



W.P.No.1790 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1790 of 2024

and

W.M.P.No.1846 of 2024

M.Shilesh Kumar

... Petitioner

-Vs-

- 1.The Secretary to Government,
Educational Department,
Secretariat, Chennai 9
2. The Director of School Education,
College Road, Chennai -6.
3. The Chief Educational Officer,
Vellore, Vellore District.
4. The District Educational Officer,
Vellore, Vellore District.
5. The Headmaster,
Government Higher Secondary School,
Kammavanpettai, Vellore District.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, calling for the entire records connected with the impugned order passed by the 4th respondent in Na.Ka.No.2125/A1/2022 dated 10.08.2022 and quash the same and consequently direct the respondents to count 50% of the past service rendered by the petitioner from 01.10.1997 to 30.09.2007 for the purpose of Old Pension Scheme.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.H.Ravi Kumar
Government Advocate

ORDER

This Writ Petition has been filed calling for the entire records connected with the impugned order passed by the 4th respondent in Na.Ka.No.2125/A1/2022 dated 10.08.2022 and quash the same and consequently direct the respondents to count 50% of the past service rendered by the petitioner from 01.10.1997 to 30.09.2007 for the purpose of Old Pension Scheme.

2. Petitioner was sponsored for the post of part time Scavenger



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by the District Employment Exchange. Accordingly, he attended the interview and he was selected and appointed as a Part Time Scavenger on 01.10.1997. However, his service was not regularized. As per G.O.Ms.No.241, Personal and Administrative Reforms Department dated 10.10.1988 and G.O.Ms.No.528, Personal and Administrative Reforms Department ordered to regularize the service of the servants appointed in the regular vacancies, on daily wages. However, the service of the petitioner was not regularized. Pursuant to the order passed by this Court, Government issued Government Order in G.O.Ms.No.111 dated 09.05.2012, to regularize the service of 614 part time daily wages and contingency personnel, serving in Government higher Secondary Schools, on completion of 10 years of service, as on 01.01.2006. Subsequently, Government also issued another Government Order in G.O.Ms.No.247 dated 03.10.2012, thereby fixing the said 614 employees in the time scale of pay. Thereafter, petitioner's service was regularized, with effect from 01.10.2007 as a Night Watchman in the time scale of pay of Rs. 2550/-. He was posted in the same School as a Full Time Sweeper and thereafter he retired from service on attainment of the age superannuation and he was duly relieved from service. As per



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G.O.Ms.No.259 dated 06.08.2003, the Government of Tamil Nadu issued G.O.Ms.No.259 dated 06.08.2003. The Government of Tamil Nadu introduced Contributory Pension Scheme to the appointments made on or after 01.04.2003. Accordingly, the petitioner was admitted in the Contributory Pension Scheme. Therefore, petitioner submitted a representation seeking to count his past service rendered by him for the benefit of Old Pension Scheme. The 4th respondent rejected the claim made by the petitioner on the ground that, as per Rule 11(2) of the Tamil Nadu Pension Rules, the petitioner is not entitled for Old Pension Scheme by calculating his 50% of his past service. That apart, his service was regularized after 01.04.2003.

3. The learned counsel for the petitioner would submit that, a batch of writ petitions were filed as against the rejection order refusing to count the 50% of past service for the purpose of Old Pension Scheme. Ultimately, the question was referred to a larger Bench. **The Hon'ble Full Bench** in the case of **The Government of Tamil Nadu & Others Vs. R.Kaliyamoorthy & Others** in W.A.No.1218 of 2018 dated



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29.08.2018 framed the following references:

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“In view of the provisions of Tamil Nadu Pension Rules as amended, if a Government Servant is regularized in service after 01.04.2003, whether such person will be entitled to count the 50% of the past service rendered prior to regularization for the purpose of computing his pension under the Old Pension Scheme”

The Full Bench of this Court held that, those who are freshly appointed on or before 01.04.2003 are not entitled to pension in view of Proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

4. It is the further submission of the learned Counsel for the petitioner that, Full Bench of this Court had not considered the decision rendered by the Hon'ble Supreme Court of India in the case of *Prem Singh Vs. State of U.P., Civil. Appeal. No.6798 of 2019 dated 02.09.2019* reported in 2019(10)SCC516, wherein it is held that, the services rendered in the work charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension.



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5. On perusal of the order impugned by the 4th respondent on 04.08.2022 it revealed that, petitioner was appointed as a Part Time Scavenger on 01.10.1997. Till his regularization of service, he was working as only a Part Time Scavenger. His service was regularized only with effect from 01.10.2007 as a Night Watchman in the time scale pay of Rs.2,550/-.

6. It is relevant to extract Rule 11(2) of Tamil Nadu Pension Rules, 1978:

[(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:-

(i) Service paid from contingencies shall be in a job involving whole time employment and not part-time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.



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(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authentic records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June, 1988.]

As per the amendment Rule 11(4) of Tamil Nadu Pension Rules, 1978, it is stated that, those who rendered service in the State Government as Non provincialised services, consolidated pay, honorarium or daily wages and if such services were regularized before 01.04.2003, half of the service would be considered for conferment of



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pension benefits. Further, petitioner was appointed as Part Time scavengers without following proper procedure laid down by the Tamil Nadu Service Rules. The appointment in the basic service, which is governed by the Tamil Nadu Basic Service Rules, states that, for the post of scavenger, the mode of appointment has been clearly defined with reference to Rule No.1 Constitution Rule, Rule No.2 Appointing authority, Rule No.3 Appointment, Rule No.3A Reservation of Appointments and Rule No.4 Selection of direct recruits. These rules were not followed while appointing the petitioner as part time scavenger. He was paid consolidated salary from the contingency fund allotted for the office. Therefore, the appointment is not regular or direct appointment. The Government Orders referred by the petitioner is applicable only to incumbents who were appointed with reference to the Tamil Nadu Basic Service Rules. Further, the petitioner was appointed by the Headmaster of the School on temporary basis and he was paid monthly salary as consolidated salary. Further, he was directed to complete his work before 9 'o' clock in the morning. Therefore, he was appointed as Part Time Scavenger.



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7. In the light of the above, this Court is of the view that the judgements relied by the learned counsel for the petitioner are not applicable to the case on hand and thus, this Court finds no irregularity or illegality in the orders passed by the 4th respondent. Accordingly, this Writ Petition is devoid of merits and it is liable to be dismissed. Consequently, connected miscellaneous petition is closed.

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G.K.ILANTHIRAIYAN, J.

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To

1. The Secretary to Government,
Educational Department,
Secretariat, Chennai 9
2. The Director of School Education,
College Road, Chennai -6.
3. The Chief Educational Officer,
Vellore, Vellore District.
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