

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.16377 of 2011

Mr.A.Shanmugasundaram

... Petitioner

Vs

- 1.The Government of Tamilnadu,
Rep by the Secretary,
Department of Higher Education,
Fort St.George, Chennai 600 009.
 - 2.The Director of Collegiate Education,
College Road, Chennai 600 006.
 - 3.The Joint Director of Collegiate Education,
Coimbatore Region,
Race Course Road, Coimbatore 641 018.
 - 4.The Director of Public Health and
Preventive Medicine,
DMS Complex, Anna Salai, Teynampet,
Chennai.
 - 5.The Principal,
Health and Family Welfare Training Centre,
Pantheon Road, Egmore,
Chennai 600 008.
 - 6.The Secretary,
PSG College of Arts and Science,
Coimbatore 641 014.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Order No.Na.Ka.No.34421/F1/12007/01522 dated 24.02.2011 and quash the same and direct the respondents to revise the petitioner's pensionary benefits by taking into account the period of his service for seven years from 19.10.1970 to 25.06.1977 as Health Education Extension Officer for the purposes of calculating the pensionary benefits and grant him all consequential benefits.

For Petitioner : Mr.T.N.Sugesh

For Respondents: Mr.C.Munusamy,

Special Government Pleader for RR1 to 5

: Mr.A.Jenasenan for R6

O R D E R

Heard Mr.T.N.Sugesh, learned counsel for the petitioner and Mr.C.Munusamy, learned Special Government Pleader appearing for the first to fifth respondents and Mr.A.Jenasenan, learned counsel appearing for the sixth respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Order No.Na.Ka.No.34421/F1/12007/01522 dated 24.02.2011 and quash the same and direct the respondents to revise the petitioner's pensionary benefits by taking into account the period of his service for seven years from 19.10.1970 to 25.06.1977 as Health Education Extension Officer for the purposes of calculating the pensionary benefits and grant him all consequential benefits."

3. The case of the petitioner is as follows:-

The petitioner had initially worked as Health Education Extension Officer from 19.10.1970 till 25.06.1977, at the Regional Family Planning Training Centre, Chennai, now known as Health and Family Welfare Training Centre, Chennai, under the Directorate of Health Services and Family Planning, Government of Tamil Nadu. While he was working as Health Education Extension Officer, he applied for a post of Assistant Professor at P.S.G College of Arts and Science, Coimbatore, through proper channel. The said College was a Government aided Institution. In response to his application, he was selected and appointed as Assistant Professor and joined the post on 01.07.1977 and worked there until the date of his retirement on attaining the age of superannuation on 30.06.1996. Before joining the post of Assistant Professor, he did technically resign from the Health and Family Welfare Training Centre, Chennai.

4. The grievance of the petitioner is that while calculating the pensionary benefits, the period of service rendered by him for seven years i.e., from 19.10.1970 till 25.06.1977, had not been taken into consideration and the period of his service as Assistant Professor, PSG College of Arts and Science, alone was taken into consideration. The petitioner in this regard, has been making a periodical representations and inspite of passage of considerable time, there was no response from the respondents.

5. According to the petitioner, he has been continued to renew his representations and finally by proceedings dated 24.02.2011, his claim came to be rejected on the ground that his services in the earlier Organisation was temporary and

since he resigned the temporary post, his claim for counting of that period of service, cannot be acceded to. The said communication is put to challenge in the present writ petition.

6. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and made his submissions.

7. The learned counsel for the petitioner would submit that while the petitioner was working in the directorate of Health Services and Family Planning as Health Education Extension Officer, he had submitted the application through his department for appointment to the post of Assistant Professor in P.S.G College of Arts and Science, Coimbatore, which is a Government aided Institution. After his application was forwarded, he was subjected to selection and eventually appointed as Assistant Professor and joined on 01.07.1977 and retired from service on attaining the age of superannuation. Before joining the post, he has submitted a technical resignation as evidenced by the letter of resignation dated 15.06.1977 and thereafter, he was properly relieved by the erstwhile Department by proceedings of the fifth respondent dated 25.06.1977. Therefore, the learned counsel would submit that once an application had been forwarded through the department and the resignation was technical in nature, the service rendered by him in one department of the Government has to be counted for the purpose of calculation of pensionary benefits.

