

(1998) 06 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No's. 4894 of 1998

P. Subbulakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 10(6)

Citation : (1998) 3 CTC 718

Hon'ble Judges : Shivaraj Patil, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Mr.R. Thirunanasambandam, Additional Government Pleader (W), for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner in this writ of Certiorarified Mandamus by calling for the records in the proceedings of the Chief Judicial Magistrate (respondent No.2), Tirunelveli in A.No.1074 of 1974 dated 7.11.1974 and direct the second respondent to regularise her services with retrospective effect from 17.7.1971 by condoning the break in her service for one day, i.e., 1.4.1973.

2. The petitioner was appointed as a Copyist in the court of the Judicial Second Class Magistrate No.2, Tirunelveli on temporary basis on 17.7.1971. She was ousted from service for want of vacancy on 1.4.1973 and was subsequently reappointed on 2.4.1973. Her services were regularised with effect from 1.4.1974. She was granted annual increment on 1.1.1975. She had submitted an application dated 10.9.1980 to the second respondent requesting to condone the break in her service of one day, i.e., 1.4.1973 and regularise her services with effect from the date of first appointment namely, 17.7.1971.

3. The first respondent has filed a counter- affidavit. In paragraph-4 of the said counter- affidavit, it is stated thus,

"According to Rule 10(bb) of Tamil Nadu State and Subordinate Service Rules

then inforce (i.e) prior to 1.1.74, a person fully qualified under the rule to hold a post rendered a temporary service for a continuous period of three years, shall be eligible for the first increment on completion of a duty period of one year reckoned from the day following the completion of 3 years of temporary service. If the above break of one day is condoned the period 3 years of temporary service will be completed on 17.7.1974 and she will be eligible for her first increment only on 18.7.75. The above rule was subsequently amended from 1.1.74 and as per the amended rule a person who has rendered continuous temporary service shall be eligible to draw annual increment. In accordance with the above rule she was granted annual increment (first increment) on 1.1.75 itself. Thus there is no necessity to condone the one day break in her service as the date of first increment was advanced to 1.1.75 instead of 18.7.1975 by virtue of the above amended rule."

4. From what is stated in the paragraph-4 of the counter- affidavit extracted above, it is clear that the petitioner was granted annual increment on 1.1.75 itself. It is not disputed that the petitioner was appointed on 17.7.1971 temporarily as copyist. From the affidavit filed in support of the writ petition, it cannot be gathered as to what is the legal basis for the petitioner to claim regularisation of her services as a matter of right by condoning one day's break in service i.e. 1.4.1973. The fact remains that her services were regularised and annual increment was given to her on 1.1.1975 itself. Government letter No. 44316 of 86-4, dated 29.8.1986 found in the additional typed set filed by the petitioner shows that there was no need to specifically condone the break in service and that the appropriate authority shall take action to count the past services rendered by the Government servant prior to the break and fix subsequent increments. In the case on hand, if that is done to the petitioner, under these circumstances, we do not find how the petitioner can make grievance in this writ petition. This being the position, the petition is liable to be dismissed and accordingly, it is dismissed.