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W.A.No.1086 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

W.A.No.1086 of 2022

S.Manickwalli

.. Appellant

VS

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Personnel and Administrative Department
Secretariat, Chennai -9.

2. The Commissioner,
Department of Horticulture and Plantation,
Chepauk, Chennai -5.

3. The Joint Director of Horticulture,
Erode.

4. The Deputy of Director of Horticulture,
Erode.

.. Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent to set aside the order passed in W.P.No.17046 of 2015 dated 14.11.2019.

For Appellant : Mr.S.N.Ravichandran

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

JUDGMENT



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(Order of the Court was made by Mr. G. ARUL MURUGAN.,J)

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This Writ Appeal is directed against the order dated 14.11.2019 made in W.P.No.17046 of 2015 dated 14.11.2019, wherein the claim of the petitioner to regularize and count the service rendered from 07.07.2003 for the purpose of re-fixation of scale of pay and pensionary benefits, came to be dismissed by the Writ Court.

2. The appellant who had passed the Higher Secondary and also Technical Examination of Typewriting got registered herself with the District Employment Exchange and was temporarily appointed as Typist at Dharapuram Panchayat Union from 23.09.1996 to 30.11.1996 and later she worked as Junior Assistant on consolidated remuneration at Collector Office, Erode from 07.07.2003 till 23.10.2004 and was then transferred to Revenue Divisional Office, Dharapuram and had worked there till 19.08.2007. The appellant was thereafter appointed as Typist after having sponsored through Employment Exchange in the District Court, Erode by proceedings dated 16.08.2007. She was relieved from the District Collector Office, Dharapuram on 19.08.2007 and she joined in the Fast Track Court No.3, Dharapuram on 20.08.2007. After passing the Special



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Competitive Examination conducted by the Tamil Nadu Public Service

Commission, the appellant was provisionally selected as Typist and was allotted to the Office of Deputy Director (Horticulture), Erode. The appellant was appointed under 10A(1) of Tamil Nadu State and Subordinate Service Rules and she had to pass the Office Automation Course within three years from the date of joining. Since, the appellant did not pass the Office Automation Course within the time prescribed, memos came to be issued and in such circumstances, the appellant preferred the Writ Petition seeking to regularize her service from 07.07.2003 and also for dispensing with the requirement of clearing Office Automation Course.

3. The learned Judge by taking note of the fact that, pursuant to filing of the Writ Petition, the petitioner had cleared Office Automation Course and since that portion of the prayer had become infructuous and also since the appellant had undertook the competitive examination only in the year 2015 and the G.O.Ms. No.124 dated 12.09.2009, wherein the regularization from the date of appointment was granted only in respect to the persons who under took the special qualifying examination in the year 1995 and also since the appellant was not appointed against any substantive vacancies had dismissed the Writ Petition. Assailing the



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impugned order in the Writ Petition, the Writ Petitioner had preferred the present appeal.

4.1 Mr.S.N.Ravichandran, learned counsel appearing for the appellant submitted that, though the Writ Petition has been preferred praying to regularize and count the service from 07.07.2003, he is restricting his claim only from 16.08.2007, the date on which the appellant was appointed as Typist at Fast Track Court No.3, Dharapuram. The learned counsel contended that, though the appellant temporarily worked as Junior Assistant in the District Collector Office, Erode initially, but however when recruitment was made by the District Court at Erode in the Tamil Nadu Judicial Ministerial Service, the selection of the appellant as Typist was only made pursuant to the names sponsored from the Employment Exchange and the appointment was made only as against the substantive vacancy in the post of one Jothi, who was transferred.

4.2. The learned counsel also drew our attention to the pay statement of the appellant for the month of August, September and October 2010 and contended that, she was drawing the pay in the time scale of pay fixed for the post of Typist and therefore this period of service of the appellant in the Fast Tract Court, Dharapuram ought to be



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taken into consideration for regularization by counting the service. It is his further contention that, though the Office Automation Course was prescribed for the Typist/ Steno-Typist to be passed for declaration of probation, the Government issued G.O.Ms.No.179 (Personnel and Administrative Reforms (B) Department) dated 19.12.2012 by carrying out amendments to the special rules under Tamil Nadu Ministerial Service. As per the amendments, Rule 5A proviso stipulates that the existing employees who are in service as on 22.07.2008 shall be exempted from passing the Certificate Course in Computer on Office Automation.

