



W.P.(MD) No.653 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.653 of 2021

Rosili Ammal

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep., by The Secretary to Government,
Department of School Education,
Fort St. George, Chennai.
- 2.The Director of School Education,
College Road,
Chennai.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thakalai,
Kanyakumari District.
- 5.The Headmaster,
Government Higher Secondary School,
Cheramangalam,
Kanyakumari District.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 4th Respondent in Na.Ka.No.10221/A1/2018, dated 07.09.2020 and to quash the same and also directing the Respondents to regularize petitioner's service from the original date of her appointment dated 01.12.1983 and to disburse retirement and pensionary benefits to her.

For Petitioner : Mr.C.M.Marichelliah Prabhu
for Mr.B.Balamurugan

For Respondents : Mr.V.Om Prakash
Government Advocate

ORDER

The petitioner herein, who was initially appointed as part time Sweeper on 01.12.1983 in the Government Middle School, Talakulam, Kanyakumari District, through Employment Exchange, continued as such and she was paid from the contingency funds. After completing 17 years of service as part time Sweeper, the service of the petitioner was absorbed as Night Watchman with effect from 17.11.2000 and she continued in the said post till 30.04.2008 on which date, she retired from service on attaining the



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age of superannuation. However, the services of the petitioner were not regularised in the cadre of Night Watchman and therefore, the petitioner approached this Court by filing W.P.(MD) No.10221 of 2018. This Court, by an order dated 28.04.2018, directed Respondent No.1 to consider the case of the petitioner for age relaxation and consequential regularisation of her service. Pursuant there to, the case of the petitioner was considered by the Respondent No.1 and through proceedings in letter No.24725/Pa.Ka. 4(1)/2019, dated 29.05.2020, the services of the petitioner were regularised with effect from 17.11.2000 in the post of Night Watch Woman. Thereafter, the petitioner made a claim for grant of pension and the said request was negated by Respondent No.4 by issuing the impugned proceedings dated 07.09.2020 stating that the petitioner has not completed the qualifying service of 10 years and therefore, she is not entitled for pension. Aggrieved by the proceedings dated 07.09.2020, the petitioner approached this Court by filing this writ petition.

2. It is the contention of the learned counsel for the petitioner that though the petitioner was appointed as part time Sweeper, the nature of work



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that was rendered by the petitioner is as a full time employee only and it is only for the name sake, it is called as part time Sweeper and the work that is extracted from the petitioner is full time employment and she was subsequently absorbed with effect from 17.11.2000 and therefore, she is entitled for counting of service rendered by her as part time Sweeper from 01.12.1983 to 16.11.2000 by taking into account 50% of her services for the purpose of qualifying service in terms of Rule 11(2)(iv) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as “the Rules”). It is contended that Respondent No.4 while issuing the said proceedings, failed to take into account 50% of the service rendered by the petitioner as part time Sweeper. Thus, the petitioner claims that she is entitled for grant of pension by duly taking into account 50% of the service rendered by her as part time Sweeper.

3. Learned counsel for the petitioner also placed reliance on a decision of this Court in W.P.(MD) No.23516 of 2015, dated 01.09.2022 and submitted that this Court allowed the writ petition under similar fact situation.



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4. Learned counsel for the petitioner further contended that even in case, if the petitioner is not entitled to take into account the service rendered by her as part time Sweeper till 16.11.2000 for the purpose of qualifying service, under Rule 43 of the Rules she is entitled for payment of service gratuity at the uniform rate of half-months' emoluments for every completed six monthly period of service. But Respondent No.4 failed to consider the claim of the petitioner under Rule 43 of the Rules. It is also further contended that under Rule 82 of the Rules, there is every power conferred on the respondent-authorities to relax any of the Rules coming in the way of granting pension to the petitioner, if the respondents are satisfied that the case of the petitioner requires such relaxation. According to the learned counsel for the petitioner, the respondents ought to have exercised the power under Rule 82 of the Rules. But they failed to exercise the said power.

