



W.A.(MD) No.94 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
09.02.2023	31.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A.(MD) No.94 of 2023

Muthupetchi

... Appellant

-VS-

1.The Principal Accountant General (A7E)
Office of the Accountant General of Tamil Nadu
361, Anna Salai, Teynampet
Chennai-600 018

2.The Commissioner of Corporation
Corporation of Madurai
Madurai-625 002

3.The Educational Officer
Madurai Corporation
Madurai-625 002

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 15.11.2022, passed in W.P.(MD) No.12068 of 2020, on the file of this Court.

For Appellant : Mr.T.Selvam



W.A.(MD) No.94 of 2023

WEB COPY

For Respondents : Mr.P.Gunasekaran
Standing Counsel for R1
Ms.S.Devasena
Standing Counsel for R2 & R3

J U D G M E N T

D.KRISHNAKUMAR, J.

This writ appeal is directed against the order, dated 15.11.2022, passed this Court in W.P.(MD) No.12068 of 2020, whereby and whereunder, the claim of the appellant seeking regularization of service has been rejected.

2. According to the appellant, on 06.11.1970, she was appointed as a part time Sweeper in contingent post in Ee.Ve.Ra.Nagammayyar High School, South Veli Street, Madurai. On 17.07.1995, she was appointed as a full time employee in regular time scale of pay. The Commissioner, Madurai Corporation / second respondent issued an order dated 29.04.2002 permitting the appellant to retire from service on 30.04.2002 and accordingly, she was retired from service on 30.04.2002. On 14.10.2015, the Educational Officer, Madurai Corporation / third respondent issued a certificate calculating the qualifying period of the appellant as 19 years 1 month and 18 days by reckoning 50% of the contingent service period from 06.11.1970 till 16.07.1995. Accordingly, on 14.10.2015, the third respondent sent a proposal



W.A.(MD) No.94 of 2023

to the Principal Accountant General / first respondent herein for sanctioning pensionary benefits to the appellant. However, *vide* order dated 28.01.2016, the first respondent returned the proposal, on the grounds that prior to full time appointment, the appellant was working as a part time employee and as per G.O.No.408, Finance (Pension) Department, dated 25.08.2009, 50% of the full time employees' service period alone can be reckoned as qualifying service period.

3. Challenging the return of the proposal and also seeking a direction to the first respondent to reckon 50% of her part time employment for pensionary benefits, the appellant filed W.P.(MD) No.12068 of 2020 and this Court, by order dated 15.11.2022, dismissed the writ petition on the grounds that even as per the version of the appellant, initially she was working as a part time employee and even in the regularization order also, the period between 06.11.1970 till 16.07.1995, has been mentioned as part time service and therefore, G.O.No.408, dated 25.08.2009 is not applicable to the appellant's case. Challenging the same, the present writ appeal.

4. Learned counsel for the appellant submitted that the appellant has rendered service in the respondent – Department for more than thirty years.



W.A.(MD) No.94 of 2023

As per G.O.No.408, dated 25.08.2009, 50% of the service period of the employees, who have been appointed between 01.01.1961 and 01.04.2003, has to be reckoned for pensionary benefits and therefore, the appellant is entitled to pensionary benefits by reckoning 50% of her contingency service period. However, the Writ Court, without considering the said fact, has rejected the claim made by the petitioner.

5. Learned Standing Counsel appearing for the first respondent vehemently opposed the arguments advanced by the learned counsel for the appellant. Even in the regularization order itself, the contingency service period has been described as part time. As per G.O.No.408, dated 25.08.2009, 50% of the full time employees' service period alone can be counted. Part time employees' service period cannot be taken into consideration for pensionary benefits and therefore, the Writ Court has rightly dismissed the writ petition filed by the appellant. In support of his contentions, he has relied upon the decision of this Court in ***State of Tamil Nadu vs. E.Balachandran [(2021) 3 MLJ 92]***.

6. Further, learned Standing Counsel for the first respondent submitted that on 17.07.1995, the appellant was appointed as a full time employee and



W.A.(MD) No.94 of 2023

retired from service on 30.04.2002. However, she filed a writ petition seeking to regularize her contingency service period *viz.*, from 06.11.1970 to 16.07.1995 only in the year 2020, after a lapse of nearly 25 years, which cannot be entertained at all. On these grounds, learned Standing Counsel for the first respondent prays for dismissal of this writ appeal.

