



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.1405 of 2015
and
M.P(MD).No.1 of 2015

N.Subramanian

.. Petitioner

Vs

1. The Managing Director,
Tamil Nadu Water and Drainage Board-Head Office,
Kamarajar Salai, Chepauk,
Chennai-600 005.

2. The Joint Chief Engineer, (General)
Tamil Nadu Water and Drainage Board-Head Office,
Kamarajar Salai, Chepauk,
Chennai-600 005.

.. Respondents

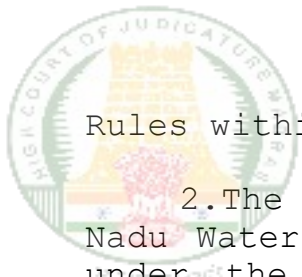
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, to call for the records second respondent ie., the Joint Chief Engineer, (General), Tamil Nadu Water and Drainage Board, Chennai relating to his letter No.P3/8824/Pen/HO/2014 dated 04.07.2014 and கடித எண்.04115228/வேநிண பிரிவு/தஅ/2015 நாள் : 06.01.2015 and quash the same and consequently direct the respondents to sanction pension to the petitioner as per Rule 43(3) of Tamil Nadu Pension Rules r/w Rule 11(4) (ii) of the Tamil Nadu Pension Rules within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For R1 and R2 : Mr.Muthuramalingam

O R D E R

The above writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent ie., the Joint Chief Engineer, (General), Tamil Nadu Water and Drainage Board, Chennai relating to his letter No.P3/8824/Pen/HO/2014 dated 04.07.2014 and கடித எண்.04115228/வேநிண பிரிவு/தஅ/2015 நாள் : 06.01.2015 and consequently direct the respondents to sanction pension to the petitioner as per Rule 43(3) of Tamil Nadu Pension Rules r/w Rule 11(4) (ii) of the Tamil Nadu Pension



Rules within the stipulated time.

2.The petitioner was serving as Maintenance Assistant in Tamil Nadu Water and Drainage Board, Paramakudi Sub-Division, Paramakudi under the control of Executive Engineer (Maintenance Division), Ramanathapuram. The petitioner was retired on 31.05.2008. However, from the internal communication between the Joint Chief Engineer of TWAD Board, Chennai and the Executive Engineer of TWAD Board, Ramanathapuram dated 04.07.2014 it is revealed that the petitioner's qualifying service in the TWAD Board was found one day short of 10 years and therefore, it was held that the petitioner was not entitled to get pension as per Rule 43(2) of Tamil Nadu Pension Rule.

3.The learned counsel for the petitioner submitted that as per Rule 43(3) of Tamil Nadu Pension Rule, fraction of service for six months or more shall be treated as one year and therefore, the impugned proceeding dated 04.07.2014 is against law. The petitioner further submitted that he was also in service for the period from 07.02.1997 to 01.06.1998 on consolidated pay and his request that half of the period during which, he was in service on consolidated pay, should also be calculated for the purpose of pension. However, this request was also rejected by the second respondent, by proceeding dated 06.01.2015. Challenging the impugned proceedings, the present writ petition is filed.

4.The learned counsel for the petitioner relied upon the judgment of the Division Bench of this Court in the case of **The Commissioner, Corporation of Chennai, Ripon Buildings Chennai v. V.Sumathi and another** reported in **2005 Writ L.R. 308**, in which Paragraph Nos.6 and 7 are extracted hereunder:

"6.Learned counsel for the appellant submitted that the writ petitioner's husband was only appointed as a substitute sanitary worker on 4.3.1978 and hence he cannot be regarded as having been appointed in a temporary capacity under Rule 11 of the Rules. Rule 11(1) states:

"11.Commencement of qualifying service.-

(1)Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation."

<https://hcservices.ecourts.gov.in/hcservices/> our opinion, there is no merit in the submission of the learned counsel for the appellant. It must be understood that employees are of two



categories, permanent and temporary. The general category of temporary employee has under it several sub categories e.g., daily wage employee, casual employee, ad hoc employee, substitute employee (such as the writ petitioner's husband) etc. A substitute appointee who is appointed on leave vacancy is a temporary appointee. All appointees who are not permanent appointees are temporary appointees. Hence, even if the husband of the writ petitioner was a substitute appointee he was certainly a temporary appointee and hence covered by Rule 11 of the Rules.

5.The learned counsel for the petitioner further relied upon the another judgment of the learned Single Judge of this Court in the case of **M.Palani v. The Government of Tamil Nadu and others** in **W.P. (MD) .No.4073 of 2009 dated 24.11.2009**, wherein it was held that fraction of service for six months or more shall be treated as one year and that service less than six months shall be ignored.

