

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.9588 of 2012

A. Elizabeth Jayaseeli

..Petitioner

Versus

1. The State of Tamilnadu
Rep. by its Secretary
Public Health and Preventive Medicine Department
Secretariat
Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine
Teynampet,
Chennai - 600 006.
3. The Joint Director of Public Health and Preventive
Medicine Teynampet, Chennai - 600 006.
4. The Deputy Director of Health Services
Salem, Salem District.
5. The Medical Officer
Government Primary Health Centre
Kolathur, Salem District.

..Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Declaration declaring that the petitioner's husband S. John Babu Multipurpose Sanitary Worker is deemed to have continued in service till 06.01.2008 (the date of superannuation) and consequently direct the respondents to pay D.C.R.G and other pension benefits due to the petitioner's husband to the petitioner and also sanction Family pension to her from 26.10.2010.

For Petitioner :: Mr.V.Thirupathi

For RR 1 to 5 :: Mrs. Sri Jeyanthi
Special Government Pleader

ORDER

The Writ Petition has been filed by the widow of the late S.John Babu for a declaration that the petitioner's late husband S.John Babu, multi-purpose Health Worker should be deemed to be continuously in service till 06.01.2008, which is the date of superannuation and to pay DCRG pension benefits due to him to the petitioner and also sanctioned family pension from 26.10.2010.

2. In the affidavit, it had been stated that the petitioner's husband S.John Babu was appointed as Surveillance worker at Dharmapuri on 10.06.1971 by the District Health Officer, Thiruchengode. His services were regularised with effect from 10.06.1971 by proceedings dated 28.04.1975. He was deputed for Health services training under multi-purpose Health Workers scheme by proceedings dated 16.10.1979 of the fourth respondent, namely, the Deputy Director of Health Services, Salem District. The third respondent, Joint Director of Public Health and Preventive Medicine, Chennai had also passed an order dated 15.11.1979 that he was eligible for the post of surveillance worker, which was re-designated as Basic Health Worker. Arrears of increment were also sanctioned. The third respondent by proceedings dated 11.07.1980 issued a mutual transfer order and he was transferred to Kolathur Centre, Salem. He was then appointed as multi-purpose sanitary worker at Tharkkadu by proceedings dated 11.12.1987. On 01.01.1988 he submitted an application for voluntary resignation due to health conditions. The respondents did not pass any order either accepting it or rejecting it. He attained the age of superannuation on 06.01.2008. He submitted a representation dated 31.07.1971 to settle the pensionary benefits. He died on 26.10.2010. The petitioner made a representation on 25.03.2011 and also an application under Right to Information Act. It was informed that no action had been taken. Consequently, the petitioner claimed that her late husband must be deemed to be in service. It is under these circumstances, the Writ Petition had been filed.

3. In the counter affidavit, it had been stated that S. John Babu worked in the following offices:-

Name of Office	Period of Worked
1. Divisional Office, National Malaria Eradication Maintenance Programme, Dharmapuri	19.06.71 FN to 01.02.76 FN
2. Divisional Office, National Malaria Eradication Maintenance Programme, Thiruvannamalai	11.03.76 FN to 09.12.76 FN
3. Divisional Office, National Malaria Eradication Maintenance Programme, Krishnagiri	17.12.76 FN to 31.01.77 AN
4. Government Primary Health Centre Samalpatti, Dharmapuri District	01.02.77 FN to 18.12.78 AN
5. Government Primary Health Centre, Manickampalayam, Namakkal District	22.12.78 FN to 09.08.80 AN
6. Government Primary Health Centre, Kolathur, Salem District	10.08.80 FN 31.12.87

