

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2010

CORAM:

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.41624 of 2006

A.Jeevarathinammal

... Petitioner

Versus

1. The Government of Tamil Nadu,  
Rep. by the Secretary,  
Social Welfare & Nutrition Meals  
Scheme Department, Fort St. George,  
Chennai - 9.
  2. The Director of Social Defence,  
Chennai - 10.
  3. The Principal Accountant General (A & E),  
261, Anna Salai,  
Chennai - 600 018.
- ... Respondents

PRAYER: This Writ Petition came to be numbered under Article 226 of the Constitution of India for issuance of writ of certiorari by way of transfer of O.A.No.4934 of 2000, to set-aside the order No.27620/S.N.10/96-3 dated 21.04.1997 read with the order No.AG (A&E)/PEN/P-21/5/J-7-228-C/RT/99-2000 dated 27.09.1997 passed by the first and third respondents respectively as illegal and unconstitutional and consequently direct the respondents to grant pension to the petitioner taking her service from 30.06.1963 as qualifying service with all arrears and exemplary interest thereon.

For Petitioner : Mrs.Anna Mathew

For Respondents 1- 2: Ms.C.Devi  
Government Advocate

For Respondent - 3 : Mr.V.Vijayashankar

O R D E R

The North Arcot District Children's Aid Society, appointed the petitioner as Warder-cum-cook by an order dated 30.06.1963 in their Reception Home at Vellore. The District Collector of Vellore was the President of the North Arcot District Children's Aid Society.

The Reception Home was run based on the grant of the Tamil Nadu Government. Since the said Society became defunct and did not show any interest in the welfare of the inmates, the said Society was placed under the charge of the Headquarters Deputy Tahsildar, Vellore with effect from 01.05.1981.

2. Thereafter, the Government issued G.O.Ms.No.1922, Social Welfare Department, dated 17.09.1985 taking over the Reception Home run under the North Arcot District Children's Aid Society along with the staff, in as is where is condition with the assets. The service of the petitioner was regularised as Cook with effect from 17.09.1985. The petitioner retired from service on 31.07.1994 on reaching the age of superannuation.

3. The petitioner requested for pension for the service rendered by her in the Reception Home at Vellore. The same was declined by the first respondent in the order dated 21.04.1997 on the ground that the petitioner did not render 10 years of qualifying service to receive pension. It is stated therein that the petitioner rendered only 8 years and 10 months of service.

4. Hence, the petitioner has filed the Original Application in O.A.No.4934 of 2000, to quash the aforesaid order dated 21.04.1997 of the first respondent and for a consequential direction to the respondents to grant pension, taking her service from 30.06.1963 as qualifying service with all arrears and exemplary interest thereon.

5. On abolition of the Tamil Nadu Administrative Tribunal, the matter stood transferred to this Court and renumbered as W.P.No.41624 of 2006.

6. The first and second respondents filed reply affidavit reiterating the stand that the petitioner rendered less than 10 of service and therefore she is not entitled to pension under the Tamil Nadu Pension Rules, 1978. The third respondent filed reply affidavit stating that the third respondent wrote a letter dated 21.07.1997 recommending to count the service, prior to the take over of the Reception Home, under G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988. But the Government took a decision not to grant pension.

7. Heard Mrs.Anna Mathew, learned counsel for the petitioner; Ms.C.Devi, learned Government Advocate for the first and second respondents and Mr.V.Vijayashankar, learned counsel for the third respondent.

8. The learned counsel for the petitioner strenuously contends that the Reception Home was fully aided by the Tamil Nadu Government and the President of the North Arcot District Children's Aid Society was the District Collector. She states that neglected

children and young offenders were the inmates of the Reception Home. Instead of the state having such a Home as mandated by the Children's Act, it was run by the North Arcot District Children's Aid Society. The learned counsel has brought to my notice Article 39 (e) and (f) of the Constitution of India and vehemently contends that the Reception Home run by the Vellore North Arcot District Children's Aid Society should be considered as Government Establishment, particularly, when the same was taken over by the Government.

9. The learned counsel for the petitioner submits that before take over of the Reception Home by G.O.Ms.No.1922, Social Welfare Department, dated 17.09.1985, the Reception Home came under the control of Headquarters Deputy Tahsildar, Vellore with effect from 01.05.1981. Hence, the petitioner is entitled to pension for the service rendered by her, even if the service is counted from 01.05.1981. The learned counsel further submits that the Government counted the service of the employees of the Reception Home for the purpose of pension and terminal benefits, if they were in receipt of time scale of pay. Since the Government counted the service of the employees of the Aid Society, who were in receipt of time scale of pay for the purpose of pension, the first respondent was not justified in not applying G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988, by counting 50% of the service rendered by petitioner, who was not in time scale of pay, during the period between 1963 to 1985, particularly, when the third respondent recommended for the said course. The learned counsel furthermore submits that the petitioner is now aged 76 years and the action of the first respondent in rejecting the claim for pension is arbitrary and violative of Article 21 of the Constitution of India.

