

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.Nos.36670 and 36671 of 2003

Vijayarangam

... Petitioner in both WPs

Vs

1.Union of India by Director
Local Administration Department
Government of Pondicherry
Pondicherry

2.The Commissioner, Office of the
Commissioner, Nettapakkam Commune
Panchayat, Pondicherry ... Respondents in both WPs

Prayer:- These Writ Petition are filed to issue a Writ of Certiorarified Mandamus and Writ of Mandamus, to call for the records of the 2nd Respondent in F.No.1-277/93 (Estt)/Net.CP dated 25.08.1995 on the file of the 2nd Respondent and to quash the same and to direct the Respondents 1 and 2 to pay the retirement benefits including pension to the Petitioner by taking into consideration of his service in the 2nd Respondent Panchayat from the date of his initial appointment viz. 1.3.1958 till the date of his retirement on 1.9.1996 respectively.

For Petitioners : Mr.K.Surendranath

For Respondent : Mr.A.Tamilvanan, GA

ORDER

In this Writ Petition, the Petitioner seeks to quash the order of the 2nd Respondent dated 25.08.1995 and to direct the Respondents 1 and 2 to pay the retirement benefits including pension to the Petitioner by taking into consideration of his service from the date of his initial appointment viz. 1.3.1958 till the date of his retirement on 1.9.1996.

2. The learned counsel for the Petitioner would contend that the Petitioner was appointed as a temporary employee in the year 1958 on a monthly salary of Rs.15 and subsequently, he was regularized and even his seniority was

finalized in the year 1987 by proceedings dated 23.7.1987. Thereafter, before his retirement, the present impugned order was passed as if he has been appointed temporarily that too afresh in the year 1995. Even on his retirement in the year 1996, his application for retirement benefits has been rejected on the sole ground that he has been employed for only one year without taking into consideration of the previous employment from 1958 to 1995. Therefore, he would contend that the appointment order in the year 1995 is invalid. Thereafter, he has filed an OA in 1998, which was dismissed with a liberty to file a Writ Petition. Hence, this Writ Petition has been filed.

3. Though a counter has not been filed on behalf of the Respondents, the learned counsel for the Respondents has submitted that the appointment order made in the year 1995 clearly states that it is a temporary appointment and even in the appointment order made in the year 1958 itself it is stated that it is a temporary appointment and therefore, the Petitioner cannot seek any relief, much less the relief as sought for in this Writ Petition.

4. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

5. Here is a case where the Petitioner, who is now aged 80 years and retired from service in the year 1996, has not received any retirement benefits from the Government. Time and again, this court, in several cases, where the persons have been employed temporarily and their services had exceeded more than 10 years, has held that 50% of their total services has to be added towards the retirement benefits. In the case on hand, admittedly, the Petitioner was employed from 1958 and in 1987 he was regularized and his seniority was also published and in 1995 again he was appointed on temporary basis. That being so, total number of years of service rendered by the Petitioner would come to 38 years and 50% of the same would come to 19 years. Apart from that, even after 1995, he worked for one year till his retirement in 1996 and therefore, the gross total years of service can be taken as 20 years. Therefore, the period of 40 years of service in the category of temporary employment of the Petitioner ought to have been taken into consideration and in the light of the decisions of this court made in several cases, the same could be taken as 20 years, after calculating 50% and accordingly, definitely his request for pension benefits ought to have been considered. Therefore, the impugned order appointing the Petitioner in 1995 once again without taking into consideration the previous services from 1958 and also the regularization and seniority list made in 1987, has got to be set aside.

6. The Petitioner has retired in the year 1996 and is now aged about 80 years. Therefore, the Petitioner is permitted to make a fresh representation seeking for the monetary benefits to the 2nd Respondent within a period of ten days from the date of receipt of a copy of this order. On receipt of such representation, the 2nd Respondent is directed to pass appropriate orders, taking into consideration 50% of the total years of service i.e. 20 years of service rendered by the Petitioner, within a period of four months thereafter. It is also made clear that the continuity of service alone is permitted to be taken into consideration for passing orders for the grant of pensionary benefits.

7. With the above directions, these Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

- 1.Union of India by Director
Local Administration Department
Government of Pondicherry
Pondicherry
- 2.The Commissioner, Office of the
Commissioner, Nettapakkam Commune
Panchayat, Pondicherry.

+1cc to the Government Pleader Sr.49770, 49774
+2cc to M/S.k.Surendranath, Advocate Sr.49428

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srg 26/09/2016