5. On the other hand, learned Government Advocate contended that the services of the petitioner were regularised with effect from 17.11.2000 by relaxing the upper age and she has not completed the requisite 10 years of



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qualifying service in order to be eligible for grant of pension. He also further contended that the service rendered by a part time Sweeper cannot be taken into account in terms of Rule 11(2)(iv) of the Rules and it is only the whole time employment rendered on temporary or contingent basis can be taken into consideration under the said Rule.

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

7. It is not in dispute that the services of the petitioner were regularised with effect from 17.11.2000 and she retired from service on 30.04.2008, i.e., even before completing 10 years of service. Thus, the petitioner admittedly did not complete the qualifying service in order to be eligible for grant of pension under the Rules. But the claim of the petitioner that she is entitled for counting 50% of the service rendered by her as part time Sweeper from 01.12.1983 to 16.11.2000 is concerned, the same was not at all considered by Respondent No.4 while issuing the impugned order.



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8. This Court in W.P.(MD) No.23516 of 2015 considered identical

case and held as under:

“6. The petitioner's service was a continuous and followed by regular absorption employment without a break. It is the submission of the learned counsel for the petitioner that though the nomenclature was part time Sweeper, the petitioner was made to work the whole day. The petitioner was paid from contingencies from 04.08.1986. She was absorbed as a full time Watchwoman on 13.11.2000, that too without a break in service. As per Rule 11 (2) (iv) of the Tamil Nadu Pension Rules, the petitioner is entitled for taking into consideration half of her service from 04.08.1986 to 13.11.2000 for calculating the qualifying service for pension. From 04.08.1986 till 13.11.2000 the petitioner was working as a part time Sweeper and then from 13.11.2000 till her retirement, she was working as a Watchwoman and her service has to be regularised.

7. The learned counsel for the petitioner submitted that the petitioner's service was regularised with effect from 2000. This Court finds that there is no need to pass a specific order with regard to the regularisation of service of the petitioner. However, this



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Court directs the respondent to pass appropriate orders, in the light of Rule 11 (2) (iv) of the Tamil Nadu Pension Rules, considering the petitioner's part time service from 04.08.1986 to 13.11.2000 for calculating the qualifying service for computation of pension.

8. In the result, this Writ Petition is allowed. The respondent is directed to take half of the service of the petitioner from 04.08.1986 to 13.11.2000 for calculating the qualifying service for pension.”

9. The claim of the petitioner that though she was appointed as part time Sweeper through Employment Exchange, the nature of services rendered by her are full time employment is a matter that can be decided basing on the facts of the present case. It is not possible for this Court to record a factual finding in that regard. Therefore, it is a fit case where Respondent No.4 should re-consider this aspect with reference to the relevant records and then consider as to whether the service rendered by the petitioner as Sweeper would fall under Rule 11(2)(iv) of the Rules or not. In case, if Respondent No.4 satisfies that the petitioner is entitled for the benefit of Rule 11(2)(iv) of the Rules, then 50% of the service rendered by her as part time Sweeper shall



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be taken into consideration for the purpose of grant of pension and in which case, the petitioner may be entitled for grant of pension. In case, if Respondent No.4 comes to the conclusion otherwise, then it may be incumbent upon Respondent No.4 to consider the case of the petitioner under Rule 43 read with Rule 82 of the Rules. None of these exercises were undertaken by Respondent No.4 while passing the impugned order. In the circumstances, this Court is of the considered view that it is a fit case to remand the matter back to Respondent No.4 for considering the claim of the petitioner afresh, in the light of the observations made hereinabove and to pass appropriate orders in accordance with law.

10. Accordingly, the impugned order is set aside and the matter is remitted back to Respondent No.4 for considering the claim of the petitioner afresh, in the light of the observations made hereinabove and also duly taking into consideration the order passed in W.P.(MD) No.23516 of 2015, dated 01.09.2022. The petitioner is granted liberty to submit a detailed representation together by duly enclosing a copy of the order in W.P.(MD) No.23516 of 2015 within a period of four weeks from the date of receipt of a



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copy of this order. On submission of such representation, Respondent No.4 shall consider the same and pass appropriate orders as directed above within a further period of two months and communicate the decision to the petitioner.

11. This Writ Petition is allowed to the extent indicated above. No costs.

13.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



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MUMMINENI SUDHEER KUMAR, J.

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