10. On the other hand, the learned Government Advocate for the first and second respondents submits that since the petitioner rendered only 8 years and 10 months of service, she was not paid pension. She seeks to support the impugned order rejecting the claim for pension.

11. The learned counsel for the third respondent submits that in fact the third respondent recommended for counting 50% of the service rendered by petitioner before take over as per G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988. However, the first respondent rejected the claim of the petitioner and passed the impugned order. Since it is a policy decision, the third respondent could have no say in this matter.

12. I have considered the submissions made on either side and perused the materials available on record.

13. It is not disputed that the petitioner was appointed by the North Arcot District Children's Aid Society, Vellore by an order dated 30.06.1963 as Warder-cum-cook in the Reception Home at Vellore.



The order appointing the petitioner as Warder-cum-cook is enclosed at page No.9 in the typed-set of the respondents 1 and 2. The Reception Home was run with the cent percent aid of the Government. It is also not in dispute. Further, the Collector was the President of the the North Arcot District District Children's Aid Society, Vellore. Another undisputed fact is that the North Arcot District Children's Aid Society, Vellore became defunct and did not show any interest in the welfare of the inmates and that therefore the Home was brought under the control of Headquarters Deputy Tahsildar, Vellore with effect from 01.05.1981. Later, the home was taken over by the Government by issuing G.O.Ms.No.1922, Social Welfare Department, dated 17.09.1985. The said G.O.Ms.No.1922 is extracted here-under:-

"Social Welfare Department

G.O.Ms.No.1922

Dated:17.09.1985

Purattasi-1, Kurodhana,  
Thiruvalluvar Aandu 2016.

Read:-

1. From the Director of Approved Schools and Vigilance Service, Madras,Lr.No.23430/B2/84, dated 30.08.1984 and 24.09.1984.

2. From the Director of Approved Schools and Vigilance Service, Madras Lr.No.11299/D1/85, dated 15.05.1985.

ORDER:-

It has been brought to the notice of the Government that the Private Reception Home, Vellore the North Arcot District Children Aid's Society, is defunct, that the Honorary Secretary of the Home did not show any interest in the welfare of the inmates and that the inmates were not provided with adequate quantity of food, clothing, bedding and medical facilities etc., The Collector of North Arcot, has, therefore, placed the institution under the charge of the Headquarters Deputy Tahsildar Vellore, with effect from 01.05.1981. The Deputy Tahsildar is not able to devote his full attention to this institution due to his multifarious official work. The Director of Approved Schools and Vigilance Service has, therefore, reported that there is an urgent need to take over this Home under the direct control of the Government with a full time head of institution for its proper and efficient functioning and to look after the welfare of the boys in custody.

2. The Government, after careful examination, accept the proposal of the Director of Approved Schools

and Vigilance Service and direct that the Reception Home, Vellore, run under the North Arcot Children's Aid Society be taken over by the Government with effect from the date of issue of this order in as is where is condition with the buildings.

3. Sanction is accorded to incur and expenditure not exceeding Rs.1.56 lakhs (Rupees One Lakh and fifty six thousands only) as recurring expenditure and Rs.12,000/- (Rupees Twelve Thousands only) as non-recurring expenditure as detailed in Annexure - 1 to this order.

4. Sanction is also accorded for the creation of the temporary posts mentioned in the Annexure - II of the draft order for a period of one year or till the need therefor ceases, whichever is earlier.

5. The staff sanctioned in paragraph 4 above shall be eligible to draw Dearness Allowance and other usual allowances as admissible under the orders in force.

6. The expenditure should be debited to "288. Social Security and Welfare-D. Social Welfare-AF. Correctional Homes-Schemes in the Seventh Five year Plan-II. State Plan-JE. Government Approved Schools (D.P.Code No.288D AF JE 0002)".

7. This order issues with the concurrence of the Finance Department vide its. U.O.No.105572/SW/85-1, dated 16.09.1985."

14. The said G.O.Ms.No.1922 makes it very clear that the Home was taken over by the Government from 01.05.1981 and was placed under the control of Headquarters Deputy Tahsildar, Vellore. Hence, the first respondent is not correct in not taking into account the service of the petitioner from 01.05.1981.

15. The services of the petitioner was regularised in G.O.No.(3D) No.5, Social Welfare and Nutritious Meal Programme Department, dated 24.03.1995, with effect from 17.09.1985.

16. The Government also issued G.O.Ms.No.262, Social Welfare and Nutritious Meal Programme Department, dated 04.11.1996 counting the service rendered by the employees in the Reception Home before take over, if they were in time scale of pay. The said G.O.Ms.No.262 is extracted here-under:-

"SOCIAL WELFARE AND NUTRITIOUS MEAL PROGRAMME DEPARTMENT

G.O.Ms.No.262

Dated.04.11.1996

Read again:-

1. G.O.Ms.No.1836, Social Welfare Department, dated 06.09.1985.
2. G.O.Ms.No.1922, Social Welfare Department, dated 17.09.1985.
3. G.O.Ms.No.539, Social Welfare Department, dated 26.03.1987.
4. G.O.(3D)No.5, Social Welfare and Nutritious Meal Programme, dated 24.03.1995.
5. G.O.(2D)No.3, Social Welfare and Nutritious Meal Programme, dated 14.03.1996.