7. Heard learned counsel for the appellant and learned Standing Counsels appearing for the respondents and perused the materials available on record.

8. On perusal, it is seen that on 06.11.1970, the appellant was appointed as a part time employee in contingent post as Sweeper in Ee.Ve.Ra.Nagammayyar High School, South Veli Street, Madurai. On 17.07.1995, she was appointed as full time employee in regular time scale of pay. She was retired from service on 30.04.2002. When the third respondent sent a proposal to the first respondent for sanctioning pensionary benefits to the appellant, the first respondent rejected the same as the appellant, prior to her appointment as full time employee, was working as a part time employee and therefore, her service period cannot be counted for granting pensionary benefits.



W.A.(MD) No.94 of 2023

WEB COPY

9. At this juncture, it would be relevant to refer the decision of the Honourable Supreme Court in **Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others [(2014) 4 SCC 769]** wherein in Paragraph No.7, it has been observed as follows:

“7. This Court in State of Rajasthan & Ors. vs. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection



WEB COPY

W.A.(MD) No.94 of 2023

which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.



WEB COPY

W.A.(MD) No.94 of 2023

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.” (Emphasis added)

10. As held by the Honourable Apex Court in **R.Govindaswamy's** case (supra) mere continuation of service by a temporary or daily wage employee would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.



W.A.(MD) No.94 of 2023

WEB COPY

11. It is seen that the appellant was appointed as part time Sweeper on 06.11.1970 in a non-sanctioned post, on 17.07.1995 she was appointed as full time Sweeper and retired from service on 30.04.2002. However, she filed the writ petition seeking to quash the order of return passed by the first respondent returning the proposal of pensionary benefits sent by the third respondent and to direct the first respondent to reckon 50% of her contingency service period, only on 11.09.2020 after an enormous delay of 25 years from the date on which she was appointed as a full time Sweeper, for which the appellant has not given any reason much less acceptable reason either before the Writ Court or this Court, which shows that the appellant is not diligent in prosecuting the matter. It is pertinent to note that any person aggrieved must establish his / her rights at the first instance by approaching the Court of law, within a reasonable period of time.

12. Rule 11 of the Tamil Nadu Pension Rules, 1978 clearly stipulates that half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with the regular service, subject to the condition that the service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day. In the present case, the appellant was working as part time employee till



W.A.(MD) No.94 of 2023

WEB C

16.07.1995 and she has not established that during the said period she was working as full time employee. Therefore, when there is no material to substantiate that during the said period the appellant was working as full time employee, 50% of the said period cannot be reckoned.

13. The learned Single Judge has also rightly observed in the order that since the petitioner was serving only as a Part Time Sweeper, the first respondent was constrained to reject the recommendation of the employer and even in the regularization order, the appellant's/writ petitioner's earlier service upto 16.07.1995 had been described only as a part time service and on that ground, the impugned order has been rightly passed and therefore, the petitioner is not entitled for any relief. Thus, for all these reasons, we are not inclined to interfere with the orders passed by the Writ Court and the writ appeal is therefore liable to be dismissed.

14. In the result, the writ appeal fails and it is dismissed. No costs.

[D.K.K., J.]

[L.V.G., J.]

31.03.2023

NCC : Yes / No



W.A.(MD) No.94 of 2023

WEB COPY : Yes / No
Index : Yes / No
Internet : Yes / No
krk

- 1.The Principal Accountant General (A7E)
Office of the Accountant General of Tamil Nadu
361, Anna Salai, Teynampet
Chennai-600 018
- 2.The Commissioner of Corporation
Corporation of Madurai
Madurai-625 002
- 3.The Educational Officer
Madurai Corporation
Madurai-625 002

D.KRISHNAKUMAR, J.



WEB COPY



W.A.(MD) No.94 of 2023

and
L.VICTORIA GOWRI, J.

krk

JUDGMENT
IN
W.A.(MD) No.94 of 2023

31.03.2023