



W.P.No.11411 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

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

W.P.Nos.11411, 11413, 11415, 20807, 20811 to 20814 of 2022
and
W.M.P.Nos.10944, 10945, 10949, 19880 to 19884 of 2022

W.P.No.11411 of 2022:-

Bhavani

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Social Welfare & Noon Meal
Programme (M4-2) Department,
Fort St. George, Chennai – 9.
2. The Additional Chief Secretary
to Government,
Finance (Pay) Department,
Fort St. George,
Chennai – 9.
3. The Director of Social Welfare &
Noon Meal Programme,
II Floor, Panagal Building,
Saidapet, Chennai – 15.
4. The District Collector,
Coimbatore District,
Coimbatore.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned orders passed by him in G.O.(D)No.10, Social Welfare & Noon Meal Programme (NMP.1) Department, dated 12.01.2006 and quash the same, insofar as bring the petitioner into regular time scale of pay w.e.f., 30.06.2001 instead of 12.01.2006, on completion of ten years of service and direct the respondents to regularize the service of the petitioner w.e.f., 30.06.2001 on completion of ten years of consolidated service and consequently bring her under the pension scheme and to extend the pension by adjustment of payment of any amount already made, consequent upon regularising her services retrospectively from 30.06.2001 instead of 12.01.2006 as per G.O.(D).No.94, Social Welfare & Nutritious Meal Programme dated 23.10.2013 and grant her all pension and pensionary benefits.

In all WPs.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
For Mr.M.Muthappan

For Respondents
For R1, R3 & R4 : Mrs.S.R.L.Karthika
Government Advocate,
For R2 : Mr.U.M.Ravichandran
Special Government Pleader



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COMMON ORDER

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These writ petitions have been filed challenging the order passed by the first respondent in G.O.D.No.10 Social Welfare & Noon Meal Programme (NMP.1) Department dated 12.01.2006, insofar as bringing the petitioners into regular time scale of pay with effect from 12.01.2006 instead of from the year 2001 viz., on completion of ten years of their respective service from the date of initial appointment.

2. The issues involved in all the writ petitions are one and the same and all the petitioners were challenged the very same government order. Therefore, this Court is inclined to pass a common order in all these writ petitions.

3. The petitioners are qualified with +2 and technical examination viz., type writing. They are registered their names in the employment exchange during the year 1991. While being so, the fourth respondent viz., the District Collector, directed the petitioners to appear for an interview for the post of Typist under noon meal programme scheme for the newly created post. Thereafter, all the petitioners were appointed temporarily in the year 1991-1992, on consolidated salary.



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Thereafter, they were brought into regular time scale of pay by the government order in G.O.D.No.10 dated 12.01.2006. The petitioners had completed their probation successfully.

4. During the year 1991, consequent to the transfer of the control of supervision of the nutritious meal programme to the Directorate of Rural Development Department was effected, one post of Junior Assistant was created per block throughout Tamil Nadu and 384 individuals were appointed work under the Manager in the cadre of Accountant. Based on the letter of the Rural Development Department, Chennai, stating that the staff already allotted to supervise relating to the function of noon meal centre was inadequate and they sought for a proposal to sanction additional staff.

5. Accordingly, 20 post of Assistants in regular time scale of pay and 20 posts of Typists on consolidated pay were created in 20 districts, except Madras. Apart from these posts, other posts were sanctioned by the Government in G.O.(Ms.)No.188, Social Welfare & Nutritious Meal Programme dated 04.04.1981. Accordingly, the petitioners have been appointed through employment exchange and the



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candidates have been appointed to the post of Typists on consolidated pay. The last extension was granted by the government in G.O(D).No.70 Social Welfare & Nutritious Meal Programme dated 11.05.2007 from 01.07.2006 to 30.06.2008. Subsequently, by the G.O.(D)No.10 Social Welfare and Nutritious Meal Programme dated 12.01.2006, bringing the post of Typist into regular time scale of pay.

6. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are entitled to get their entire service for the purpose of pensionary benefits for the sole reason that the post under the petitioner was appointed is not a part-time appointment, but it is a full time appointment to serve for minimum ten hours a day. Therefore, they were also eligible under G.O.Ms.No.22, P & AR Department, dated 28.02.2006 on completion of ten years of service. Therefore, when the petitioners were served from the year 1991, they are entitled to be regularized on completion of their ten years of service well before the cut off date for implementing the Contributory Pension Scheme viz., on 01.04.2003.

6.1. As per the government order in G.O.Ms.No.74, P&AR



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Department dated 27.06.2013, the petitioners ought to have been regularized from the date of their completion of ten years of service.