6.The learned counsel for the petitioner also relied upon the judgment of another unreported judgment of the Honourable Division Bench of this Court in the case of **The Secretary to Government, Transport (H.W) Department, and others v. M.Palani** in **W.P.(MD) . No.809 of 2010 dated 18.01.2011**, wherein the Honourable Division Bench has considered Rule 43(3) of Tamil Nadu Pension Rule. The relevant portion is extracted as follows:

"7.Rule 43(3) of the Tamil Nadu Pension Rules, reads as follows:

Rule43(3) in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated a completed one half year and reckoned as qualifying service."

The said amendment to the rule was introduced through G.O.Ms.No.762 Finance (Pension) Department, dated 05.09.1994, which came into force from 1.1.1986.

8.Applying the said rule to the facts of this case and having regard to the undisputed fact that the respondent's half of the service rendered on daily wage basis should be taken for calculating pensionable service as per Pension Rule 11(2), we hold that the respondent is entitled to get pension as he has completed more than 10 years of pensionable service. There is no error in the order passed by the learned Single Judge and hence, we are unable to interfere with the said order."

7.The learned counsel for the petitioner also relied upon another unreported judgment of this Court in the case of **M.Subramanian v. The Managing Director, Metro Transport Corporation, Pallavan Illam, Chennai** in **W.P. (MD) .No.6387 of 2011 dated**



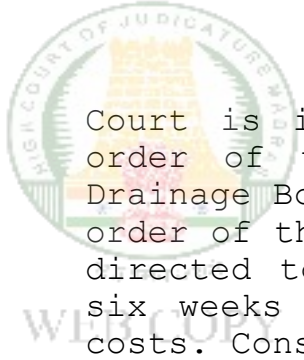
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27.11.2014, in the said judgment, it has been held as follows:

"7. On the failure of the learned Standing Counsel to point out one of such clause in the said Government Order, this Court is inclined to hold that the ground on which the pensionary benefit has been rejected to the petitioner is not valid in law. Further, the fact remains undisputed is that the petitioner has completed 9 years 8 months and 17 days of service and though the same is below, ten years, the unreported Judgment of the Division Bench of our High Court, dated 16.01.2011, made in W.A.(MD).No.809 of 2010, Secretary to Government and others vs. M.Palani, would come to the aid of the petitioner, wherein it is held that three months service shall be rounded off as one half year and reckoned as qualifying service. If it is so, the period of six months and above can be treated as one complete year and reckoned as qualifying service and if the same is applied to the facts of the present case, the petitioner having completed 9 years 8 months and 17 days of service is deemed to have net qualifying service of ten years and becomes eligible to claim pensionary benefits. That being so, the petitioner is entitled to claim pensionary benefits and the respondent is directed to sanction pensionary benefits, due to the petitioner, as per the relevant Pension Rules, within a period of eight weeks from the date of receipt of a copy of this order."

8. On the basis of the judgment above referred to, the learned counsel for the petitioner submitted that Rule 43(3) of Tamil Nadu Pension Rule specifically provide for calculating the petitioner's service as 10 years and that the respondents have not applied their mind with regard to the Pension Rules. Similarly, it was also contended by the learned counsel for the petitioner that the period between 07.02.1997 and 01.06.1998, in which the petitioner was in service on consolidated pay and hence, as per Rule 11(4)(ii) of the Tamil Nadu Pension Rule, half the period of service on consolidated pay should be taken into account for the purpose of calculating pension. However, without considering the petitioner's application with reference to the specific rules particularly, Rule 43(3) of Tamil Nadu Pension Rule and Rule 11(4)(ii) of the Tamil Nadu Pension Rule, the second respondent has rejected the petitioner's application and denied pension, as if the petitioner is not entitled to get pension as per rules.

9. Having regard to the fact that the position is well settled by this Court on the interpretation of Rule 43(3) and Rule 11(3)(II) of the Tamil Nadu Pension Rules, this Court has no other option but to accept the case of the petitioner. The petitioner is entitled to ~~the period from 07.02.1997 to 01.06.1998 for the purpose of pension.~~ In view of the fact that 50% of the period from 07.02.1997 to 01.06.1998 enables the petitioner to get pension, this



Court is inclined to allow this writ petition and set aside the order of the Joint Chief Engineer of the Tamil Nadu Water and Drainage Board, viz., the second respondent dated 04.07.2014 and the order of the second respondent dated 06.01.2015. The respondents are directed to sanction pension to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu Water and Drainage Board-Head Office,
Kamarajar Salai, Chepauk,
Chennai-600 005.
 2. The Joint Chief Engineer, (General)
Tamil Nadu Water and Drainage Board-Head Office,
Kamarajar Salai, Chepauk,
Chennai-600 005.
- + 1 CC TO Mr.S.VISVALINGAM, ADVOCATE IN SR No. 61398
+ 1 CC TO Mr.MUTHURAMALINGAM, ADVOCATE IN SR No. 61445

NS/LS

TE/MR-KKR/SAR-III : 05/07/2017 : 5P/5C

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M.P (MD) .No.1 of 2015
22.06.2017