4.3 The learned counsel further contended that the similar issue was considered by the Division Bench of this Court and by order dated 04.12.2018 in W.A.No.1832 of 2018 in the case of **The Principal Secretary to Government and others Vs. B.Suresh**, the benefits were extended in view of the FR26 by referring to the another Division Bench Judgement of this Court in W.A.No.928 of 2009 dated 30.08.2010 in the case of **G.D. Rajeswari Vs. The Commissioner, Transport Department, Chennai**, wherein also the employee who served in Judicial Department as Steno-Typist for a period of eight years on getting selected in the Tamil Nadu Public Service Commission Group IV



Examination joined in Transport Department, on the next day of relieving from service, the candidate had joined the identical post with identical pay, whereby in view of FR22B, the appellant therein was held to be entitled for fixation of pay last drawn in the Judicial Department and whereas in the instant case, in fact after passing the qualifying exam and joining as Typist in the Horticulture Department, the appellant was appointed only in a lesser pay compared to the Judicial Service. This decision was not brought to the notice of the learned Judge and also G.O.Ms.No.179 (Personnel and Administrative Reforms (B) Department) dated 19.12.2012 introducing Rule 5A in view of the amendment made to the special rules of Tamil Nadu Judicial Ministerial Service was not considered in the order impugned and therefore sought for interference of this Court.

5. Mr.Stalin Abinmanyu, the learned Additional Government Pleader appearing for the respondents argued that the appellant was only appointed as temporary employee under 10A(1) of Tamil Nadu State and Subordinate Service Rules as typist in the Horticulture Department on 23.12.2010, which alone could be considered as entry into service and



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any prior service rendered by the appellant on temporary capacity cannot be taken as regular service for that to be counted for the purpose of regularization and consequential benefits.

6. The learned Additional Government Pleader further contended that, the appellant ought to have passed the Computer Automation Test within the period of three years, but had only passed the test on 30.06.2015 and therefore the appellant is not entitled to seek for any benefits during the prior period. It is his further contention that, any service rendered by the appellant in the Judicial Department has not been substantiated or not entered in the service register and therefore those period cannot be taken into account and further FR 26 is not applicable to the appellant as she was not officiating any Government service and discharged from service for want of vacancy. The learned Judge has after finding that the appellant cannot be extend the benefits in the absence of any rule or materials has rightly dismissed the Writ Petition which needs no interference and sought for dismissal of the Writ Appeal.

7. Heard the rival submissions and perused the materials available on records.



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8. The facts are not in dispute that the appellant after completing the Higher Secondary Course had passed the Typewriting Technical Examination Higher Grade in both English and Tamil and got registered with the District Employment Exchange. She had been temporarily appointed as Typist at Dharapuram Panchayat Union from 23.09.1996 to 30.11.1996. Later she was appointed as Junior Assistant on consolidated pay in the District Collector Office at Erode from 07.07.2003 to 23.10.2004 and thereafter was transferred to Revenue Divisional Office at Dharapuram and had worked till 19.08.2007. The service rendered by the appellant in the above mentioned Offices till 19.08.2007 are all only on need based temporary basis and not appointed against substantive vacancy by following appropriate selection process and therefore as rightly held by the learned Judge, this service put in by the appellant in different Offices on different capacities from 23.09.1996 to 19.08.2007 cannot be counted for regularization of her service or for any other benefits.

9. However, it could be seen from the proceedings of the Principal District Judge, District Court, Erode District in A.No.225 of 2006 dated 16.08.2007, wherein it states that, the appellant is temporarily appointed as Typist and posted as temporary Typist in Fast Track Court No.III,



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Dharapuram vice Tmt. A.Jothi (Transferred). As per Clause (3) of the appointment order, it reads that the appointment is made purely on temporary basis under Rule 10A(1) of Tamil Nadu State and Service Rules. From the above referred proceedings, it could be seen that to fill up the substantive vacancies in the District Court at Erode under the Tamil Nadu Judicial Ministerial Service, names were called for and pursuant to the names sponsored by the Employment Exchange, the selection process was undertaken and the appellant was appointed as Typist under Rule 10A(1) of Tamil Nadu State and Service Rules in the substantive vacancy caused due to the transfer of Tmt. Jothe. The appellant had served in the Fast Track Court, Dharapuram as Typist from 16.08.2007 to 22.12.2010.

10. From the pay accounts statements filed in the typed set of papers, it could be seen that the appellant was working as Typist and drawing salary at the time scale of pay as fixed for Typist even till October 2010. Only thereafter, the appellant had undertaken the special qualifying examination and having successfully cleared the same was appointed as Typist in the Horticulture Department and after having relieved from her service from Fast Track Court at Dharapuram 22.12.2010, the very next day she had joined as Typist in the Services of



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Horticulture Department on 23.12.2010. When the appellant had been selected and appointed by following the selection procedure under the Tamil Nadu Judicial Ministerial Service, pursuant to the name having been sponsored from the Employment Exchange and also appointed as against substantive vacant post and appointed under 10A(1) of the Tamil Nadu State and Service Rules, this period of service rendered by the appellant cannot be simply wiped out and the claim of the appellant for considering this period of service as Typist in the Fast Tract Court, Dharapuram to be counted for regularization and consequential benefits is justified.