Further as per G.O.Ms.No.409 Finance (Pay) dated 25.08.2009, any employee – non-provisionalised, consolidated pay, honorarium and daily wage basis employed prior to 01.04.2003 and subsequently regularized, half of the service rendered by them will be taken into account for the purpose of pensionary benefits on condition that the service should be a full time job; it should be either on consolidated pay, honorarium or daily wages; there should be no break in service and their service should be brought into regular time scale of pay after 01.04.2003. The petitioners had entered into service, though on consolidated salary, as full time employee from the date of their employment. They had been continuously in service without any break till their services were brought into regular time scale of pay.

7. The fourth respondent filed counter and the learned Government Advocate appearing for the respondents submitted that by the petitioners were appointed on consolidated salary and their services were regularized after 01.04.2003, as such they are not entitled for old pension scheme and they were transferred to Contributory Pension



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Scheme. She also relied upon the order passed by the Hon'ble Division Bench of this Court in ***W.A.No.158 of 2016*** etc batch of cases, dated ***03.12.2019*** as follows :-

“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 W.A.No.158 of 2016 etc., batch 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



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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 Rule 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."

The petitioners were regularized only from the year 2006 and the persons those who joined in the government service after 01.04.2003 are not covered by the Tamil Nadu Pension Scheme.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.

9. As rightly pointed out by the learned Senior Counsel appearing for the petitioners the post of Typist was created based on the



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orders passed by the government in G.O(D).No.188, Social Work & Nutritious Noon Meal programme dated 04.04.1991 among other posts.

The availability of work under the MGR Noon Meal Scheme, which was brought under the Rural Development Department viz., under the exclusive control of the District Collector, among other number of posts on time scale of pay was created. Further, the post of Typist was created as sanctioned post on consolidated pay.

10. Though the persons appointed under the scheme of consolidated pay, satisfy all the requirements of a regular staff in all respects and they should be treated as persons appointed regularly and they should be given the benefit of persons appointed on regular time scale of pay on completion of ten years of service as per G.O.Ms.No.22 P & AR Department dated 28.02.2006. Therefore, their initial service of ten years on consolidated pay in the sanctioned post should be counted for the purpose of regularization. All the petitioners should be brought under Gratuity Pension Scheme from the date of completion of their ten years of service under the Tamil Nadu Pension Scheme.

11. Further the conditions imposed by the Hon'ble Division



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Bench of this Court in W.A.No.158 of 2016, as stated supra, are not application to the case of the petitioners. It is relevant to rely upon the judgment of the Hon'ble Full Bench of this Court dated **26.02.2024** made in ***W.P.No.23823 of 2023***, in the case of ***M.Sivappa Vs. The State of Tamil Nadu and ors.***, in which, the Hon'ble Full Bench after analyzing the several judgments of this Court in the issue as to whether the government order in G.O.Ms.No.74 Personnel and Administrative Reforms (F) Department dated 27.06.2013 could have been made retrospective with effect from 01.01.2006, held that, it is needless to point out that such amendment are reconsideration cannot and will not take away the right that had already vested in the petitioners. Further held as follows :-

“38. In fine, we hold

(a) If it shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full- time, the employee would be entitled to the benefit of regularisation de hors G.O.Ms.No.74 dated 27.06.2013.

(b) If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made



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under various welfare schemes, it will then be open to the Government to engage temporary employees or part-time employees.

39. We conclude that the judgments in State of Tamil Nadu. by its Secretary, Public Works Department, and another vs. S. John Charles and others, and State of Tamil Nadu rep by its Secretary to Government, Rural Development and Panchayat Raj Department and others vs K.Rajakrishnan, cannot be taken as laying down an inflexible rule of law that any part-time or temporary employee who has completed 10 years of service on 28.02.2006 will not be entitled to regularisation. The benefit of regularisation will depend on the nature of the job and the fact that whether the post falls within any one of the 86 categories mentioned in the Special Rules for Tamil Nadu Basic Service.”

12. In view of the above discussions, the petitioners are entitled to be regularized on completion of their ten years of service from the date of their initial appointment. Accordingly, the government order in G.O.(D)No.10, Social Welfare & Noon Meal Programme (NMP.1) Department dated 12.01.2006 is hereby quashed insofar as bringing the petitioners into regular time scale of pay with effect from 12.01.2006,



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instead of, on completion of ten years of service from the date of their initial appointment. The respondents are directed to regularize the service of the petitioners on completion of ten years of their service from the date of initial appointment and bring them under the old pension scheme and also grant them all service and monetary benefits within a period of twelve weeks from the date of receipt of a copy of this Order.

13. With the above directions, all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

25.03.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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G.K.ILANTHIRAIYAN. J.

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