

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2017

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.2646 of 2011

V.Rajalingam

... Petitioner

- Vs -

1 THE DIRECTOR OF MUNICIPAL ADMN.
CHEPAUK, CHENNAI - 5.

2 THE DIRECTOR OF TOWN PANCHAYATS
KURALAGAM, CHENNAI - 108.

3 THE EXECUTIVE OFFICER
NALLIYALAM 3RD GRADE MUNICIPALITY,
PANALUR, NILGIRIS DISTRICT.

4 THE DIRECTOR
LOCAL FUND AUDIT, KURALGAM,
CHENNAI - 108.

... Respondents

The writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to calling for the proceedings of the 3rd respondent in N.K. no. 179/2006 dt 28.2.2006 in so far as the prospective date of regularization of the petitioner is concerned and the consequential order passed by the 4th respondent in N.M. 41639/Nos(4)/2009 dt 7.4.2010 and quash both the orders and consequently direct the respondents to count the period of continuous service rendered by the petitioner from 1.10.1983 to 2.2.2006 for the purpose of granting pension and other terminal benefits and pay the same w.e.f. 1.9.2009 to the petitioner.

For Petitioner : Mr.V.Vijay Shankar

For R- 1, 2 & 4 : Mr.S.Diwakar, SPL.G.P.

For Respondent-3 : Mr.E.Renganayaki

ORDER

The petitioner has filed the present writ petition seeking to quash the order of the third respondent in his Proceedings N.K. no. 179/2006 dated 28.2.2006 in so far as the prospective date of regularization of the petitioner is concerned and the consequential order passed by the fourth respondent in N.M. 41639/Nos(4)/2009 dated 7.4.2010 and quash both the orders and consequently, direct the respondents to count the period of continuous service rendered by the petitioner from 1.10.1983 to 2.2.2006 for the purpose of granting pension and other terminal benefits and pay the same w.e.f. 1.9.2009 to the petitioner.

2. It is the case of the petitioner that he had joined the office of the third respondent on 01.10.1983 as a watchman and was duly rendering his service. While so, as per the government order in G.O.Ms.No.878, Rural Development Department, dated 15.05.1981, the government had decided to bring the full time contingent staff in the panchayats who had rendered ten years of service or more as on 01.04.1981 in the regular time scale of pay and there had been a rider clause in the said government order that as and when the said contingent staff completes ten years of services, proposals would be sent so as to bring them in regular time scale of pay. When things stood thus, another government order in G.O.Ms.No.216, Rural Development Department came to be issued on 19.10.1992 wherein the services of 64 contingent staffs who have completed ten years of service were regularised. Yet another batch of 65 contingent staffs services were also been regularised by another G.O.Ms.No.223, MAWS Department, on 11.09.1997. It is the grievance of the petitioner that though he had completed 14 years of service, his services had not been regularised.

3. Originally, the petitioner had approached the Tamil Nadu State Administrative Tribunal and filed O.A.No.2245 of 2001 and the said O.A., had been transferred to the file of this court and renumbered as W.P.No.2804 of 2007. On 10.03.2010, when the W.P.No.2804 of 2007 was taken up for hearing, it was represented that the petitioner's services were regularised with effect from 23.02.2006 and that the writ had become infructuous. However, liberty was granted to the writ petitioner to challenge the prospective regularization. It is the further case of the petitioner that he had attained superannuation on 31.08.2009 and in the light of the contributory pension scheme which came to be in force at that point of time, petitioner is not entitled to get any pension. Therefore, the petitioner has come up with the present writ petition in which he seeks the aforesaid prayer.

4. Learned counsel for the petitioner in support of his contention places a decision of this Court in similar set of facts rendered in W.P.No.8205 of 2011 on 19.04.2011 wherein this court had directed the authorities concerned to count 50% of the services as pensionable service. The said decision was also confirmed by the Division Bench of this Court in W.A.Nos.27 & 28 of 2012 on 13.02.2012.

5. Learned Special Government Pleader appearing for the respondents 1, 2 and 4 would submit that the petitioner has to satisfy the conditions in Section 11 (2) of the Pension Rules and the petitioner had not made any application nor any representation before the authorities concerned seeking regularization from the date of initial appointment namely, from 01.10.1984 to 02.02.2006. Hence, the present writ petition deserves to be dismissed.

6. Perused the materials placed on record and heard the submissions of both the parties. It would be appropriate to extract Rule 11(2) of the Tamil Nadu Pension Rules, 1978 which reads as:

"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 the 23rd June 1988.

Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break."

7. Therefore, I am of the view that in the light of the decision rendered by this Court in W.P.No.8205 of 2011 on 19.04.2011 which was also confirmed by the Honourable Division Bench on 13.02.2012 in W.A.Nos.27 & 28 of 2012, I have no hesitation to set aside the impugned order passed by the respondents. In the interest of justice, I am inclined to pass the following orders :-

(i) The petitioner herein is permitted to make representation to the third respondent within a period of two weeks from the date of receipt of a copy of this order;

(ii) On receipt of such an representation, the third respondent shall forward the same to the first respondent within a period of six weeks thereafter.

(iii) The first respondent on receipt of such an application from the third respondent shall pass appropriate orders in accordance with law by taking into account in Rule 11(2) of the Tamil Nadu Pension Rules, 1978 and in the light of the decision rendered by this court in W.P.No.8205 of 2011 as early as possible preferably within a period of three months thereafter.

8. With the above observation, this writ petition is allowed. No costs.

Sd/
Assistant Registrar

/True copy/
Sub Assistant Registrar

To,

1. THE DIRECTOR OF MUNICIPAL ADMN.
CHEPAUK, CHENNAI 5
2. THE DIRECTOR OF TOWN PANCHAYATS
KURALAGAM, CHENNAI 108
3. THE EXECUTIVE OFFICER
NALLIYALAM, 3RD GRADE MUNICIPALITY,
PANALUR, NILGIRIS DT.
4. THE DIRECTOR
LOCAL FUND AUDIT, KURALGAM,
CHENNAI - 108.

+1cc to Mr.V.Vijaya Shankar, Advocate SR.No.2321
+1cc to Mr.E.Ranganayagi, Advocate SR.No.2340
+1cc to Government Pelader SR.No.2608

W.P.No.2646 of 2011

SDR 08.03.2017