



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.4650 of 2016

C.Kamalabai

... Petitioner

-vs-

1. The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli-627 012.

2. The Secretary to Government,
Higher Education (H2) Department,
Secretariat, Chennai-9.

3. The Assistant Director,
Local Fund Audit Department,
Palayamkottai, Tirunelveli-2.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to count the Temporary Service of the petitioner from 10.11.1994 to 02.11.2002 along with the Regular Service of the petitioner till the date of superannuation on 30.04.2009 for about 16 years and to sanction the retirement and other pensionary benefits in light of the Judgment of this Hon'ble Court in W.P. (MD) No.4707 of 2014 dated 13.10.2014, which was complied by the respondents on 14.01.2016.

For Petitioner : Mr.S.Govindan

For R1 : Mr.M.Mahaboob Atiff

For R2 & R3 : Mr.A.K.Baskara Pandian
Spl. Govt. Pleader

O R D E R

This petition has been filed, seeking to direct the respondents to count the Temporary Service of the petitioner from 10.11.1994 to 02.11.2002 along with the Regular Service of the petitioner till the date of superannuation on 30.04.2009 for about 16 years and to sanction the retirement and other pensionary

benefits in light of the Judgment of this Court in W.P.(MD) No.4707 of 2014 dated 13.10.2014, which was complied by the respondents on 14.01.2016.

2. The case of the petitioner is that she is entitled to pensionary and other benefits for the entire services, by taking into account 50% of her Temporary Service rendered between 10.11.1994 and 02.11.2002 along with the Regular Service of the petitioner from 02.11.2002 to 30.04.2009 and that she has completed more than 10 years of service.

3. The 1st respondent would submit that the petitioner's claim has got to be rejected on two grounds, namely, even if 50% of her temporary service is taken into account, her total service is not more than 10 years that the petitioner has retired from service in the year 2009 and that after a period of seven years, she has approached this Court with inordinate delay.

4. After a detailed argument, Mr.M.Mahaboob Atiff, learned counsel appearing for the 1st respondent fairly submitted that the petitioner has completed required number of years of service, thereby she has become eligible to get terminal benefits. With regard to the aspect of delay and laches, this Court need not exercise its discretion, as the person, who has slept over for long years, need not be awakened from his/her slumber. Since the pensionary benefits are continuous cause of action, it is the duty cast upon the State to extend such benefits to the petitioner in terms of the judgment of the Hon'ble Division Bench of this Court in the case of **Pramila Kiruba Augustus vs. State Bank of India, represented by its Chief General Manager and others [W.A.Nos.1244 & 1587 of 2011 decided on 04.10.2012,** wherein the Hon'ble Division Bench declined the request of the respondents therein to non suit the petitioner therein on the ground of delay and laches, by holding as under:

".....16. It is to be pointed out at this juncture, though the bank has responded to the representation dated 31st July, 2003, by sanctioning provident fund and gratuity, has not chosen to pass any orders with regard to her claim for pensionary benefit and in this regard, the writ petitioner submitted numerous representations, but she was not favoured with any response. The abovesaid fact has not been seriously disputed by the respondents and further that the petitioner's husband underwent by-pass surgery and her father underwent hip replacement surgery and she is also suffering from cervical cancer. Moreover, the writ petition was entertained in the year 2011 and taking into consideration the above facts and circumstances, this Court is of the view that the petitioner is not guilty of delay and laches.



17. The respondents/bank took a stand the petitioner herein is having an effective alternative remedy and, in fact, she raised an industrial dispute with regard to the act of the bank in voluntarily retiring her from service with effect from 31st March, 1999 and it failed and she sought a reference and it was also declined and since she has not chosen to make a challenge, she is not entitled to file the present writ petition.

