



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM :

THE HON'BLE MR. JUSTICE S. VAIDYANATHANW.P. (MD) No. 24408 of 2016

WEB COPY

P. Rajasekaran

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Municipal and Water Supply Department,
Fort St. George, Chennai-600 009.
2. The Director,
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai-600 108.
3. The Director of Town Panchayat,
Kuralagam Buildings,
Chennai-600 108.
4. The Assistant Director,
Local Fund Audit Department,
Dindigul, Dindigul District.
5. The Executive Officer,
Pallapatti Selection Grade Town Panchayat,
Aravakurichi, Karur District.

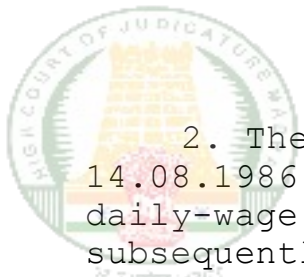
... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner, viz. encashment of Earned Leave and Unearned Leave and the Tamil Nadu Government Employees' Special Provident Fund and the General Provident Fund, Gratuity and pension admissible to the petitioner with penal interest at the rate of 18%.

For Petitioner	: Mr. M. Veilkaniraju
For Respondents	: Mr. M. Rajarajan
	Govt. Advocate

ORDER

The petitioner has come forward with this petition, seeking to direct the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner, viz. encashment of Earned Leave and Unearned Leave and the Tamil Nadu Government Employees' Special Provident Fund and the General Provident Fund, Gratuity and pension admissible to the petitioner with penal interest at the rate of 18%.



2. The case of the petitioner is that he joined the service on 14.08.1986 as Plumber (now designated as Pipe-line fitter) on daily-wage basis in the fifth respondent Town Panchayat; that subsequently, he was absorbed as Water Tank Helper with effect from 06.07.2001 on a consolidated pay; that later, his appointment was regularized in the cadre of Water Tank Helper and was placed under regular time scale of pay with effect from 28.07.2006; that he has put in 28 years of service and retired from service on 31.12.2015 on attaining the age of superannuation; that the fifth respondent orally informed him that he was not entitled to pensionary benefits in view of G.O.Ms.No.259 (Finance - Pension Department) dated 06.08.2003.

3. Learned counsel appearing for the petitioner submitted that the respondents have denied the pension and pensionary benefits under the old scheme on the ground that the petitioner's service was regularized only on 28.07.2006, which cannot be sustained in view of the decision made by this Court reported in the case of S.Mary Sherly vs. Secretary to Government, Education Department, Chennai and others, reported in (2013) 3 MLJ 56. He further submitted that admittedly the petitioner was appointed on consolidated pay in the 5th respondent Panchayat on 06.07.2001 itself, which is much earlier to G.O.Ms.No.259, dated 06.08.2003 and therefore, the respondents are not justified in relying on the said G.O. to deny the benefit of pension to the petitioner.

4. Per contra, the learned Government Advocate appearing for the respondents submitted the petitioner's service was regularized only with effect from 28.07.2006, by that time, G.O.Ms.No.259, dated 06.08.2003 came into force and therefore, the petitioner has no right to demand the benefit of pension.

5. Heard the learned counsel on either side.

6. The only point for consideration in this case is as to whether the denial of pensionary benefits by the respondents on the basis of G.O.Ms.No.259, dated 06.08.2003 is sustainable or not.

7. The G.O.Ms.No.259, dated 06.08.2003 contemplates that new Contributory Pension Scheme based on defined contribution will be introduced to the newly "recruited employees" and that the same will apply to all employees, who are recruited on or after 01.04.2003. Needless to say that the words "recruited employees" used in the said Government Order would mean that the same is applicable to the persons, who are selected and appointed to the service on or after 01.04.2003, not in respect of persons, who joined the service either as temporary or consolidated pay much earlier to the date of the said G.O. The very same issue was considered by this Court in a decision reported in (2013)3 MLJ 56 (cited supra) and clause 3(i) of the said G.O., was taken up for consideration therein. Paragraphs 19 and 20 of the said decision read as follows:-



"19. At any event, I have already found that very order of appointment appointed the petitioner on 26.3.2003. If such appointment was made on 26.3.2003, whether the petitioner can be denied the benefit of the earlier GPF scheme, which was existing prior to the Contributory Pension Scheme is the question to be considered now. While considering the said question, it is necessary to look into G.O.Ms.No.259, dated 6.8.2003 is the question to be considered now. A perusal of the said Government Order only says that the Contributory Pension Scheme was introduced to the newly recruited employees, who were recruited on or after 1.4.2003. The relevant clause in 3(i) of the said G.O. is extracted hereunder:-

"3(i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003"

20. On going by the language of the said Government Order, more particularly the Clause 3(i), there will not be any difficulty to say that the said Government Order is applicable to persons, who are appointed on or after 1.4.2003. The word 'recruited' cannot be construed or taken to mean 'joined'. Certainly, the word 'recruited' has to have a related meaning of the word 'appointed'. When the 'recruitment' is the action of the employer, 'joining the duty' is the action of the employee. Both are to be seen with different connotation. When that being the position, in my considered view, the said G.O.No.259, having been made only in respect of persons, who have been recruited on or after 1.4.2003, the same cannot be applied to the petitioner's case, who was admittedly recruited earlier to 1.4.2003."

8. This Court is of the view that the word 'recruited' cannot be construed or taken to mean 'joined' and that the word 'recruited' implies to give the a related meaning of the word 'appointed'. In this case, it is an admitted fact that the petitioner was appointed on consolidated pay on 06.07.2001

9. Considering the fact that the appointment of the petitioner on consolidated pay was admitted to have been made on 06.07.2001 i.e., much earlier to the cut of date fixed by the G.O.Ms.No.259 dated 06.08.2003, the decision reported in (2013)3 MLJ 56 (cited supra) is squarely applicable to the facts and circumstances of the present case. It is also brought to the notice of this Court by the petitioner that the aforesaid judgment has been followed by this Court in the subsequent case in R.Kesavan vs. The State of Tamil Nadu, by its Secretary, Department of Municipal and Water Supply Department, Fort St. George, Chennai-600 009 [W.P. (MD)No.16049 of 2014], decided on 16.02.2015 and the respondents

therein were directed to grant the pension to the petitioner therein.

10. In view of the above stated position and foregoing discussions, this Writ Petition is disposed of with the direction to the respondents to consider the claim of the petitioner for payment of pension and pensionary benefits and to pass suitable orders, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To:

- 1.The Secretary,
State of Tamil Nadu,
Department of Municipal and Water Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Director,
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai-600 108.
- 3.The Director of Town Panchayat,
Kuralagam Buildings,
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