11. The appellant after having been appointed as Typist in the Horticulture Department has to pass the Office Automation training and only thereafter the probation will be declared. Though, initially the appellant did not acquire the Office Automation Course and memos were came to be issued, the appellant had ultimately acquired the Computer Automation Certificate in June 2015. Though reliance was made by the learned counsel for the appellant in G.O.Ms.No.179 (Personnel and Administrative Reforms (B) Department) dated 19.12.2012 that in view of the amendment carried out to Rule 5 in the Special Rules for Tamil



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Nadu Judicial Ministerial Service which is applicable to all the Department and as per the proviso to Rule 5A, the existing employees who are in service as on 22.07.2008 shall be exempted from passing the Certificate Course in Computer on Office Automation and as per the respondent since she was in Service as Typist in the Judicial Service, she is exempted from passing the Computer on Office Automation Course. However according to the respondent, since she was appointed as Typist only on 23.12.2010, pursuant to qualifying the special Test conducted by Tamil Public Service Commission, the exemption is not applicable to her. But now in view of the fact that the appellant had successfully completed and passed the Computer on Office Automation Course during June 2015, this issue need not be gone into further and the probation of the appellant having been declared, her service also has been regularized.

12. Further, in the decision relied on by the appellant in **B.Suresh case** *cited supra*, wherein similar issue in respect of the persons who are temporarily appointed under 10A(1) of Tamil Nadu State and Subordinate Service Rules as Steno-Typist and working continuously without any break, who had successfully participated in the competitive examination conducted by Tamil Nadu Public Service Commission and was selected for the post of Steno Typist, wherein also they had after having relieved



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from the earlier post had joined the selected post on the very next day had sought for regularization of that period to be counted for the purpose of all service benefits was allowed. The Division Bench considering G.O.Ms. No.71 (Personnel and Administrative Reforms (B) Department) dated 07.04.2000, by which special qualifying service rules is issued under Article 309 of the Constitution of India, wherein under Clause 8(iv & v), the temporary service of Junior Assistant, Typist or Steno-Typist as the case may be prior to the date of commencement of probation shall count for increment in the time scale of pay, provided such services were continuous and this will be applicable to persons who are appointed to different categories/service after allotment by the Tamil Nadu Public Service Commission. Further, the Division Bench also considered G.O.Ms. No.124 (Personnel and Administrative Reforms (P) Department) dated 12.09.2009, wherein even the candidates who did not qualify the examination were allowed to be regularized from the date of their initial appointment by taking into consideration of the past services rendered in the light of the exemption to FR 22B. The Division Bench had ultimately confirmed the orders in the writ petition by allowing the service rendered by the Steno Typist rendered under 10A(1) of Tamil Nadu State and Subordinate Service Rules, prior to passing of the competitive examination conducted by the Tamil Nadu Public Service Commission



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for the purpose of regularization.

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13. In the instant case, as we have held that the appellant was appointed as Typist in the Tamil Nadu Judicial Ministerial Service in Fast Track Court, Dharapuram on 16.08.2007 under 10A(1) of Tamil Nadu State and Subordinate Service Rules in the substantiative vacancy and the appellant had passed the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission and after having been relieved from the Judicial Service on 22.12.2010 on the very next day ie., on 23.12.2010, she had joined as Typist in the Services of Horticulture Department and had also subsequently completed the Office Automation Course and the probation having been declared, the appellant is entitled to re-fixation of pay scale by counting her service rendered as Typist from 16.08.2007 to 20.02.2010 in Fast Track Court No.III, Dharapuram. To this extent, the order impugned cannot be sustained and is liable to be interfered with. In so far the claim of the appellant to count her service from 23.09.1996 to 16.08.2007 rendered under different capacities and in different Offices, the claim of the appellant cannot be entertained and to this extent we are in agreement with the order passed by the learned Judge.



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14. In view of the above findings, Writ Appeal is partly allowed in the following terms:

(i) the Impugned order in W.P.No.17046 of 2015 dated 14.11.2019 is set aside.

1. the respondents are directed to count the service of appellant as Typist in the Fast Track Court No.III, Dharapuram from 16.08.2007 to 22.12.2010 for the purpose of re-fixation of pay scale and grant the consequential benefits. The said exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order.

14. Resultantly, the Writ Appeal is partly allowed. No costs.

[A.S.M., J] [G.A.M., J]
16.08.2024

sma
Index: Yes/No
Neutral Citation: Yes/No

To

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Rep. By its Secretary to Government
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DR. ANITA SUMANTH,J.
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