

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 5024 OF 2007
(O.A. No. 6170 of 2001)

S. Periyasamy

...Petitioner

Vs.

1. The Director of Rural Development Department
Rural Development Directorate
Panagal Buildings
Saidapet, Chennai 600 015.
2. The District Collector
Tiruchirapalli.
3. The Commissioner
Panchayat Union
Lalkudi

...Respondents

PRAYER: This Writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.6170 of 2001 from the file of the Tamil Nadu Administrative Tribunal praying for issuance of a Writ of Mandamus, to direct the respondents herein to forthwith sanction pension and gratuity with suitable interest from 30.06.2000 by taking into his services rendered in the 3rd respondent Town Panchayat from 01.11.1966 to 30.06.2000.

For petitioner : Mr. V. Ajay Khose
For respondents : Mr. K.V. Dhanapalan, AGP for R1 & R2
Mr. V. Subbiah, Spl.G.P. for R3

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O R D E R

Mr. S. Periyasamy, filed O.A. No.6170 of 2001 before Tamil Nadu Administrative Tribunal, seeking a direction to the respondents to forthwith sanction pension and gratuity, with suitable interest from 30.06.2000 by taking into his services rendered in the 3rd respondent Town Panchayat from 01.11.1966 to 30.06.2000. The said O.A. came on transfer to this Court as W.P. No. 5024 of 2007.

2. Learned counsel appearing for the petitioner would submit that the petitioner having joined service of the third respondent, the Commissioner of Lalgudi Panchayat Union as Night Watchman on 01.11.1966 had been working as such till 24.11.1966 for a consolidated pay of Rs.83/- per month. Subsequently, he was appointed as a Tractor Cleaner with effect from 06.01.1967, in a sanctioned post. As a Tractor Cleaner he was working from 06.01.1967 to 31.10.1988. Thereafter the Tractor was condemned as it was not used. Hence, the petitioner was appointed as Office Assistant with effect from 01.11.1988 and he served in the said post till 02.05.1989. When the matter stood as above, the Panchayat Union Council resolved to purchase a Road Roller and also to appoint a Driver and Cleaner to the said Road Roller. Thereafter, the second respondent District Collector, Tiruchirapalli passed an order on 09.12.1988 appointing the petitioner to the post of Road Roller Cleaner. He also joined duty as Road Roller Cleaner on 03.05.1989 and served in the said post till 30.06.2000. Thereafter, on reaching the age of superannuation on 30.06.2000, retired from service.

3. The grievance of the petitioner is, although the service of the petitioner in the post of Tractor Cleaner and Office Assistant were regularised and he was conferred continuity of service, due to the audit objection raised with regard to the purchase of the Road Roller and the consequent appointment of Driver and Cleaner, the Director of Rural Development in his letter dated 23.12.2000 advised the 2nd and 3rd respondents to send proposal for ratification of the appointment made in the post of Road Roller Cleaner and Road Roller Driver. In the light of the suggestion/ advice given by the Director of Rural Development in his letter dated 23.12.2000, the Commissioner of Lalgudi Panchayat Union, the third respondent herein, sent a proposal in his letter dated 08.03.2001. Accepting the said proposal, the District Collector, Trichy also forwarded the same to the first respondent by his letter dated 14.03.2001. But till date the services of the petitioner rendered in the post of Road Roller Cleaner between 03.05.1989 and 30.06.2000 have not been regularised. As a result, the petitioner is not able

to get his full pension and gratuity.