18. As rightly contended by the learned counsel for the petitioner, that by virtue of the order dated 31st March, 1999, the petitioner was voluntarily retired from service and in that event, she ceased to be in employment and, therefore, she cannot be a member of the Union. Hence, the writ petitioner, as an individual, cannot raise an industrial dispute for pension under Section 2-A of the Industrial Disputes Act, 1947 and for raising an industrial dispute under Section 2 (k) of the Act, sponsorship by the Union is mandatory and since she cannot be a member of the Union, the said remedy also cannot be invoked by the writ petitioner.

19. It is very pertinent to point out at this juncture, though the writ petitioner submitted number of representations praying for pensionary benefit, the respondents/bank did not respond and left with no other alternate or efficacious remedy, the petitioner was constrained to approach this Court by filing a writ petition. It is also to be remembered, the petitioner, who is aged about 57 years, is diagnosed with cervical cancer and she is also undergoing chemotherapy treatment. Therefore, this Court is of the view that the availability of alternate remedy is not a bar for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

20. Though a Full Bench of this Court in **P.Pitchumani - Vs - The Management of Sri Chakra Tyres Ltd. (2004 (3) CTC 1)**, has laid down the proposition that dismissal, transfers and matters concerning service conditions of employees governed by the Industrial Disputes Act have to be adjudicated under the said statute and not otherwise, from the facts of the case projected above, the remedy sought by the writ petitioner by invoking the jurisdiction of this Court under Article 226 of the Constitution of India is not barred.



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34. It is the specific case of the petitioner that right from the year 2003, she was repeatedly submitting representations praying for pensionary benefit and since the Bank did not choose to respond by sending any reply, coupled with the fact that her husband underwent by-pass surgery and her father underwent hip replacement surgery and she is also suffering from cervical cancer right from the year 2008, she was not able to approach this Court earlier in point of time. This Court, taking into consideration the above facts and circumstances, is of the view that the petitioner is eligible for pension. But, insofar as payment of interest on belated settlement of arrears of pension is concerned, the period between 31st March, 1999 - the date on which the order voluntarily retiring her from service came to be passed and 7th Jan., 2011 - the date on which the writ petition was filed, the petitioner will not be entitled to interest on the said arrears.

35. In the result, W.A. No.1244/2011 filed by the petitioner/employee is allowed and the impugned order dated 7th June, 2011 passed by the learned single Judge in W.P. No.728/11, insofar as postponing of the relief to be given to the petitioner till the verdict of the Hon'ble Supreme Court in SLP (Civil) No.13599/10 is set aside and it is declared that the petitioner is entitled to pensionary benefits. However, in respect of arrears of pension, the petitioner is entitled to interest @ 9% p.a. from 7th Jan., 2011 - the date on which the writ petition came to be filed and the respondents are directed to take immediate and necessary steps to pay the arrears of pension along with interest within a period of three months from the date of receipt of a copy of this order and continue to pay the eligible pension to the writ petitioner. However, in the facts and circumstances of the case, there shall be no order as to costs.

5. In this case, the respondent University, which is a State within the meaning of Article 12 of the Constitution of India, cannot act arbitrarily and the petitioner's rights are protected under Article 21 of the Constitution of India.

6. In view of the foregoing discussions and submissions, the respondents herein are directed to count the 50% of the Temporary Service of the petitioner, viz., from 10.11.1994 to 02.11.2002 along with her Regular Service and to sanction the retirement and other pensionary benefits to her within a period of four weeks from the date of receipt of a copy of this order, if there are no



7. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar

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To:

1. The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli-627 012.
2. The Secretary to Government,
Higher Education (H2) Department,
Secretariat, Chennai-9.
3. The Assistant Director,
Local Fund Audit Department,
Palayamkottai, Tirunelveli-2.

+1CC to Mr.S.Govindan, Advocate Sr.No.1373

+1CC to M/S.Ajmal Associates, Advocate Sr.No.1041

GJM/CM/MSA/14.2.17-5p-6c

W.P. (MD) No.4650 of 2016
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