "New Contribution Pension Scheme" with effect from 01.04.2003 under G.O.Ms.No.259 (Finance) (P) Department, dated 06.08.2003. The petitioner's 50% of the prior service can be taken into consideration, if the petitioner is regularized prior to 01.04.2003. Admittedly, in the present case, the petitioner was appointed on 07.09.2006 i.e., after 01.04.2003. Therefore, the petitioner is not entitled to claim 50% of the past service.

6. Heard Mr.M.R.Sreenivasan, learned Counsel appearing for the petitioner, Mr.V.Omprakash, learned Government Advocate appearing for the respondent Nos.1 to 5 and Mr.P.Gunasekaran, learned Standing Counsel appearing for the sixth respondent.

7. The issue of taking 50% of Noon Meal Organizer service was considered by this Court in W.A.(MD)No.587 of 2014, dated 03.12.2014, where it has been held that the combined reading of G.O.Ms.No.408 Finance (Pension) Department, dated 25.08.2009, G.O.Ms.No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010, G.O.Ms.No.41, Finance (Pension) Department, dated 09.02.2010 and G.O.Ms.No.34, Social Welfare and Nutritious Meals Scheme Department, dated 14.03.2013 read with Rule 11(4) of the Pension Rules would clearly reveal that the respondents are not entitled to the benefit of counting of 50% of their services rendered in Noon Meal Programme and ICDS Services, since the petitioner was absorbed after 01.04.2003 i.e. he was absorbed on 07.09.2006.

8. It is seen that the issue of granting the pensionary benefits by interpreting Rule 11(4) was considered by the Honourable Full Bench of this Court, where it has clearly held that any service rendered prior to 01.04.2003, if not regularized prior to 01.04.2003, the service cannot be taken into account. In the present case, admittedly, the petitioner's service was regularized after 01.04.2003 i.e., 07.09.2006. Also submitted that the Division Bench in W.A.(MD)No.587 of 2014 has also rendered that the service cannot be taken into account. Therefore, following the Division Bench order rendered in ***W.A. (MD)No.587 of 2014 and the Full Bench order reported in 2019 (6) CTC 705***, the petitioner is not entitled to claim the 50% of service as Noon Meal Organizer. Therefore the writ petition is devoid of merits.



9. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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The Government of Tamil Nadu,
Department of School Education, Fort St. George, Chennai.
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+1 CC to M/s.SPL GP (SR-15088[F] dated 29/03/2022)

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-15218[F] dated 29/03/2022)

Order made in
W.P. (MD)No.3102 of 2016
28.03.2022