



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.8601 of 2017

and

W.M.P(MD)Nos. 6526 of 2017 & 19614 of 2024

M.Rithammal

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Labour,
Secretariat,
Saint George Fort,
Chennai – 600 009.
2. The Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai – 600 006.
3. The Principal Accountant General,
[Accounts & Entitlements],
361, Anna Salai,
Chennai – 600 018.

4. A.Gnanaprakasi

... Respondents

[Respondents 3 & 4 are impleaded vide Order of this Court, dated 06.02.2025]



WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue of *Writ of Certiorarified Mandamus*, calling for records in connection with the impugned order passed by the 2nd respondent in E4/49937/14, dated 11.12.2014, quash the same and consequently directing the Respondents 1 and 2 herein to refix the pension of the petitioner by calculating half of the total honorarium service rendered by the petitioner from 01.09.1973 to 31.08.1977 (4 years) and add it into regular service served by her from 06.01.1982 to 31.05.2006 (25 years 4 months and 22 days) as per G.O.Ms. No.408, Finance (Pension) Department, dated 25.08.2009.

For Petitioner : M/s.S.Bharathy Kannan

For Respondents : M/s.D.Farjana Ghousia,
Special Government Pleader, for R-1 & R-2
R-3 No appearance

ORDER

This Writ Petition is filed for *Writ of Certiorarified Mandamus* to quash the impugned order dated 11.12.2014 passed by the 2nd respondent and consequently direct to the respondents 1 and 2 to refix the pension of the petitioner, by calculating half of the total honorarium service rendered by the petitioner for a period from 01.09.1973 to 31.08.1977 (4 years) and add it into regular service from 06.01.1982 to 31.05.2006 (25 years 4 months and 22 days),



WEB COPY

as per G.O.Ms. No.408, Finance (Pension) Department, dated 25.08.2009 and grant pension.

2. Heard M/s.S.Bharathy Kannan, the Learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, the Learned Special Government Pleader appearing for the respondents 1 & 2, and perused the materials available on record.

3. The petitioner was initially appointed as “Youth Service Corps” by the Director of Social Welfare Service Corps, on 21.08.1973. After completion of two months, the petitioner was posted as Taluk Head Quarters Hospital, Padmanabapuram, Kanyakumari District on 01.09.1973 and salary was fixed as Rs.175/-per month, on consolidated basis. Again, after completion of four years of service on consolidated basis for a period from 01.09.1973 to 31.08.1977, the petitioner was appointed as 'Junior Assistant' on 06.01.1982 through the Tamil Nadu Public Service Commission and posted as 'Junior Assistant' in the office of the Deputy Commissioner of Labour, Tirunelveli. After completion of 25 years, 4 months and 22 days of service, the petitioner had attained superannuation was retired from service on 31.05.2006. At the time of retirement, he was working as Superintendent in the 2nd respondent Department.



WEB COPY

4. The contention of the writ petitioner is that as per G.O.Ms. No.408, Finance (Pension) Department, dated 25.08.2009, 50% of the service already rendered by the petitioner on consolidated pay under the Department of Social Welfare for a period from 01.09.1973 to 31.08.1977, i.e., four years ought to be taken into account while calculating pension. Hence, the petitioner has submitted a petition / proposal to the respondents for revising her pension to refix her pension by calculating 50% of the earlier service on consolidated pay along with her regular service in the Labour Department from 12.01.1981 to 31.05.2006. The said petition / proposal was duly forwarded by the 2nd respondent to the Accountant General, but the same was returned for certain clarifications. The petitioner again resubmitted the representation by relying upon the G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009. But the respondents have stated that the petitioner was not absorbed in the Government service and further her appointment was through TNPSC and the same cannot be taken into account for calculating pension. Aggrieved over the same, the present Writ petition is filed.

5. The respondents 1 & 2 have filed counter, wherein it is stated that the petitioner had served as “Youth Service Corps” for a period of 4 years in the office of the Director of Social Welfare Service Corps and requested to take 50%



WEB COPY

of the period, based on the G.O.Ms. No.408, Finance (Pension) Department, dated 25.08.2009. But the petitioner was not absorbed from the Youth Service Corps, but selected through TNPSC for the post of Junior Assistant and was appointed in the regular service. Further there was break in service. Hence the service cannot be considered.