4. It was submitted that he was transferred from Government Primary Health Centre, Manickampalayam to Government Primary Health Centre, Kolathur on 10.08.80. He was also posted as multi-purpose Health Worker on 11.12.87. It was claimed that he had tendered letter resigning his service from 01.01.88 and was absent from duty from 01.01.88. The resignation was forwarded to the District Health Officer, Tiruchengode. This office was abolished and also the files and records were directed to be handed over to the Deputy Director of Health Services, Namakkal. The file relating to resignation of S. John Baby was not available. Consequently, orders were not passed. It was stated that permitting to retire him on attaining the age of superannuation does not arise since he was absent from 01.01.88. It was therefore stated that the Writ Petition should be dismissed.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

6. It is seen from the records that the late husband of the petitioner is S.John Baby had joined service on 10.06.1971. He had been working in the following offices:-

Name of Office	Period of Worked
1. Divisional Office, National Malaria Eradication Maintenance Programme, Dharmapuri	19.06.71 FN to 01.02.76 FN
2. Divisional Office, National Malaria Eradication Maintenance Programme, Thiruvannamalai	11.03.76 FN to 09.12.76 FN
3. Divisional Office, National Malaria Eradication Maintenance Programme, Krishnagiri	17.12.76 FN to 31.01.77 AN
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6. Government Primary Health Centre, Kolathur, Salem District	10.08.80 FN 31.12.87

7. It is seen that he has been continuously in employment without any break for more than 16 years. Thereafter, on 01.01.1988, he had given his letter resigning his service under voluntary retirement scheme. There was an obligation placed on the respondents either to accept it or to reject the said application by S.John Babu . On the other hand, a blame excuse is given that the file was handed over to the District Health Officer, Thiruchngode. The office of District Health Officer, Thiruchengode was abolished at the time of reorganisation of Public Health and Preventive Medicine at District level during 1991. However, no explanation has been given as to why no orders were passed on the application from 1988 till 1991. It was thereafter stated that the files and records relating to the office of the District Health Officer, Thiruchengode, were ordered to be handed over to the Deputy Director of Health Service, Namakkal. The date on which this order was passed is also not mentioned in the counter affidavit. The file relating

to the resignation of S. John Babu is not available. It was admitted in the counter affidavit that orders were not passed. However, it is stated that he was absent from duty from 01.09.1988. There is also no explanation given as to why disciplinary proceedings were not effected against him for unauthorised absence if it is claimed that he was unauthorisedly absent. He had been in service for more than 16 years and his service had been regularised. Therefore, if he had absent, then the respondents should have initiated necessary action. They simply kept quite.

8. Rule 43(2) of the Pension Rules is as follows:-

"43.(2) in the case of a Government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount."

9. In the said rules, the quantum of pension, which is payable if the employee works for 10 years and more, had been given. The said rules will be attracted if the employee had resigned in accordance with Chapter V of the Pension Rules. Chapter V of the Pension Rules relating to (i) Superannuation pension; (ii) Retiring Pension; (iii) Pension on absorption in or under a Corporation, Company or Body; (iv) Payment of lumpsum amount to persons on absorption in or under a Corporation, Company or Body; (v) Invalid Pension; (vi) Medical Opinion; (vii) Compensation pension; (viii) compulsory retirement pension; (ix) Compassionate allowance; and (x) Unfitness for further advancement.

10. It is admitted that the petitioner had given an application for voluntary retirement. If it had not been accepted, it would only mean that it is deemed to have been accepted from 01.01.1988. Then under Section 43(2) of the Pension Rules, then, he would be entitled for pension for the said period of 16 years, which he had worked. The respondents are directed to calculate that amount and pay the necessary benefits to the Writ Petitioner within a period of three months from this date.

11. With these observations, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
State of Tamilnadu
Public Health and Preventive Medicine Department
Secretariat
Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine
Teynampet,
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4. The Deputy Director of Health Services
Salem, Salem District.
5. The Medical Officer
Government Primary Health Centre
Kolathur, Salem District.
6. The Deputy Director of Health Services
Namakkal, Namakkal District.

+1cc to Mr.V.Thirupathi, Advocate, S.R.No.78720

+1cc to the Government Pleader, S.R.No.79134

W.P.No.9588 of 2012

KK(CO)
GSP19(/12/2018)