IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

W.P.No.3913 of 2023

P.Rose Mary .. Petitioner

Vs

1.Government of Tamil Nadu
Rep. by its Secretary
Environment, Climate Change and Forest Department
Fort St. George
Chennai 600 009

2.Tamil Nadu Pollution Control Board
Rep. by its Chairman
No.76, Mount Salai
Guindy
Chennai 600 032

3.The Member Secretary
Tamil Nadu Pollution Control Board
No.76, Mount Salai
Guindy
Chennai 600 032 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the concerned records from the 2nd and 3rd respondents, quash the order of the 2nd respondent dated 09.05.2022 bearing letter No.TNPCB/Per/P5/038582/2013 and the order of the 3rd respondent dated 10.01.2023 bearing letter No.TNPCB/Per/P5/ 038582/2013 as illegal, arbitrary and contrary to law and consequently, direct the respondents to take the entire period of service rendered from 15.07.1991 to 25.04.1993 for the purpose of pension and on that basis revise the pension payable to the petitioner from 01.06.2012, pay arrears of pension and continue to pay the revised pension.

For Petitioner	Mr.Balan Haridas
For 1st Respondent	Mr.M.S.Premkumar Government Advocate
For R2 and R3	Ms.Vijayakumari Nadarajan Standing Counsel

ORDER

This writ petition has been filed challenging the proceedings of the 2nd and 3rd respondents dated 09.05.2022 and 10.01.2023, respectively, and for a consequential direction to the respondents to take the entire period of service rendered by the petitioner from 15.07.1991 to 25.04.1993, for the purpose of pension and on that basis, to revise the pension payable to the petitioner from 01.06.2012 and to pay the arrears of pension and continue to pay the revised pension.

2. The case of the petitioner is that she is a B.Sc. graduate, who had passed Typewriting English (Higher Grade) and Typewriting Tamil (Lower Grade). She registered her name with the District Employment Exchange. She was sponsored to the 2nd respondent/Board for the post of Typist and she also underwent a selection process. The 2nd respondent/Board issued an appointment order dated 09.07.1991, appointing her in the post of Typist in the time scale of pay. It is the further case of the petitioner that posting order was issued on 12.07.1991 and she joined duty on 15.07.1991 in the 2nd respondent/Board. The service of the petitioner was regularised in the post of Typist, by proceedings dated 04.12.1991.

3. The 2nd respondent, through memo dated 10.03.1992, issued a show cause notice to the petitioner, calling upon her to explain as to why her services should not be terminated, since she did not possess the minimum qualification for appointment to the post of Typist. Thereafter, the 2nd respondent, through a communication dated 17.03.1992, terminated the services of the petitioner and on the very same day, separate proceedings were issued to her and she was engaged on NMR basis in the same post. Further, the petitioner was directed to pass Tamil

Typewriting (Higher Grade) within six months to consider her case for regular appointment.

4. The petitioner passed Tamil Typewriting (Higher Grade) in December 1992. Thereafter, the 2nd respondent, issued an order dated 26.04.1993, reappointing the petitioner in the post of Typist in the time scale of pay. The reappointment was also ratified and the petitioner's service was regularised with effect from 30.04.1993. The petitioner ultimately reached the age of superannuation on 31.05.2012.

5. The grievance of the petitioner is that while fixing pension, the services rendered by her from 26.04.1993 to 31.05.2012 (19 years and 1 month) alone was taken and the period from 15.07.1991 to 16.03.1992, was not taken into consideration. Insofar as the period during which the petitioner's services were engaged as NMR from 17.03.1992 to 25.04.1993, 50% was taken into account out of 13 months. Therefore, in all, the petitioner was falling short by nearly 4½ months, in order to be entitled to claim full pesion.

6. The petitioner made a representation to the 2nd respondent/Board to take into account the services rendered by her from 15.07.1991 to 16.03.1992 and also the full service for the period from 17.03.1992 to 25.04.1993. The said request made by the petitioner was rejected by the 2nd respondent, through communication dated 09.05.2022. This was followed by the communication of the 3rd respondent dated 10.01.2023. Aggrieved by the same, the present writ petition has been filed before this Court.

7. The 2nd and 3rd respondents have filed counter affidavit. They have taken a stand that the petitioner was not qualified to be appointed as a Typist and therefore, the period from 15.07.1991 to 16.03.1992, cannot be counted in the total service, since the petitioner did not qualify for being appointed. They have relied upon Rule 12(1) of the Tamil Nadu Pension Rules, 1978, in order to take a stand that since the services of the petitioner for the first 8 months was not as per the regulations, the entire period must be treated as *non est* and it cannot be added in the total service of the petitioner. Insofar as the period during which the petitioner was engaged as an NMR, 50% was taken out of the total 13 months. Thus, the 2nd and 3rd respondents have taken a stand that there is no ground to take the

entire period of service from 15.07.1991 to 25.04.1993 for the purpose of pension and that the claim made by the petitioner is untenable and accordingly, they have sought for the dismissal of this writ petition.

