



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2015

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition(MD)No.946 of 2013
and
M.P(MD)No.1 of 2013

R.Karuppiaha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Finance (Pension) Department,
St. George Fort,
Chennai - 9.

2.The Commissioner,
Directorate of Rural Development and
Panchayati Raj Department,
Panagal Building,
Saidapet, Chennai - 15.

3.The District Collector,
Collectorate (Development),
Panagal Building, Thanjavur.

4.The Commissioner,
Panchayat Union Office,
Ammapettai, Thanjavur District.

5.The Block Development Officer
(Block Panchayat),
Panchayat Union Office,
Ammapettai, Thanjavur District.

6.The Director,
Local Fund Accounts,
Kuralagam, 4th Floor,
Chennai - 108.

... Respondents

**(R-6 implead vide order,
dated 04.02.2015)**

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to give pension to the petitioner as per G.O.No.408, dated 25.08.2009 issued by the Principal Secretary of Tamil Nadu Government.



For Petitioner : Mr.S.Karthick
For RR 1 to 3 : Mr.N.S.Karthikeyan
Additional Government Pleader
For RR 4 & 5 : Mr.R.Anandharaj
Government Advocate
For R - 6 : Mr.S.Karthick

ORDER

The petitioner is seeking for issuance of a Writ of Mandamus directing the respondents to give pension to the petitioner, as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009.

2. The case of the petitioner is as follows:-

He was appointed as Motor Fitter on 01.03.1991 in a Panchayat Union coming under Puducherry District. After completion of 10 years of service, he was given the benefit of regularization on 31.05.2011. Thereafter, he was promoted as Office Assistant on 20.09.2007. He retired on 31.03.2012. G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, empowers to give pension as per Old Pension Scheme to State Government employees, who were regularized before 01.04.2003. As the petitioner's service was regularized on 31.03.2001, he is entitled to get pension as per the said Government Order. The fourth respondent through his order, dated 12.08.2011 directed to deduct 10% of the amount from the petitioner's salary from September, 2007 onwards towards Contributory Pension Scheme. Accordingly, a sum of Rs.45,494/- was deducted from his salary towards Contributory Pension Scheme. The petitioner will not come under the Contributory Pension Scheme and he is entitled to pension, as per the Old Pension Scheme in view of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. However, the respondents have not given the benefit, which has resulted in filing the above Writ Petition.

3. The fourth and fifth respondents have filed their counter-affidavit, wherein it is stated as follows:-

The petitioner was appointed on daily wages basis and his service was regularized on 31.05.2001, after the fulfillment of 10 years of service on contingent basis. Though his service was regularized with retrospective effect, he is entitled to get salary in the time Scale-of-Pay from 20.07.2007 ie., from the date on which he is appointed into the regularized service. The petitioner is not eligible for pension with effect from 31.05.2001, since monetary benefit for the regularized service post of Office Assistant starts only with effect from 20.09.2007.



4. Heard the learned counsel on either side and perused the materials placed before this Court.

5. The short point that arises for consideration in this Writ Petition is as to whether the petitioner is entitled to get the benefit of Pension, as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 under the Old Pension Scheme or the pension is payable to the petitioner under the Contributory Pension Scheme.

6. A perusal of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 would show that the daily wages employees, who were absorbed and their service regularized on or before 01.04.2003, are entitled to receive pension under the Old Pension Scheme.

7. In this case, the petitioner contends that he was appointed as Pump Operator on 01.03.1991 and his service was regularized on 31.05.2001. The said contention is supported by the proceedings of the Block Development Officer, dated 10.02.2010. In fact, the said contention is not disputed by the respondents 4 and 5 in their counter-affidavit. It is admitted by those respondents that the petitioner's service was regularized on 31.05.2001, after the fulfillment of 10 years of service on contingent basis.

8. Having said so and accepting the factum of regularization of service with effect from 31.05.2001, I am unable to understand as to how the respondents can deny the benefit of pension under the Old Pension Scheme and insist upon the petitioner to come under the Contributory Pension Scheme alone. Therefore, I am of the considered view that the petitioner, having been regularized much earlier to the cut-off date referred to in the said Government Order, is entitled to get the benefit of Pension as per the said Government Order.

9. Consequently, the Writ Petition is allowed and the respondents are directed to give pension to the petitioner as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. Such exercise shall be done by the respondents within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(A.S.,)

/True Copy/

Sub-Assistant Registrar



To

1. The Secretary,
Finance (Pension) Department,
St. George Fort, Chennai - 9.
2. The Commissioner,
Directorate of Rural Development and Panchayati Raj Department,
Panagal Building, Saidapet, Chennai - 15.
3. The District Collector,
Collectorate (Development),
Panagal Building, Thanjavur.
4. The Commissioner,
Panchayat Union Office,
Ammapettai, Thanjavur District.
5. The Block Development Officer (Block Panchayat),
Panchayat Union Office,
Ammapettai, Thanjavur District.
6. The Director,
Local Fund Accounts,
Kuralagam, 4th Floor,
Chennai - 108.

+1cc to Mr.S.Karthick, Advocate, in SR. No.5430.

W.P(MD) No.946 of 2013
04.02.2015

ps

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