



W.P.(MD)No.9298 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2025

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**THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

W.P.(MD)No.9298 of 2019

Sudalai Madathi

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,  
Rep by its Secretary,  
Department of School Education,  
Fort.St.George, Chennai-9.
- 2.The Director of School Education,  
DPI Complex, College Road,  
Chennai-6.
- 3.The District Educational Officer,  
Office of the District Educational Office,  
Tenkasi, Tirunelveli District.

... Respondents

**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.029398/R1/E2/2018 dated 11.01.2019 on the file of the second respondent and quash the same as illegal and consequently for a direction to the respondents to calculate half of the temporary service rendered by the petitioner for pension benefits and provide all other consequential benefits as per G.O.Ms.No. 408, Finance (Pension)Department, dated 25.08.2009 and Rule 11(2) of the Tamil Nadu Pension Rules within the time period stipulated by this Court.



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W.P.(MD)No.9298 of 2019

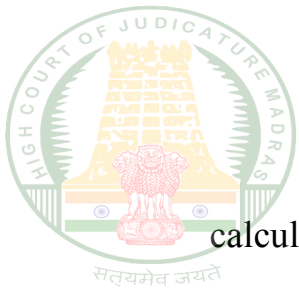
For Petitioner : Mr.S.Rajasekar,  
for M/s.T.Lajapathi Roy and Associates

For Respondents : Mr.G.V.Vairam Santhosh,  
Additional Government Pleader.

### **ORDER**

Under assail is the order dated 11.01.2019 issued by the second respondent and consequently to direct the respondents to calculate half of the temporary service rendered by the petitioner for pension benefits.

2.The case of the petitioner is that she was appointed temporarily in the post of Sweeper at Avvaiyar Government Girls Higher Secondary School, Pavoorchatram, Tenkasi Taluk, Tirunelveli District, as per proceedings dated 22.11.1977. She was not regularized upto the year 2006. She approached this Court by filing a writ petition in W.P. (MD)No.11639 of 2006 and based on the order passed by this Court dated 02.03.2007, she was regularized in the post of Sweeper vide proceedings dated 24.03.2008. The Government has issued an order in G.O.Ms.No.408 dated 25.08.2009, in which, it has been categorically provided that half of the temporary service should be reckoned for



W.P.(MD)No.9298 of 2019

calculation of pension benefits of those regularized employees. She is entitled to the benefit of calculation of half of the temporary service rendered by her from 22.11.1977 to 24.03.2008 for the purpose of calculation of pension. The Hon'ble Division Bench in W.A.(MD) No.547 of 2012 dated 24.08.2017 has held that “the writ petitioner had worked as an NMR Pump Operator cum Watchman during the entire period and entitled to take 50% of the said period for computing pensionary benefits”. The said judgment is squarely applicable to the case of the petitioner and she is entitled to the benefit of calculation of half of the temporary service rendered from 22.11.1977 to 24.03.2008 for the purpose of calculating pension. Hence, this writ petition.

3.The learned counsel appearing for the petitioner would submit that as per G.O.Ms.No.408 dated 25.08.2009, the petitioner is entitled to reckoned half of the temporary service and Tamil Nadu Pension Rules 11(2) also provides for inclusion of half of the temporary service rendered prior to regularization. To strengthen his contention, he has relied upon the judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No.547 of 2012 dated 24.08.2017.



W.P.(MD)No.9298 of 2019

4.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner was working as part time employee from 22.11.1977 to 23.03.2008. Part time service is not equal to the service of NMR, as NMR service is full time service, the petitioner cannot claim parity with it. He would submit that the petitioner was absorbed in regular service after 01.04.2003. Therefore, the petitioner is not entitled to calculate 50% of the service rendered from 22.11.1977 to 22.03.2008. The Hon'ble Division Bench in W.A.(MD)No.547 of 2012 dated 24.08.2017 considered the case of NMR employees, whereas, the petitioner is served as part time employee and part time service of the employee is not par with NMR employees. Therefore, the order issued in the above writ appeal cannot be made applicable to the petitioner.