8. Heard both sides and perused the materials available on record.

9. The short issue that arises for consideration is, as to whether the period from 15.07.1991 to 16.03.1992 can be counted while calculating the total service rendered by the petitioner, in order to enable her to get full pension.

10. In the instant case, the petitioner was appointed in a substantive post by the 2nd respondent/Board as a Typist and she was also brought within the time scale of pay. The petitioner accordingly joined duty on 15.07.1991 and her services were regularised by an order dated 04.12.1991. Subsequently, it was found that she did not complete Tamil Typewriting (Higher Grade). Therefore, the proceedings dated 17.03.1992 was issued by the 2nd respondent/Board. For proper appreciation, the proceedings are extracted hereunder :

> *"Tmt.E.Rose mary, Typist, Board Meeting Section Branch, Board Office is informed,*

(a) The appointment and regularisation orders issued vide, the references cited is cancelled with immediate effect, since she is not fully qualified for the post of Typist.

(b) Tmt.E.Rose Mary is engaged on NMR basis to the post of Typist @ Rs.72/- (Rupees Seventy Two Only) per day from 17.03.92 F.N. for six months.

(c) The individual is directed to pass the Government Technical Examination in Tamil Typewriting Higher Grade - within six months (from 17.03.92 onwards) for considering her case for regular appointment in the post of Typist."

11. The time that was granted to the petitioner to complete Tamil Typewriting (Higher Grade) was subsequently extended and ultimately, the petitioner completed/qualified Tamil Typewriting (Higher Grade) during December 1992. The 2nd respondent/Board, through proceedings dated 26.04.1993, reappointed the petitioner as Typist and she continued to render her service, till she attained superannuation on 31.05.2012.

12. The materials available on record show that the petitioner was never disengaged from service at any point of time. The status in which the petitioner was rendering service alone changed from 17.03.1992 onwards. For the period from 17.03.1992 to 25.04.1993 (13 months), the services of the petitioner was

utilised on NMR basis. In view of the same, 50% of this period was added towards the total service of the petitioner. This is perfectly in line with the relevant rules.

13. Now, the only issue is, as to whether the period from 15.07.1991 to16.03.1992 has to be taken into consideration for adding this period towards the total period of service rendered by the petitioner.

14. In the case in hand, the petitioner was rendering service for the period from 15.07.1991 to 16.03.1992 on regular basis. The petitioner was working against an available vacancy and doing the work of a Typist on regular basis. The petitioner was also drawing the salary fixed on time scale of pay.

15. It will be relevant to take note of the Rule 12(2) of the Tamil Nadu Pension Rules, 1978, which is extracted hereunder :

“12. Conditions subject to which service qualifies:

(1) … ….

(2) For the purposes of sub-rule(1), the expression “service” means service under the Government and paid by the Government from the Consolidated Fund of the State, or a local fund administered by the Government but does

not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government."

The above rule specifically states that for the purpose of understanding the expression "service", the period of service rendered by a person who was drawing a regular pay from the Consolidated Fund of the State or a local fund administered by the Government, must be taken into account while adding that period of service.

16. That apart, it is also relevant to take note of the decision of the Full Bench of this Court in ***The Government of Tamil Nadu vs. R. Kaliyamoorthy [(2019) 6 CTC 705]***. The Full Bench, after taking into consideration, all the relevant factors, came up with the following conclusions :

"45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 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.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

One of the directions that was issued by the Full Bench was that those Government servants/employees appointed prior to 01.04.2003, whether on temporary or permanent basis, will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

17. In the case in hand, the petitioner was appointed in a regular post and she had rendered service during that period. The cancellation of appointment and reappointment of the petitioner subsequently, will not wipe away the services rendered by her from 15.07.1991 to 16.03.1992. The services of the petitioner, in fact, was continuously utilised from 15.07.1991 till her superannuation that took place on 31.05.2012. Therefore, if the period of service rendered by the petitioner as NMR is taken into account and 50% is added to the service period, there is no

reason as to why the period from 15.07.1991 to 16.03.1992 where the services of the petitioner was utilised on regular basis, cannot be taken into account. It cannot be held that this period gets completely wiped off.

18. In the light of the above discussion, the impugned proceedings of the 2nd respondent dated 09.05.2022 and the 3rd respondent dated 10.01.2023, are hereby quashed. There shall be a direction to count the service rendered by the petitioner from 15.07.1991 to 16.03.1992 into the total service period of the petitioner. Once this period is added, the petitioner will satisfy the 20 years of qualifying service to get full pension. Consequently, the pension payable to the petitioner has to be revised and the arrears of pension has to be paid to the petitioner and the petitioner must also be continued to be paid the revised pension. This process shall be completed by the respondents 2 and 3 within a period of 12 weeks from the date of receipt of a copy of this order.

In the result, this writ petition is allowed on the above terms. No costs.

21.08.2024

gya

Index : Yes/No
Neutral Citation : Yes/No