

O.A.NO. 405/2004

CORAM:

**Smt. B Ramalakshmy Amma,
Retired Sweeper,
O/o Commissioner of Income Tax,.
Thiruvananthapuram.**

VS

- By Advocate Mr Thomas Mathew Nellimoottil, ACGSC**

ORDER

**This is an application filed by Smt. B. Rajalakshmi Amma Retired
Sweeper, Office of Commissioner of Income Tax Thiruvananthapuram for**

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getting pension sanctioned from the Chief Commissioner of Income Tax, Thiruvananthapuram.

2. The case of the applicant is that she joined the Income Tax Department in 1988 as part time sweeper. She acquired temporary status with effect from 1.9.93 vide A-2 order dated 3.11.93. She was considered for appointment against regular post of sweeper (Group'D') and after going through the due procedure of securing her willingness, the Department appointed her as Group'D' Sweeper vide A-4 order dated 23.1.96. As no action was initiated towards granting pension she represented vide A-5 representation dated 23.1.2004 stating that if the period of her service from full time to date of superannuation is taken into account she would have a service of 10 years and 6 months, as per her office records she has only 9 ½ years' service and requesting that the period of 5 years for which she worked as contingency worker might also be added to the above-mentioned official period of service making the total above 10 years thus enabling her to get pension. In response thereto, she was informed vide A-1 dated 4.3.2004 that as per G.O.I. decision (2)(a) under Rule 14 of CCS (Pension) Rules, service rendered involving whole time employment (and not part time for a portion of day) paid from contingencies only will qualify for pensionary benefits.

3. By way of reliefs, the applicant seeks to get A-1 quashed, to direct the respondents to adopt 10 years qualifying service and sanction superannuation pension with effect from 1.4.2004.

4. In reply, the respondents have pointed out that she was recruited as part time Sweeper on temporary basis for the period from 1.11.1988 to 31.12.1988, extensions were given first, for 2 months, then for 3 months and then until further orders. It was admitted by the respondents that she was granted temporary status in which capacity she worked with effect from 1.9.93, later on she was appointed as Group'D' Sweeper in which post she joined on 5.2.96 (or 5.3.96?) and worked till her retirement. As per the Government of India decision vide A-1 letter part time service cannot be



counted for pension, she does not have the required qualifying service of 10 years and she is not entitled to the pension.

5. We have heard Shri P Balakrishnan, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel for respondents. We have given due consideration to the pleadings and evidence placed on records.

6. According to the tabulation in the application, the claim of having qualifying pensionable service rests on the following:

		y	m	d
(a)	Service put in between 1.9.92 till 1.9.93 as a pre-condition for temporary status	1	0	0
(b)	Service put in actual temporary status from 1.9.93 to 23.1.96	2	4	22
(c)	Total	3	4	22
(d)	Fifty percent of (c) above	1	8	11
(e)	Service put in from 23.1.96 to 31.3.2004	8	2	9
(f)	Total	9	10	20
(g)	Administrative delay	0	5	13
	Total	10	4	3

It is seen from the records furnished and the extant rules that the above calculation suffers from the following defects. As regards (a), the applicant is not entitled to count the period of one year which is a precondition for conferment of temporary status. A-2 order makes it very clear that one year previous continuous service is a precondition and the temporary status commences only with effect from 1.9.93. The applicant vide (e) above has reckoned her service in Group'D' Sweeper post from 23.1.96 to 31.3.2004, the former date being the date of order by which she was appointed as Group'D' Sweeper (A-4 order). But the above order is not found to be self-executing and it envisages fulfillment of certain conditions by the appointee by way of furnishing certain documents etc. In the reply statement the respondents says in para 6 that the applicant joined duty on 5.2.96 apparently after fulfilling the necessary preconditions. It is seen, however, that in para 7 page 4, the date of the same statement is given as 5.3.96 making a difference of one month.

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Giving the benefit of doubt to the applicant, the date of joining is taken as 5.2.96 and it is found that the service put in from 5.2.96 to 31.3.2004 works out to about 8 years and one month. Reckoning the duration of administrative delay as a period for pensionable service does not appear to be justified as the department has to process the cases of 25 appointees as referred to in A-3 document.

7. The total therefore works out as follows:

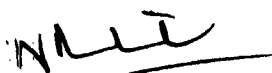
		y	m	d
(a)	Service put in actual temporary status from 1.9.93 to 4.2.96	2	5	4
(b)	Fifty percent of (a) above	1	2	10
(c)	Service put in from 5.2.96 to 31.3.2004	8	1	29
	Total	9	4	9

Rule 49(3) of Pension Rules envisages that "in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. The fraction of 4 months and some days above would entitle the applicant the benefit of rounding up only to an extent of 6 months making the total as 9 years 6 months. This falls short of the threshold value of the qualifying service prescribed is 10 years. It is relevant to note here that vide A-5, the applicant herself has made a reference to departmental figure of 9 ½ years service.

8. It is therefore evident that the length of qualifying service for pension in the case of the applicant falls short of the required 10 years service.

9. In the result it is found that the applicant does not have a case and the O.A. is dismissed. There is no order as to costs.

Dated, the 25th May, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER