



W.P. No.82 of 2021 & batch etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

**W.P.No.82 of 2021 & W.P.Nos.14348, 14350,
14355, 14358, 18915 & 18919 of 2020
and
W.M.P.Nos.23487, 17819, 17822, 17829,
17830, 23489 of 2020 and 123, 3087 of 2021**

W.P.No.82 of 2021:

M.Rani

... Petitioner

Vs.

1.The Director,
Institute of Child Health
& Hospital for Children,
Egmore, Chennai-600 008.

2.The Pay & Account Officer,
Pay & Accounts Office (East),
Egmore, Chennai – 600 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified mandamus, calling for the records relating to the order of the first respondent made in No.14789/RTI/2019 dated 08.01.2020 quash the same and to consequently direct the respondents to reckon the service rendered by the petitioner from 22.09.1989 till 12.03.2001 as qualifying service to arrive at the pension as permissible under law and to further revise and refix the pension and other



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retirement benefits for a pension qualifying service between the period 22.09.1989 and 30.11.2012 in terms of Tamil Nadu Pension Rules, 1978 and that of supplementary instructions issued by the Government.

For Petitioners : Mr.L.Chandrakumar in all W.Ps.

For R1 : Ms.M.Sneha
Special Counsel for Health and
Family Welfare Department in all W.Ps

COMMON ORDER

The brief facts that are relevant for disposal of these batch of writ petitions are as under:

i) All the petitioners herein were appointed as Substitute employees in the 1st respondent Hospital, having drawn their name from the District Employment Exchange and after conducting interview and undergoing other selection process. The petitioners were issued common appointment orders in proceedings Na.Ka.8207/Ni7/89 dated 22.09.1989 and 25.10.1989. Accordingly all the petitioners herein have reported to duty and they were continued in service for considerable time and thereafter, the services of the petitioners were regularized through proceedings Na.Ka.No.12602/Ni6/2000 dated 21.03.2001 with effect from 12.03.2001, Ne.Mu.NO.1556/Ni/02 dated 20.04.2002 and another proceedings bearing No.Ne.Me.8705/Ni7/02 dated 09.08.2002. Thereafter, all the petitioners herein have attained the age of



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superannuation and they were allowed to retire from service. They were also extended pensionary benefits by counting their services with effect from the date of regularization i.e., 12.03.2001.

ii) Thereafter, the petitioners made a claim for counting 50% of the service rendered by them prior to the date of their regularization by placing reliance on various Government orders including Rule 11 of Tamil Nadu Pension Rules, 1978. However, the respondents, on considering the said request made by the petitioners, rejected the claim of the petitioners, on the ground that the service rendered by the petitioners is substituted work and their services were utilised in the absence of basic servant and the petitioners have not worked continuously, through proceedings Ref.No.14789/RTI/2019 dated 08.01.2020. It is aggrieved by the said proceedings the petitioners approached this Court by filing the present writ petition seeking to quash the proceedings dated 08.01.2020 and to extend the benefits by counting 50% of the services rendered by them prior to their date of regularization.

2. Mr.L.Chandra Kumar, learned counsel appearing for the petitioners, contended that though the appointment order issued in favour of the petitioners speaks of substitute work, the services of the petitioners were



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utilised on regular basis and in terms of the appointment order the petitioners were required to be available in the 1st respondent Hospital both in morning as well as in evening. Accordingly by virtue of said condition imposed in the appointment order, the petitioners were constrained to be available in the 1st respondent Hospital everyday both in morning and in evening. According to the learned counsel for the petitioners there are more than 200 employees working in the 1st respondent Hospital and there used to be leave vacancies almost every day. Accordingly, the petitioners have been working in the said leave vacancies continuously till the date of their regularization. It is also further contended that the names of the petitioners have been drawn from the Employment Exchange and by virtue of the appointment orders issued to them as substitute worker, they were deprived of consideration of their case, for any other employment. He also further contended that in terms of Rule 11 of Tamil Nadu Pension Rules, 1978, 50% of the services rendered by temporary employee is required to be taken into consideration, as qualifying service for payment of pension. He also placed reliance on a decision of a Full Bench of this Court in W.A.No.158 of 2016 and batch dated 03.12.2019.

3. On the other hand, Ms.M.Sneha, learned Special Counsel appearing



for the respondents contended that the petitioners have worked only as substituted worker during the year 22.09.1989 to 11.03.2001 as and when regular basic servant went on leave/absence from the Hospital and as such the petitioners have neither rendered, non-provincialised services nor worked on consolidated pay or honorarium or daily wage basis. According to the learned counsel, as and when there is any leave vacancies, the substitute workers worked and therefore they are not entitled for benefit of Rule 11 of Tamil Nadu Pension Rules, 1978 and other Government orders for counting 50% of their substituted service for calculation of the pension. She also further contended that the entire service rendered by the petitioner after extending regular time scale of pay with effect from 12.03.2001, was taken into consideration for the purpose of settling the pensionary benefits of the petitioners.

4. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

5. The very appointment order issued in favour of the petitioners, though speaks of appointing the petitioners as substitute employees and



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requiring them to work against the leave vacancies in the 1st respondent Hospital, all the petitioners were required to come to the 1st respondent Hospital both in morning as well as in the evening. It is also categorically stated in the appointment order that in case any of the petitioners failed to come to work for more than a week and those found to be indiscipline in their duties, they will be removed from the list without any notice. In addition to that, the petitioners were also assured of making their employment permanent in the order of seniority in various positions such as Ayah, Sweepers, Hospital Workers, Sanitary Workers, Kitchen Workers and Water Women. It is pursuant to the said appointment order, and the assurances, they have reported duty and they continued in service for more than ten years and they were also extended the benefit of regular time scale and their services were also regularised with effect from 12.03.2001.

6. In the absence of any factual material being placed before the Court mere contention of the respondents that the services of the petitioners were utilised in the leave vacancy and not on regular basis, cannot be accepted. It is not as if, the petitioners were appointed through back door. Method. The



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very appointment order is clear that they were appointed through Employment Exchange after following due process. Merely because they were called as substitute workers, they cannot be treated to be not entitled for the benefits on par with temporary workers who are paid consolidated pay or daily wages or the persons who have worked in non-provincialised post.

7. In terms of Sub-class (2) of Rule 11 of Tamil Nadu Pension Rules, 1978, half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to certain conditions imposed. Under Rule 11, Sub-class (2) (iv) of Tamil Nadu Pension Rules, 1978, the services paid from contingencies shall be continuous and followed by absorption in regular employment without a break. Besides other conditions the proceedings through which the services of the petitioners were regularized, that is proceedings Na.Ka.No.12602/Ni6/2000 dated 21.03.2001, itself speaks about all the petitioners completing ten years of service and it is only on completion of ten years of service, the petitioners were extended the benefit of regular time scale, i.e., regularization of their services with effect from 12.03.2001.



8. Therefore, it is not open for the 1st respondent to contend otherwise by contending that there was a break in services of the petitioners and they have not worked on regular basis, etc. The benefit of counting half of the service paid for contingencies was allowed to be counted for the purpose of counting the qualifying service only in respect of employees whose services were regularized or absorbed prior to 2003. Admittedly, the services of the petitioners were regularized with effect from 12.03.2001 and thereafter, they retired from service on attaining the age of superannuation.

9. The eligibility, or entitlement of the temporary, daily wage employees, etc, for claiming benefit under Rule 11 of Tamil Nadu Pension Rules, 1978 came up for consideration before the Full bench of this Court in W.A.No.158 of 2016 and batch. The learned Full Bench, by an order dated 03.12.2019, answered the reference and the relevant paragraph No.45 (iii) of the said order reads as under:

“(iii) In case, the 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



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conferment of pensionary benefits.”

In terms of Sub para (iii) of Para 45 as extracted above, the Government employee who rendered service in non-provincilaised service or on consolidated pay or on honorarium or daily wage basis and such services were regularised before 01.04.2003, they are entitled for counting half of such temporary service rendered for the purpose of conferment of pensionary benefits.

10. In the case on hand, though the petitioners were called as substitute employees, their services were stated to have been utilised on regular basis i.e. for leave vacancy or absentee vacancy, etc. In view of the assurance made in the appointment order, acknowledging the fact that the petitioners have completed ten years of service and it is only thereafter they were extended the benefit of regularization. Hence, it is not open for the respondents to now say otherwise. When the petitioners' case was considered for extending the benefit of Rule 11 of Sub-class (2) of Tamil Nadu Pension Rules, 1978, the petitioners cannot be denied the benefit of Sub-class (2) of Rule 11 on the mere ground that appointment order speaks of Substitute Worker. In fact, the petitioners were paid daily wages in terms of



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appointment order while taking into consideration the scale attached to the post for which the petitioners were appointed. Therefore the petitioners cannot be said to be the 'employees not on daily wages basis' on mere usage of the word Substituted worker in their appointment order.

11. As already noted above, the respondents themselves having acknowledged that the petitioners have completed ten years of service, it is not open for the respondents now to contend otherwise when the claim of the petitioners came for consideration for extending the benefit of Sub Rule (ii) of Rule 11 of Tamil Nadu Pension Rules, 1978. Hence, the impugned orders are liable to be set aside. Accordingly, the same is set aside and the respondents are directed to extend the benefit of Sub-class(2) of Rule 11 of Tamil Nadu Pension Rules to the petitioners and duly count 50% of the service rendered by respective petitioners for the purpose of qualifying service and for extending consequential pensionary benefits. In case if any of the petitioners are not extended the pensionary benefits due to non-completion of ten years of minimum qualifying service from the date of their regularization till the date of their superannuation, such petitioners shall also be extended the



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pensionary benefits, in case if they satisfy the requirement of ten years qualifying service on counting half of the temporary service rendered by them. The 1st respondent is directed to complete entire exercise, as directed above, as expeditiously as possible at any rate within a period of three (3) months from the date of receipt of a copy of this order.

12. Accordingly, these writ petitions are allowed and the connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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