6. After hearing arguments on either side, this Court had given its anxious consideration. It is seen that Rule 11(4) of the Tamil Nadu Pension Rules, 1978 permits to add 50% service from non-provincialized service, consolidated pay, honorarium or daily wages for the purpose of granting pension. The condition is the said period should be a regular employment, whole time employment and government employment and should be absorbed in government service. In the present case, the petitioner had served from 01.09.1973 to 31.08.1977 (4 years) which is regular employment, whole time employment and government employment. Thereafter the petitioner was appointed in the regular service from 06.01.1982 to 31.05.2006. But the respondents submitted that the petitioner was not absorbed but appointment by TNPSC.

7. In order to consider the rival pleas, it is necessary to refer to the provision and the relevant provision is extracted hereunder:



WEB COPY

(4)[Half of the service rendered under the State Government in non-provincialized service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government -employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialized 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 basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

(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.

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.] *[Rule 11(4) and Proviso added - G.O.Ms.No.41, Finance (Pension) Department, dated 09-02-2010.]*”

8. The petitioner has satisfied the conditions namely regular employment, whole time employment and government employment. However, the provision states there should be an absorption in regular service before 1st April 2003. The same is interpreted by the respondents that the person ought to be absorbed in the same service and in the present case the petitioner had served as



WEB COPY

Youth Service Corps and according to respondents the petitioner ought to have absorbed as Youth Service Corps in regular service, but the petitioner has appointed as Junior Assistant. When the provision states that the person should be absorbed in government service prior to 01.04.2003, it means the person should be a government servant prior to the 01.04.2003. The word absorption cannot be separately interpreted but the entire phrase “absorbed in government service prior to 01.04.2003” ought to be taken. Further the said phrase is not stating that the person should be absorbed in the “same service” but only states absorbed as government servant. Further, this Court is of the considered opinion that the said word “absorption” ought to be interpreted liberally, as the Pension Rule is a beneficial piece of legislation. Therefore, the interpretation stated by the respondent is not acceptable.

9. The next contention of the respondents is that the petitioner is not having continuous service, but there is break in service. It is seen that the petitioner had served as Youth Service Corps from 01.09.1973 to 31.08.1977 (4 years). Then the petitioner had served the other service from 06.01.1982 to 31.05.2006. Admittedly there is break in service from 01.09.1977 to 05.01.1982 for the period of five years. Of course the petitioner is having break in service but the same can be condoned by the government as per proviso to Rule 11(4).



WEB COPY

10. The respondents submitted that the petitioner had retired from service and had filed the present writ petition after delay of 11 years and prayed that the writ ought to be dismissed on delay and laches. Considering the facts of the case, this Court is of the considered opinion that the petitioner may not be entitled to the arrears of pension from 2006 to 2017, but she is entitled to from the date of filing of this writ petition i.e., from 27.04.2017.

11. For the reasons stated supra the following order is passed:

1. The impugned order is set aside and the writ petition is allowed.
2. The petitioner is directed to submit a fresh representation along with the copy of the order to the 2nd respondent, within a period of Two weeks from the date of receipt of a copy of the order.
3. Thereafter the 2nd respondent shall forward the same to the 1st respondent, within a period of three weeks therefrom.
4. Thereafter, the 1st respondent shall consider the representation of the petitioner and condone the break in service, within a period of Four months, therefrom. And grant pension by adding 50% of earlier service.
5. Thereafter, the Pension authorities shall disburse the same to the petitioner.
6. The petitioner is not entitled to arrears of pension from the date of retirement till the date of filing this writ petition.
7. Further the petitioner is not entitled to interest at all.



WEB COPY

12. No Costs. Consequently, W.M.P(MD)No.19614 of 2024 is allowed and W.M.P(MD)No.6526 of 2017 is closed.

Index : Yes / No
Internet : Yes

06.02.2025

KSA

To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Labour,
Secretariat,
Saint George Fort,
Chennai – 600 009.
2. The Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai – 600 006.
3. The Principal Accountant General,
[Accounts & Entitlements],
361, Anna Salai,
Chennai – 600 018.



WEB COPY



S.SRIMATHY, J

KSA

Order made in
W.P(MD)No.8601 of 2017

06.02.2025