Read also:-

6. From the Director of Social Defence, letter No.5795/A3/90, dated 20.09.1990.
7. From the Accountant General, Madras, letter No.P.M./I/GL/CWH/91-92/435, dated 01.01.1992.
8. From the Accountant General, Madras, letter No.PM./I/GL/CWH/92-93/639, dated 09.12.1992.
9. From the Director of Social Defence, letter No.5795/A3/90, dated 28.06.1993.
10. From the Director of Social Defence, letter No.15304/A3/95, dated 29.02.1996.

Order:-

In the Government Order first read above the Government takeover the Reception Home which was functioning under the Tiruchirapalli Children's Aid Society along with the staff. In the Government Order third read above orders were issued for the retrospective regularisation of the services of the staff of the institution from their date of absorption. In the Government Order Second read above, the Government takeover the Reception Home functioning under the North Arcot Children's Aid Society along with the staff. In the Government Orders fourth and fifth read above orders were issued for retrospective regularisation of the services of the staff of the institution who have rendered service in time scale of pay from their date of absorption by relaxing rules.

2. The Director of Social Defence has requested that the past services rendered by the erstwhile employees of the Reception Homes at Tiruchirapalli and Vellore under the private managements may be taken into account for the purpose of pension and Death-cum-Retirement Gratuity. The Director of Social Defence has further reported that the above staff have not contributed to any Provident Fund, that the posts in which they are now working are pensionable and that the conditions prescribed in Rule 14 of the Tamil Nadu Pension Rules, 1976 will not be applicable to the staff of the erstwhile Reception Homes at Tiruchirapalli and Vellore. The Accountant General who was consulted in the matter has stated that prior to taking over of the institutions the staff were paid salaries out of Government grant and it is therefore presumed that their duties and pay were regulated under conditions determined by Government and that if so, such services can be treated as qualifying service for pension and orders issued by Government under the enabling provisions of Rules 12(2) of Tamil Nadu Pension Rules, 1978, subject to the condition that the service be otherwise reckonable under the Rules.

3. The Government after careful consideration, direct that the services rendered by the employees of the erstwhile Reception Home run by Tiruchirapalli Children's Aid Society and Reception Home run by North Arcot Children's Aid Society, Vellore on time scales of pay indicated in the Annexure to this order be counted for the purposes of pension and Death-cum-Retirement Gratuity.

4. This order issues with the concurrence of the Finance Department - Vide its U.O.No.86713/Pension/96-1, dated 01.11.1996."

17. As rightly contended by the learned counsel for the petitioner, taking into account that the Reception Home was run as mandated by the Children's Act and also taking into account Article 39 (e) and (f) of the Constitution of India and also the fact that the Government decided to count the services rendered by the employees in the Reception Home before take over if they were in time scale of pay, for the purpose of terminal benefits, the Government also should have counted the service of other employees in the Reception Home before take over, as per G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988, as recommended by the third respondent.

18. I am of the view that the respondents 1 and 2 should have counted 50% of the service of the petitioner from 30.06.1963 to



17.09.1985 for the purpose of pension and other terminal benefits, particularly, when the first respondent passed G.O.Ms.No.262, Social Welfare and Nutritious Meal Programme Department, dated 04.11.1996, counting the services of the employees before take over, who were in receipt of time scale of pay, after consultation with the Accountant General, the third respondent herein. That is, when the Accountant General, the third respondent herein, recommended in its letter dated 21.07.1997 to count 50% of the service of the petitioner before take over, based on G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988, the respondents 1 and 2 ought to have counted 50% of the service.

19. Hence, the impugned order is liable to be quashed and the same is quashed. The first respondent is directed to provide pension and other terminal benefits to the petitioner by counting 50% of the service from 30.06.1963 to 17.09.1985 also, along with her regular service from 17.09.1985 to 31.07.1994, within a period of six weeks from today.

20. The writ petition is allowed on the above terms. No costs.

Sd/-

Asst. Registrar

//true copy//

Sub Asst.Registrar

r n s

To

1. The Secretary,  
Government of Tamil Nadu,  
Social Welfare & Nutrition Meals  
Scheme Department, Fort St. George,  
Chennai - 9.

2. The Director of Social Defence, Chennai - 10.

3. The Principal Accountant General (A & E),  
261, Anna Salai,  
Chennai - 600 018.

1 cc to Government Pleader, Sr.No.72742

1 cc to Mr.V.Vijay Shankar, Advocate, Sr.No.72562

W.P.No.41624 of 2006

RV {CO}

TP/5.10.2010.