8. The learned counsel for the petitioner would further submit that in the instant case, for the service rendered by the petitioner, no matter the nature of employment, has to be counted for calculation of pensionary benefits, since his erstwhile service was nothing, but, a Government service and that is an admitted fact. The learned counsel would rely upon a decision of this Court rendered by the learned Judge by allowing the writ petition in respect of a similar claim in W.P.No.4787 of 2005 dated 24.11.2010. He would draw the attention of this Court, particularly, to paragraph Nos.12 and 13, which are extracted below:-

"12. As per G.O.Ms.No.1129, Education Department dated 22.06.1988, one K.R.Natarajan, who rendered service in Government College from 10.06.1963 to 16.07.1977 has prayed for counting of the said period of service as a qualifying service for the purpose of pensionary benefits. The said person, subsequently, joined the services of PSG College of Arts and Science, which is an aided college and rendered service therein and retired from service. His earlier request on the same lines was rejected and once again he made a representation. The Education Department after taking into consideration the representation

submitted by K.R.Natarajan, has passed the above said order, ordering counting of services rendered by him in the Government College for the purpose of qualifying service for retirement benefits.

13. In the considered opinion of this Court, the petitioner is similarly placed like that of K.R.Natarajan and therefore, his claim for treating the period of services rendered by him the HR & CE Department between 06.06.1970 and 31.05.1975 may be taken into account subject to the fulfilment of other requirements."

He would further submit that this Court in identical circumstances, has allowed similar claim and this petitioner is also entitled to the same relief.

9. Although the relief as prayed for in the writ petition is sought to be resisted by the learned Special Government Pleader appearing for the respondents, however, this Court, upon considering the materials and pleadings placed on record and also upon appreciating the arguments advanced on behalf of the petitioner, is of the considered view that the earlier service rendered by the petitioner in the Directorate of Health Services and Family Planning from 19.10.1970 till 25.06.1977, ought to be taken into consideration and to be counted for the purpose of calculation of pensionary benefits payable to the petitioner.

10. In fact, as held by the learned Judge of this Court in the aforesaid writ petition, the petitioner herein also is similarly placed. Therefore, he is entitled to count the services rendered by him as Health Education Extension Officer in the Directorate of Health Services and Family Planning. From the materials as made available before this Court, it is very clear that the application for the post of Assistant Professor was forwarded through the Department. The petitioner has submitted technical resignation before he had chosen to join the post of Assistant Professor. He was also relieved in terms of the regulations by the proceedings of the fifth respondent herein. Therefore, in all fours, the petitioner is entitled to count the services rendered by him in the Directorate of Health Services and Family Planning Department.

11. Although the learned Special Government Pleader appearing for the respondents would object the long and unexplained delay on the part of the petitioner in approaching this Court, however, this Court is of the considered view that the delay as such cannot be held against the petitioner in respect of payment of pensionary benefits, since the issue of pensionary benefits is nothing, but, a continuous and recurring cause of action. Therefore, this Court over rules the said objection.

12. For the above said reasons, the impugned order in Na.Ka.No.34421/F1/12007/01522 dated 24.02.2011, is hereby set aside. The respondents are directed to revise the pensionary benefits payable to the petitioner by counting the services of the petitioner rendered by him as Health Education Extension Officer in the Directorate of Health Services and Family Planning, Government of Tamil Nadu from 19.10.1970 till 25.06.1977. Since the petitioner has approached this Court belatedly after fifteen years from his retirement, this Court holds that he is not entitled to arrears of pension from the date of his retirement. However, the petitioner is entitled to receive the arrears of differential revised pensionary benefits for three years prior to the institution of the present writ petition. The respondents are directed to revise the pensionary benefits as indicated above and pay the revised pensionary arrears to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The Government of Tamilnadu,
Department of Higher Education,
Fort St.George, Chennai 600 009.
 - 2.The Director of Collegiate Education,
College Road, Chennai 600 006.
 - 3.The Joint Director of Collegiate Education,
Coimbatore Region,
Race Course Road, Coimbatore 641 018.
 - 4.The Director of Public Health and Preventive Medicine,
DMS Complex, Anna Salai, Teynampet,
Chennai.
 - 5.The Principal,
Health and Family Welfare Training Centre,
Pantheon Road, Egmore,
Chennai 600 008.
- + 1 cc to Mr.A. Jenasenan, Advocate SR.50131
+ 1 cc to M/s. Sugesh, Advocate Sr.49800
+ 1 cc to Government Pleader Sr.49944

W.P.No.16377 of 2011

MG (CO)

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EU (24/09/2018)