4. Adding further, learned counsel appearing for the petitioner, taking the reply affidavit filed by the Commissioner of Lalgudi Panchayat Union, the third respondent herein, brought to the notice of this Court paragraphs 7 and 9, wherein it has been admitted by the Commissioner that the petitioner has served in the Panchayat Union, Lalgudi from 06.01.1967 to 30.10.1988 as a Tractor Cleaner. Subsequently, after the said Tractor was condemned, he was working as Office Assistant till 02.05.1989 and on purchase of a Road Roller he was re-appointed as Road Roller Cleaner on 02.05.1989 and he was working as such till his retirement on 30.06.2000. In the meanwhile, accepting the recommendation of the third respondent, the District Collector Trichy also has requested the first respondent, the Director of Rural Development, to ratify his appointment as Road Roller Cleaner. However, as there is no order issued by the first respondent ratifying the appointment of the petitioner to the post of Road Roller Cleaner, it is not open to the third respondent to state that only after receipt of necessary orders for ratification, the entire service of the petitioner would be counted for the purpose of disbursing his pensionary benefits. Concluding his argument, by placing on record G.O. (2D) No. 85 Rural Development and Panchayat (E5) Department dated 28.12.2006 passed in favour of one Mr. N. Durairaj, who was also appointed as a Road Roller Driver in Mussiri Panchayat Union submitted that when ratification has been given by the Government in the said G.O. in favour of the said N. Durairaj, the respondents cannot endlessly remain silent in answering a similar proposal for ratification of the petitioner, who has been appointed by the respondents 2 and 3. Paragraphs 7 and 9 of the reply filed by the third respondent is extracted, as under :

" 7. it is submitted that the applicant served in the Panchayat Union, Lalgudi from 06.01.1967 to 30.10.1988 as Tractor Cleaner. The post was sanctioned by the Government, as the Tractor is condemned he was appointed as Office Assistant till 02.05.1989 and on purchase of a Road Roller. He was reappointed as Road Roller Cleaner from 03.05.1989 till his retirement.

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9. Further it is submitted that on receipt of the letter dated 23.12.2000 of the Director of Local Fund Audit, Chennai, the District Collector, Trichy has been requested to obtain a ratification

order from the Director of Rural Development and the District Collector, Trichy in his letter No. Q4/2603/2001 dated 14.03.2001 has sent ratification proposals to the Director of Rural Development and the matter is pending for necessary orders. As soon as the orders are received proper action will be taken to settle the Retirement Benefits and pension. As this respondent is not at all to deny the benefits. It is purely administration reasons."

5. A mere reading of the stand taken by the third respondent shows that the third respondent has admitted the appointment of the petitioner in the Lalgudi Panchayat Union as a Tractor Cleaner from 06.01.1967 to 30.10.1988 in a sanctioned post, by the Government. Subsequently, the Tractor was condemned. Therefore, the petitioner was appointed as Office Assistant and was working as Office Assistant till 02.05.1989. Thereafter a Resolution No.404 dated 04.09.1979 was passed by the Panchayat Union Council to purchase a Road Roller and also to appoint a Road Roller Driver and a Road Roller Cleaner. It is also an admitted case that the second respondent District Collector, Trichy passed an order appointing the petitioner in the post of Road Roller Cleaner. The above facts clearly show that the petitioner who joined as a Road Roller Cleaner on 03.05.1989 served in the said post till 30.06.2000, the date on which he attained the age of superannuation. Paragraph 9 of the counter affidavit of the third respondent also clearly shows that the respondents are not denying the legal benefits claimed by the petitioner.

6. Further, the third respondent, the Commissioner of Lalgudi Panchayat Union has sent the pension proposal to the Director of Local Funds Audit, Chennai for sanction, in his Lr. No. Rc.A1/3415/98 dated 16.08.2000. But, the Director of Local Funds Audit, Chennai in his Lr. No. K.Dis. 52146/0-4/2000 dated 23.12.2000 had returned the proposal. Besides, it may be noted from the reply affidavit filed by the third respondent that the Director of Local Funds Audit, Chennai has sent a letter dated 23.12.2000 directing to take action for dropping the audit objection raised by the Local Fund Audit authorities in respect of the appointment of Road Roller Cleaner from the post of Tractor Cleaner. Therefore, the District Collector, Trichy in his letter No. Q4/2603/2001 dated 14.03.2001 has sent ratification proposal to the Director of Rural Development and the matter is also pending for necessary orders, as such, the stand of the third respondent in his counter shows that as soon as the orders are received proper action would be taken to sanction the

retirement benefits. Equally, it is also the case of the third respondent that they are not denying the benefit of the petitioner.