5.This Court has considered the submissions made on either side and perused the available records.

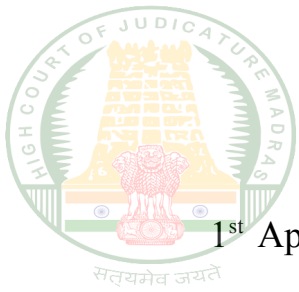
6.It is not in dispute that the petitioner was initially appointed as part time Sweeper on 22.11.1977. It is pertinent to mention that the petitioner was appointed as part time employee on consolidated pay and



W.P.(MD)No.9298 of 2019

not as full time employee. Thereafter, the petitioner was brought regular establishment on time scale of pay with effect from 24.03.2008. The petitioner attained the age of superannuation on 29.02.2012 after rendering a regular service of four years. The petitioner had submitted a representation to take 50% of the part time service to sanction pensionary benefits and filed a writ petition in W.P.(MD)No.15334 of 2018 dated 16.07.2018. This Court directed the respondents to consider the representation of the petitioner. In compliance of the order of this Court, the second respondent, in terms of rules, rejected the by explaining the reasons, vide order dated 11.01.2019.

7.The petitioner has relied mainly on the orders in W.A.(MD)No. 547 of 2012 dated 24.08.2017 and G.O.Ms.No.408, dated 25.08.2009. The Division Bench of this Court has ordered with regard to the NMR employees. It is pertinent to mention that the petitioner has served as part time employee and the part time service employee is not on par with NMR employees. As far as G.O.Ms.No.408 is concerned, it is applicable to the employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1<sup>st</sup> January 1961 and absorbed in regular service before



W.P.(MD)No.9298 of 2019

1<sup>st</sup> April 2003. Rule 11(4) of the Tamil Nadu Pension Rules says that such employees is not entitled to get benefit of counting half of the service rendered in daily wages basis along with regular service.

8.At this juncture, it is relevant to refer Rules 1 & 2 of the Tamil Nadu Pension Rules, which reads as follows:-

*1.Short title and commencement - (1) These rules may be called the Tamil Nadu pension Rules, 1978.*

*(2) they shall be deemed to have come into force on the 1st January 1979.*

*"Provided that these rules shall not apply to Government Servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent."*

*2. Application Save as otherwise provided in these rules, these rules shall apply to all Government Servants appointed to services and posts in connection with the affairs of the State which are borne on pensionable establishments whether temporary or permanent, but shall not apply to -*

- (a) persons in casual and daily rated employment;*
- (b) persons paid from contingencies;*
- (c) persons employed on contract except when the contract provides otherwise;*



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W.P.(MD)No.9298 of 2019

*(d) members of the All-India Services;*

*(e) persons entitled to the benefit of a Contributory Provident Fund;*

*(f) persons who are entitled to the benefits under the Factories Act, 1948 and the Employees' Provident Fund Act, 1952, excluding those who are governed by Statutory Service Rules and belong to pensionable service.*

9.A reading of Rule 11(4) shows that half of service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1<sup>st</sup> January 1961 in respect of Government employees absorbed in regular service before 1<sup>st</sup> April 2003 shall be counted for retirement benefits along with regular service, subject to the following three conditions:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.



W.P.(MD)No.9298 of 2019

(iii) Service rendered in non-provincialised service, consolidated

pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.

10. In this case, the petitioner was absorbed in regular service after 01.04.2003 and Tamil Nadu Pension Rules is not applicable to the petitioner. There is no merits in this writ petition and the same is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs.

NCC : Yes / No  
Index : Yes / No  
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**22.04.2025**



W.P.(MD)No.9298 of 2019

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W.P.(MD)No.9298 of 2019

**M.JOTHIRAMAN, J.**

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W.P.(MD)No.9298 of 2019

22.04.2025