

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1510/2016

Dated Tuesday, the 22nd day of January, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

M. Anantham

No. 29, Mariamman Koil Street

Pillaichavadi

Puducherry – 605 014.

...Applicant

By Advocate M/s P. Rajendran

Vs.

1.Union Territory of Puducherry
rep. by the Director of School Education,
Puducherry.

...Respondent

By Advocate Mr.R. Syed Mustafa

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the records relating to the impugned order of the respondent in No. 6832/DSE/Estt.I/D4/2016 dated 22.04.2016 and quash the same and direct the respondent to treat the applicant as regularly appointed with effect from the date of her intial appointment, namely, 6.11.1982 and grant her pension under CCS(Pension)Rules and grant her all consequential benefits.”

2. It is submitted that the applicant was aggrieved by the impugned Annexure A-8 order dated 22.04.2016 by which her representation for counting her part time/daily rated service for grant of pension was rejected. Learned counsel for the applicant would argue that the applicant was admittedly in the service of the respondent as a Part Time Sanitary Assistant w.e.f 06.11.1982. She was engaged full time on daily rated wage basis w.e.f 01.10.1999 and later appointed as Sanitary Assistant on regular basis w.e.f 24.05.2000. She retired on superannuation w.e.f 31.07.2008 after rendering a regular qualifying service of 8 years and 2 months.

3. As the applicant had worked on part time basis for over 17 years, she could not be deprived of her right to pension. Executive instructions do exist to consider part time service on pro-rata basis for the purpose of determination of gratuity and eligibility for regularization. There is no

reason why a similar facility could not be extended for the purpose of pension, it is contended.

4. Learned counsel for the respondents would oppose the prayer stating that the applicant was clearly short of the minimum qualifying service required for pension under the CCS Pension Rules, 1972. Half of the service rendered on part time basis could be taken into account for computation of qualifying service provided the part time service is on a full time job or one for which there could be a full time sanctioned post. In the case of applicant, she performed sanitary work only for a few hours in a week. The decision of the Government of India under Rule 14 of CCS Pension Rules, 1972 does not provide for counting of service in case of part time employment for posts which do not involve full time work as the conditions prescribed in GI MF OM No.F.12(1)-E.V/68 dated 14.05.1968 are not fulfilled, the applicant could not be sanctioned pension, it is argued.

5. I have considered the pleadings as also the submissions made by the rival counsel. It is not in dispute that the applicant was engaged as Part Time Sanitary Assistant under the respondent department w.e.f 06.11.1982 and went on to be appointed as a regular Sanitary Assistant w.e.f 24.05.2000. The applicant had completed over 8 years and 2 months of service as a regular Sanitary Assistant prior to her retirement on superannuation on 31.07.2008. The impugned order rejects her claim for pension on the strength of decision no.2 below Rule 14 of the CCS

Pension Rules 1972 which provides for half of the service paid from contingencies to be allowed to count towards pension at the time of absorption in regular employment subject to certain conditions including one which requires that the service paid from contingencies should have been in a job involving whole time employment (and not part time for a portion of the day).

6. It appears that the respondents overlooked the fact that the conditions also provide for service paid from contingencies in a type of work or job for which regular posts could have been sanctioned, eg., Malis, Chowkidars, Khalasis etc. The conditions subject to which service paid from contingencies would be allowed to count towards pension as stated in the OM dated 14.05.1968 cited above are reproduced below:

- (a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time for a portion of the day).
- (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., malis, chowkidars, khalasis, etc.
- (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available.

7. It would be seen that the applicant's claim has been rejected on the strength of condition (a) as the applicant was admittedly only in part time employment from 06.11.1982 to 01.10.1999. However, what appears to

have been lost sight of is the fact that the condition does not require that the employment itself should be full time. It should only have been in a job involving whole time employment. Condition (b) states that the employment should be in a type of work or job for which regular posts could have been sanctioned. The fact that the applicant was appointed as Sanitary Assistant on a sanctioned post on regular basis w.e.f 24.05.2000 would clearly establish that the applicant was working on part time basis on the same post or a job for which regular post could have been sanctioned at the relevant time. Clearly, the respondents have invoked condition (a) by misreading its purport.

8. As the requirement is not that the engagement itself should be whole time but should only have been in a job involving whole time employment, I am of the view that the applicant fulfils the condition. I, therefore, hold that the service rendered by the applicant from 06.11.1982 to 01.10.1999 on part time basis and from 01.10.1999 to 24.05.2000 on daily rated wage basis ought to be counted for the purpose of computing the qualifying service for pension. How much weightage should be given for part time services is a matter of policy and it is for the competent authority to take an appropriate decision in this regard. However, the rejection of the applicant's claim on the basis of conditionality relied upon is clearly erroneous and in that view of the matter Annexure A-8 order dated 24.04.2016 is liable to be set aside.

9. The competent authority is directed to consider the applicant eligible to count the period spent as Part Time Sanitary Assistant from 06.11.1982 appropriately for the purpose of pension and pass fresh orders within a period of six months from the date of receipt of a copy of this order.

10. OA is disposed of as above. No costs.

**(R.RAMANUJAM)
MEMBER (A)
22.01.2019**

M.T.