



W.P.No.34166 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.34166 of 2017

T.Tamilselvi

...Petitioner

Versus

1.The Government of Tamil Nadu,
Represented by Principal Secretary to Government,
(Rural Development Panchayat Raj Department),
Secretariat, Chennai -9.

2.The Director of Rural Development
and Panchayat Raj,
Chennai – 600 015.

3.The District Collector,
Development Wing,
Villupuram District,
Villupuram.

4.The Assistant Director (Audits),
Kallakurichi,
Villupuram District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus directing the respondents to consider the claim of the petitioner to count the petitioner's past service from 17.11.2008 to 30.4.2009 and from 2.5.2009 to 21.5.2012 in Tamil



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Nadu Judicial Ministerial Service by condoning the unavoidable break in service for just two days on 01.5.2009 and 22.5.2012 along with the petitioner's regular service in the Rural Development and Panchayat Raj Department with effect from 23.5.2012 for purpose of grant of annual increments, refixation of pay and all consequential benefits.

For Petitioner : Mr.I.Kabilan
for Mr.M.Ravi

For Respondents : Mrs.Meera Arumugam
Additional Government Pleader

ORDER

The petitioner has filed the present writ petition seeking issuance of a writ of mandamus directing the respondents to consider the claim of the petitioner to count her past service from 17.11.2008 to 30.4.2009 and from 2.5.2009 to 21.5.2012 in Tamil Nadu Judicial Ministerial Service by condoning the unavoidable break in service for just two days on 01.5.2009 and 22.5.2012, along with her regular service in the Rural Development and Panchayat Raj Department with effect from 23.5.2012 for the purpose of grant of annual increments, refixation of pay and all consequential benefits.



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2. The petitioner was serving as a Steno typist in the Court of Judicial Magistrate, Sankarapuram from 17.11.2008 and she was discharged from service on 30.04.2009 and reappointed and served as Steno typist in the same Court from 02.05.2009. Subsequently, she was recruited as Steno typist by the Tamil Nadu Public Service Commission and posted in the Rural Development and Panchayat Raj Department in Salem District, where the petitioner was appointed as Steno typist on 23.5.2012.

3. The petitioner's grievance is that though she had rendered service in the Government Department from 17.11.2008 to 30.4.2009 and from 2.5.2009 to 21.5.2012 and thereafter, in the present place of employment, the entire period of service has not been taken into consideration for the purpose of granting annual increment and other consequential benefits. Hence, the petitioner made several representations to the respondents, requesting them to consider the service rendered by her in the Court of Judicial Magistrate, Sankarapuram by placing reliance on G.O.Ms.No.1034 Personnel & Administrative Reforms (Placement) Department, dated 1.11.1983.



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4. Rule 7 of the said G.O is extracted here under :

"7. Fixation of pay :

Every person appointed to the post of Junior Assistant, Typist or Steno-typist shall continue to draw the same pay drawn by him prior to the date of his regularisation if he had been allotted to the same category in the same department where he had been previously working temporarily. The pay of a person allotted to the same category in a different department shall be fixed at the same stage in the time scale of pay applicable to the post of prior to such allotment.

Provided that the above fixation shall not be applicable to a person who was ousted from such temporary appointment in a service for want of vacancies and was appointed in any department on allotment by the Tamil Nadu Public Service Commission. In such cases, the pay shall be fixed at the minimum of the time scale of pay applicable to the post to which he is appointed.

The unavoidable breaks in Service of the candidates appointed temporarily to the post of Junior Assistant, Typist or Steno-typist working in Government departments, caused while on joining duty in a different department on allotment by the Tamil Nadu Public Service Commission, shall be condoned.



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The temporary services of Junior Assistants, Typists or Steno-typists as the case may be, prior to the date of regularisation shall count for increment provided such services were continues.

The basic pay of the Junior Assistants, Typists or Steno-typists who were qualified in the Special Qualifying Examinations held in 1977 and who were working in a department but were transferred temporarily to any other department prior to allotment by the Tamil Nadu Public Service Commission shall be fixed with reference to the pay last drawn by them prior to such allotment."

5. The third respondent has filed a counter stating that G.O.Ms.No.1034 Personnel & Administrative Reforms (Placement) Department, dated 1.11.1983, on which the petitioner places reliance is obsolete and does not apply to the petitioner and therefore, prayed that the writ petition is liable to be dismissed.

6. The only point for consideration in this petition is as to whether G.O.Ms.No.1034 Personnel & Administrative Reforms (Placement) Department, dated 1.11.1983 would apply to the facts of the present case. The said notification was passed in exercise of the powers



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conferred by the proviso to Article 309 of the Constitution of India. The Rules have been deemed to have come into force on 18.12.1977. In other words, retrospective effect has been given to the application of the said G.O. However, as rightly pointed out by the learned Additional Government Pleader appearing for the respondents that the said G.O will not apply to the petitioner's case. As the G.O.Ms.No.1034 Personnel & Administrative Reforms (Placement) Department, dated 1.11.1983 was framed specially to the candidates, who were appointed through special recruitment held on 1977 on 28.6.1981 and therefore, the petitioner cannot seek umbrage under the said G.O to contend that the break in service of candidates should be condoned. However, at the same time, it is also seen that yet another contention is also raised by the petitioner in the affidavit with reference to the the Fundamental Rules of the Tamil Nadu Government.

7. Note-1 appended to Fundamental Rules 26(1)(a) run thus :

"Note 1 – If an officiating Government servant in a post, who has no substantive appointment is discharged from service for want of vacancy, he shall on appointment to the same post, draw the pay last drawn prior to his discharge from service. The periods prior to



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the discharge from service shall count for purpose of future increment in the time scale of pay."

8. Note-1 clarifies that when a Government servant, who has no substantive appointment has been discharged from service and subsequently, appointed to the same post, then the period prior to discharge from service would also count for the purpose of future increment in the time scale of pay of the said post. The benefits that were sought to be conferred under the said G.O., are now obsolete, as rightly contended by the learned Additional Government Pleader. However, in view of Fundamental Rules 26 (1) (a) r/w Note-1, though the petitioner's service as a Steno typist in the Court of Judicial Magistrate, Sankarapuram is temporary, it would have to be necessarily counted for the purpose of calculating the future increments in the time scale of pay in the said post. It is not in dispute that the petitioner joined duty only as a Steno typist in the office of the Rural Department and Panchayat Raj Department, Salem District. Therefore, the petitioner clearly falls within the Fundamental Rules 26 (1) (a) r/w Note-1 and consequently, she is entitled for her service from 17.11.2008 to 30.4.2009 and from 2.5.2009 to 21.5.2012 being counted for the purposes of annual increment,



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refixation of pay and all consequential benefits. This Fundamental Rule

does not speak about break in service also.

9. This writ petition is therefore, allowed and the respondents shall re-work and re-fix the pay of the petitioner by counting her service from 17.11.2008 to 30.4.2009 and from 2.5.2009 to 21.5.2012 and consequently, settle her annual increment and other consequential benefits. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

27.06.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
(Rural Development Panchayat Raj Department),
Secretariat, Chennai -9.
- 2.The Director of Rural Development
and Panchayat Raj,
Chennai – 600 015.
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P.B.BALAJI, J.,

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