



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

W.P(MD) No.6366 of 2016

WEB COPY

K.P.K.Syed Mohamed Masooth

... Petitioner

-vs-

1.The Government of Tamilnadu

rep by its Secretary,

Finance (Pension) Department,

Fort St.George, Chennai - 600 009.

2.The District collector,

Tuticorin Collectorate Complex,

Tuticorin,

Tuticorin District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus, directing the 1st respondent to consider the petitioner's representation dated 02.12.2015 for sanction of full pension treating the total service rendered by the petitioner from 29 years 11 months and 26 days as 30 years and treating the petitioner as surviving beneficiary belonging to the same class of pensioner entitled to the benefits conferred to those retiring after 31.07.1996 with all arrears and emoluments from 01.07.1996 as held by the Apex Court Civil Appeal No.5048 of 1998 dated 09.10.1998 annexed to the representation and dispose the same in accordance with law within such time as this Court may direct.

For Petitioner : Mr.M.Joseph Thatheus Jerome

For Respondents : Mr.V.R.Shanmuganathan

Special Government Pleader

O R D E R

This writ of mandamus has been filed, seeking a direction to the first respondent to sanction full pension treating total service rendered by the petitioner as 30 years, even though the service rendered was for the period of 29 years 11 months and 26 days.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondents.

3. The brief facts, leading to the filing of this writ petition read as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner's date of birth is 07.03.1935. He joined service under the respondent as Cashier in Karungkulam Panchayat Union, Srivaikundam Taluk on 05.04.1969. After getting special

grade salary, he retired from service on 31.03.1993. Thus he has completed 29 years 11 months and 26 days of service, that is, short of 4 days for completion of 30 years of service.

3.1. The petitioner has submitted a representation dated 02.12.2015 to the respondents to sanction full pension treating total service rendered by the petitioner as 30 years, but it has not been considered so far. Hence, this writ petition is filed.

4. The learned counsel for the petitioner relied upon Section 43(2)(a)(3) of the Tamil Nadu Pension Rules, 1978 and contended that while calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as completion of one half year.

5. Rule 43(2)(a)(3) of the Tamil Nadu Pension Rules, 1978 is extracted hereunder for easy reference.

"(3) In calculating the length of qualifying service, fraction of a year equal to [three months] and above shall be treated as completed one half year and reckoned as qualifying service".

Therefore, it is clear that the petitioner is deemed to have completed 30 years of qualifying service.

6. The learned counsel for the petitioner has also relied upon a decision rendered by the Division Bench of this court in WP (MD) No. 29946 of 2014 dated 05.01.2015, under which also, reliance has been placed upon Rule 49(3) of the Central Civil Service (Pension Rules) and the contention raised therein, has been accepted. Relevant portion of the order is extracted as under for convenient reference:-

"10. Insofar as the State Government employees are concerned, Rule 43(2)(a)(3) of the Tamil Nadu Pension Rules, 1978 states that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as completed one half year and reckoned as qualifying service. In this case, the 1st respondent's pensionable service comes to 9 years 6 months and 23 days. If 3 months period is taken as half year, 6 months should be treated as full year."

7. The learned Special Government Pleader for the respondents submitted that G.O. Ms. No. 461 Finance (Pension) Department dated 31.07.1996 is applicable to those who have retired on or after 01.07.1996 and not to the petitioner, who retired from service on 31.03.1993.

8. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in *Civil Appeal No. 5048 of 1998 dated 09.10.1998 [V. Kasturi vs. Managing Director, State Bank of India, Bombay and Another]*, under which, it has been held

"....If the person retiring is eligible for pension at the time of his retirement and if he survives



till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force."

9.Going by the above said decision, it is clear that when the Government Order is providing for additional benefit, the petitioner is also entitled to the same, as he would be the member of the very same class of pensioners. The benefit, according to the said decision, cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to those pensioners came into force.

10.Under such circumstances, the first respondent is directed to consider the claim of the petitioner, in the light of the judgment of the Hon'ble Supreme Court in *Civil Appeal No.5048 of 1998 dated 09.10.1998 [V.Kasturi vs. Managing Director, State Bank of India, Bombay and Another]* and in the light of the order passed by the Division Bench of this Court in WP(MD)No.29946 of 2014 along with Rule 43(2)(a)(3) of the Tamil Nadu Pension Rules, 1978 and to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

11.The Writ Petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary, Government of Tamilnadu
Finance (Pension) Department, Fort St.George,
Chennai - 600 009.

2.The District collector, Tuticorin Collectorate Complex,
Tuticorin, Tuticorin District.

+One cc to M/s.M.Joseph Thatheus Jerome, Advocate, RS.No.72106
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