



W.A.No.2100 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.2100 of 2019
and C.M.P.No.14255 of 2019**

- 1.The Government of Tamil Nadu
rep.by the Secretary to Government
Finance Department, Fort St.George
Chennai 600 009.
- 2.The Secretary to Government
Social Welfare and Nutritious Meal Programme
Department, Secretariat, Chennai 600 009.
- 3.The District Project Officer
Integrated Child Development Schemes
Collectorate, Tiruppur, Tiruppur District. ... Appellants

-Vs-

- 1.K.Lakshmi
- 2.The Principal Accountant General
O/o The Principal / Accountant General
(Accounts and Entitlements), 361, Anna Salai
Teynampet, Chennai-18. ... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.21675 of 2015 dated 21.07.2015

For Appellants : Mr.K.V.Sajeev Kumar, Special Govt.Pleader
For Respondents : Mr.P.Rajendran - for R1
R2 - Served, no appearance



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J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

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This writ appeal has been directed against the order passed by the writ Court dated 21.07.2015 made in W.P.No.21675 of 2019.

2. The first respondent herein was the writ petitioner, who was appointed as Child Welfare Organizer on 19.12.1980 by the appellant Department based on her qualification. In that capacity, she had been working for long years. At one point of time, it was the decision taken by the Tamil Nadu Government by way of policy decision to regularize the Noon Meal Organizers / Child Welfare Organizers by bringing them under regular time scale of pay or special time scale of pay. Accordingly, the first respondent also became eligible to enjoy such benefits.

3. When that being so, considering the qualification of the first respondent, she was considered for further promotion to the post of Supervisor Grade II. Accordingly, such a promotion was given to the first respondent on 18.12.2008 and therefore, she was relieved from the post of Child Welfare Organizer and joined in the promoted post ie., Supervisor Grade II and in that capacity she worked till her superannuation ie., 31.12.2012. On that date, she retired from service.



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4. Though the first respondent had worked for the Department from 1980 till 2012 ie., for 32 years, she was not considered for pensionary benefit by giving reason that, only from the date of promotion ie., on 18.12.2008 it can be considered that the erstwhile post held by the first respondent as Child Welfare Organizer has been regularized and therefore from the date of such regularization ie., 18.12.2008 the respondent had worked only for few years ie., for four years till 31.12.2012. Therefore, she has not rendered the minimum qualifying service of ten years to earn minimum pension and for that reason, the first respondent was denied the pensionary benefits.

5. As against the said decision, the petitioner had approached the writ Court and filed the said writ petition, which was considered and allowed by the learned Judge in the order impugned dated 21.07.2015, where the learned Judge, following the earlier orders passed in similar circumstances in W.P.No.20133 of 2015 had allowed the present writ petition also, as against which the present appeal has been directed.

6. It is not in dispute that the appellant was appointed as Child Welfare Organizer with effect from 09.12.1980. Thereafter, those who were working as Child Welfare Organizer / Noon Meal Organizer were



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brought under the time scale of pay and that became a regular post.

Therefore, that service rendered by them, at least 50% of the service was to be taken into account for the purpose of calculating the total pensionable service of any such incumbent like the first respondent. Many of such cases had been decided by this Court.

7. Insofar as the first respondent is concerned, she has not only been brought under the time scale of pay, but has been given promotion with effect from 18.12.2008. A temporary employee, without being regularized, cannot be given promotion and therefore, the promotion dated 18.12.2008 since has been wrongly taken as regularization date, based on which the pensionary benefits sought for by the first respondent has been rejected by the appellant. the said approach on the part of the appellant cannot be accepted, as that would run contra to the service conditions of the first respondent.

8. When similar cases had already been decided, one such case decided by the learned Judge who passed the present impugned order has been taken as a precedent and accordingly the writ petition was allowed by the learned Judge, which order is impugned herein.

9. Apart from the reasons that have been stated by the learned



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Judge in the impugned order, even independently if the case of the first respondent is taken into consideration, it can be safely concluded that the first respondent has been working from 19.12.1980 for 32 years continuously without any break and cannot be said to be a temporary employee till her superannuation.

10. Moreover, no temporary employee can earn promotion and such a promotion since has been given to the first respondent on 18.12.2008, for all practical purposes her service can only be treated as regularized service. Therefore, the past service rendered by the first respondent can be taken into account for the purpose of pensionable service.

11. In this context, since the first respondent had been appointed only as a Child Welfare Organizer in the year 1980 and it was only a temporary appointment on a consolidated pay and subsequently only by way of a policy decision, those consolidated pay employees have been brought under special time scale of pay and since then onwards they became regular employees, the entire past service cannot be taken into account for pensionable service, therefore 50% of such past service can be taken into account for the purpose of calculating total pensionable service rendered by the first respondent. Therefore, such a benefit that has been extended otherwise for the reason stated in the impugned order



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by the learned Judge cannot be found fault with.

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12. In that view of the matter, the appeal fails and therefore it is liable to be dismissed. The benefit that has been extended to the first respondent by the writ court shall be calculated and be paid to her within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

(R.S.K.,J..)

(K.B.,J.)

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Index : Yes/No

Internet : Yes/No

KST



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To

The Principal Accountant General
O/o The Principal / Accountant General
(Accounts and Entitlements), 361, Anna Salai
Teynampet, Chennai-18



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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