7. Mr. V. Subbiah, learned Special Government Pleader appearing for the third respondent would submit that proposals have already been sent on 26.02.2001 requesting the Director of Rural Development, Chennai, the first respondent to issue ratification of the order. But till now, nothing has been moved. In the meanwhile, in a similar circumstances, the Government has issued G.O. (2D) No. 85 Rural Development and Panchayat (E5) Department dated 28.12.2006 passed in favour of one Mr. N. Durairaj, who was also appointed as a Tractor Cleaner and subsequently as a Road Roller Driver in Mussiri Panchayat Union, in the same district.

8. Therefore, when the proposal sent by the third respondent, Commissioner of Lalgudi Panchayat Union has been accepted by the District Collector, Trichy, the second respondent, who had forwarded the same to the Director of Rural Development, Chennai, the first respondent herein, to issue the necessary ratification order, keeping in mind the G.O. (2D) No. 85 Rural Development and Panchayat (E5) Department dated 28.12.2006 granting the same relief in favour of one Mr. N. Durairaj, this Court directs the Director of Rural Development, Chennai, the first respondent to issue necessary ratification, within a period of five weeks from the date of receipt of a copy of this order. It is further directed that, five weeks thereafter, all the respondents are directed to ensure disbursement of the pensionary benefits to the petitioner. This Court is constrained to say that if the respondents fail to disburse the pensionary benefits within the period of ten weeks from the date of receipt of a copy of this order, the petitioner is entitled to get interest at the rate prescribed in the rules, on the pensionary benefits from the date of his retirement.

9. With this direction, the Writ Petition is allowed. No order as to costs.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

avr

To

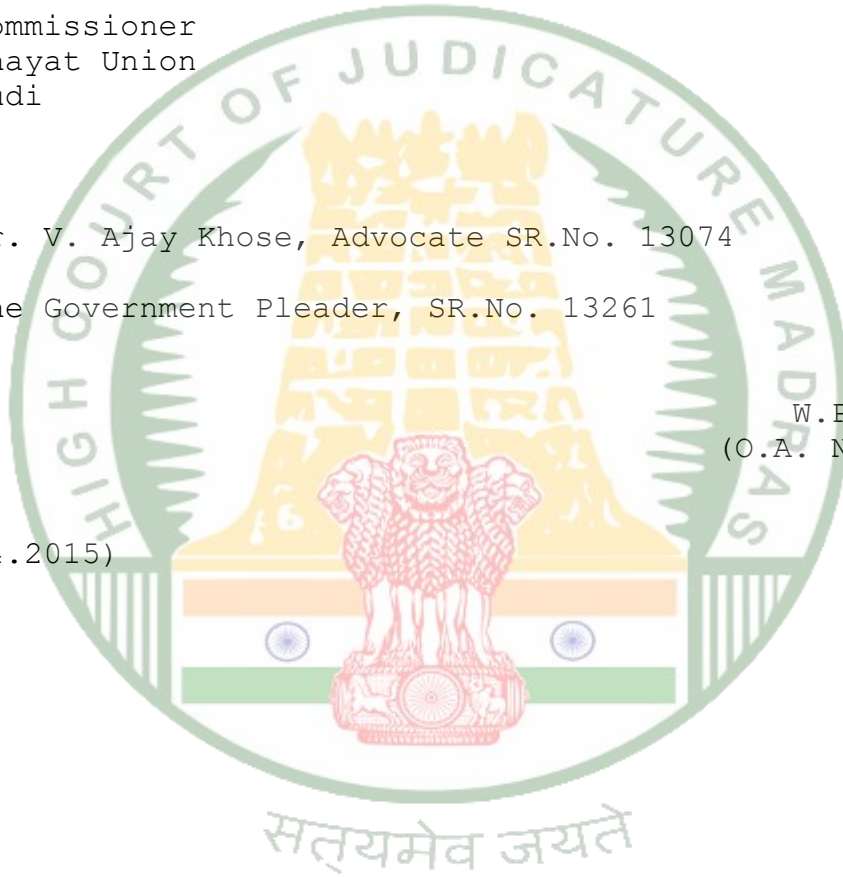
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Panchayat Union
Lalgudi

1 CC to Mr. V. Ajay Khose, Advocate SR.No. 13074

1 CC to the Government Pleader, SR.No. 13261

W.P.NO.5024 OF 2007
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TEJ (CO)
PSI (28.04.2015)



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