

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.32485/2015

R.Jayabalan

..Petitioner

Versus

1.Government of Tamil Nadu
Rep by its Secretary
Highways Department,
St.George Fort
Chennai - 600 009

2.Chief Engineer
Highways Department,
Chennai.

3.Divisional Engineer (H)
Cuddalore
Cuddalore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of mandamus directing the 1st respondent to pass orders sanctioning pension and other retirement benefits under the old GPF and Pension Scheme by including 50% of his past service on daily wages for more than 10 years prior to 01.04.2003 along with his regular service from 12.12.2007 to 31.03.2013.

For Petitioner : Mr.R.Rengaramanujam

For Respondents : Mr.V.Subbiah, Spl.Govt.Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner was engaged as a Gang Mazdoor on daily wage basis with effect from 05.04.1981 and continued to serve in that capacity for more than 10 years till regular Gang Mazdoors were appointed in the year 1997. The petitioner has also filed OA.No.8741/1998 before the Tamil Nadu Administrative Tribunal praying to consider his case for

appointment as Gang Mazdoor in regular time scale of pay taking into account the past services rendered by him for more than 10 years. During pendency of the said application, the 1st respondent has issued G.O.Ms.No.265, Highways [HM 2] Department, dated 09.11.2007, in and by which, the petitioner was absorbed in the regular time scale of pay with effect from 12.12.2007 and continued to serve in that capacity till the date of his retirement on 31.01.2013. The grievance expressed by the petitioner is that though he was absorbed and his services were regularised with effect from 12.12.2007, after the introduction of the new Contributory Pension Scheme with effect from 01.04.2003, his retiral and other pensionary benefits have not been settled. In this regard, he has submitted a representation dated 14.12.2012 and the office of the Accountant General has also sent a communication to the 2nd respondent with a copy marked to the petitioner, stating that the orders are awaited from the Government of Tamil Nadu with regard to the finalisation of CPS account.

3 Learned counsel for the petitioner would submit that 50% of the past services on daily wages have to be taken into consideration along with the regular service and hence, prays for appropriate orders. He also placed reliance on the decision of this Court reported in 2014 [2] CTC 777 [Union of India and others Vs. K.Puuniyakoti and others] as well as the order dated 18.06.2014 made in WP.No.12656/2013 [P.Chinniyar Vs. The State of Tamilnadu rep. by its Secretary to Government, Forest and Environment Department, Fort St George, Chennai and others].

4 This Court heard the submissions Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents.

5 It is relevant to extract Rule 11[2] and 11[4] of the Tamil Nadu Pension Rules, which reads thus:-

"11.Commencement of qualifying service:-

[2]Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:-

[i]Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

[ii]Service paid from contingencies shall be in a type of work or job for which

regular posts could have been sanctioned, for example Chowkidar.

[iii]Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

[iv]Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

[v]Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.

[vi]Pension or revised pension admissible as the case shall be paid from 23rd June 1988."

11[4]:-Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

[i]Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

[ii]Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequent absorbed in regular service under the State Government ;

[ii]Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service

before 1st April 2003 without a break ;

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honararium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially condone by the orders of the Head of Department in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

6 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances, permits the petitioner to submit one more representation to the 1st respondent by enclosing a copy of this order as well as a copy of the earlier representation dated 14.12.2012 within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the 1st respondent shall consider and dispose of the said representation on merits and in accordance with law and pass orders within a period of ten weeks thereafter and communicate the decision taken, to the petitioner.

7 The writ petition is disposed of accordingly.
No costs.

sd/

ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

AP

To

1.The Secretary
Highways Department,
Government of Tamil Nadu
St.George Fort, Chennai - 600 009.

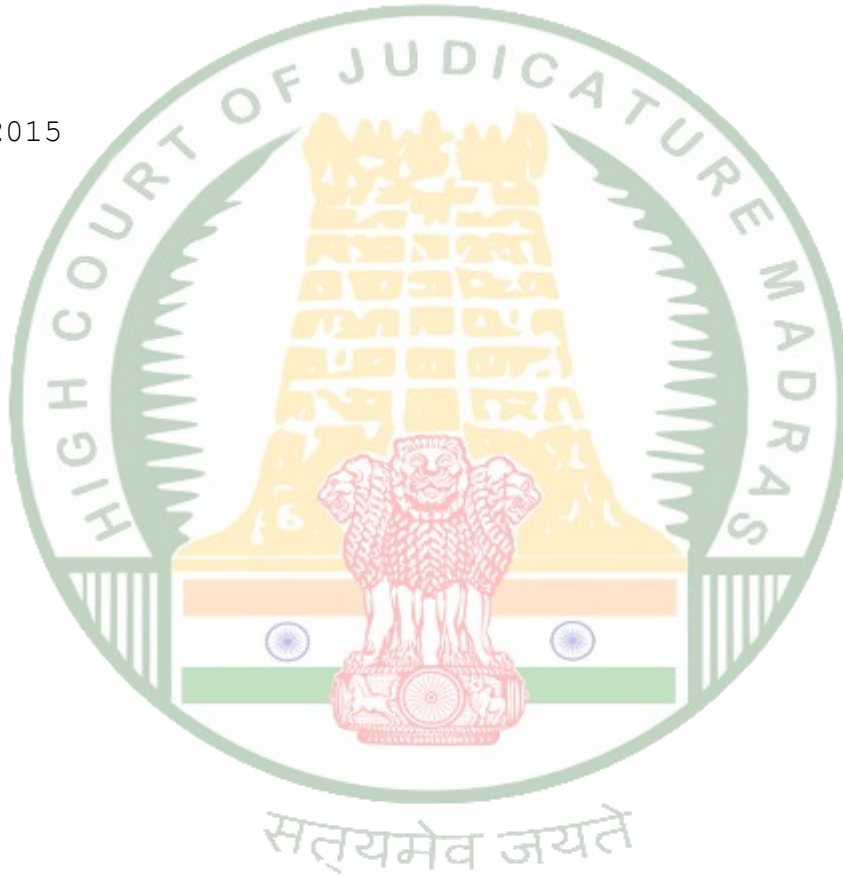
2.The Chief Engineer, Highways Department,
Chennai.

3.The Divisional Engineer (H), Cuddalore
Cuddalore District.

+1 CC to MR.R.Rengaramanujam Advocate. SR.NO. 55887

W.P.No.32485/2015

CO-SR
JD 16/11/2015



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