

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM:

**THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

W.A.No.425/2018

M.Devathi

... Appellant

Vs

1. State of Tamil Nadu
rep. by the Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.
 2. The Principal Secretary-cum-Commissioner
for Revenue Administration,
Chepauk, Chennai-5.
 3. The District Collector,
Coimbatore District,
Collectorate, Coimbatore-641 018.
 4. The District Collector,
Tiruppur District,
Tiruppur.
 5. The Tahsildar,
Civil Supplies,
Udumalpet, Tiruppur District.
- ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 03.01.2018 made in W.P.No.34162/2017 by a learned Single Judge.

For Appellant :: Mr.K.Govi Ganesan

For Respondents :: Mr.P.S.Siva Shanmuga Sundaram,
Special Government Pleader

JUDGMENT

(Judgment of the Court was pronounced by **HULUVADI G.RAMESH, J.**)

The Writ Appeal is directed against the order dated 03.01.2018 made in W.P.No.34162/2017 by a learned Single Judge.

2. The Writ Petition has been filed by the petitioner therein seeking to issue a Writ of Mandamus, directing the respondents to regularise his services in the post of Masalchi-cum-Night Watchman w.e.f. 10.10.1980 and consequently, direct the respondents herein to disburse the retirement benefits and full pension to the petitioner within a stipulated period.

3. The case of the writ petitioner is that he was appointed as Masalchi-cum-Night Watchman in the Office of the Agricultural Income Tax, Udumalpet, on 10.10.1980 through Employment Exchange and thereafter, he was promoted as Office Assistant on 1.9.1988 and his service was also regularised w.e.f. 31.8.1988 A.N. in the said post and the completion of his probation was also recorded and respective entries were made in his Service Register. Subsequently, he was

promoted as Junior Assistant on 24.11.1997 and his services in the said post was also regularised and necessary entries were made on his Service Book. While so, on 30.12.2008, a proposal was sent to the 3rd respondent regarding completion of probationary period of the petitioner in the post of Junior Assistant. When the said proposal was pending in the office of the 3rd respondent, the Coimbatore District was bifurcated and the new District Tiruppur was notified. Thereafter, the 4th respondent by his Proceedings in Na.Ka.No.A4/2297/09 dated 30.11.2009 sought for orders from the 2nd respondent herein for the completion of probationary period from the 2nd respondent herein in the post of Junior Assistant. But the 2nd respondent office returned his Service Register and the connected files to the 4th respondent to regularise the petitioner's service in the initial post of Masalchi-cum-Night Watchman. Without rectifying the said defect, once again his Service Register was sent back to the 2nd respondent by the 4th respondent. In the meanwhile, the petitioner retired from service on attaining the age of superannuation on 31.3.2010 A.N. The non-regularising the service of the petitioner in the post of Masalchi-cum-Night Watchman is the mistake committed on the part of the department. But, in view of the same, the petitioner is unable to derive his pensionary benefits and till date, his service register is lying in the office of the 2nd respondent.

4. The learned Single Judge of this Court dismissed the said writ petition by order dated 03.01.2018. Aggrieved over the same, the appellant is before this Court with this Writ Appeal.

5. Heard the learned Counsel for the appellant and the learned Special Government Pleader appearing for the respondents.

6. On the face of the records, it appears that the initial appointment of the appellant was made as Masalchi-cum-Night Watchman on 10.10.1980 on temporary basis and thereafter, he was promoted as Office Assistant on 01.09.1988. But his service in the post of Masalchi-cum-Night Watchman has not been regularised and his service rendered as Office Assistant has been regularised w.e.f. 31.08.1988 A.N. Now the grievance of the appellant is that if the service rendered by him in the post of Masalchi-cum-Night Watchman has been regularised, the said period will also be taken into account for calculating his pension and his pension would be much higher than the present.

7. Per contra, according to the respondents, there is no order showing that the appellant was initially appointed as Masalchi-cum-Night Watchman on regular basis and his services have been regularised in the said post. That apart, the appellant has approached

this Court by way of filing the Writ Petition only after a lapse of 7 to 8 years after his retirement. Therefore, the Writ Appeal is liable to be dismissed.

8. A perusal of the appointment order issued to the appellant dated 6.10.1980 by the Agricultural Income Tax Officer discloses that the appellant was appointed temporarily in the post of Masalchi-cum-Watchman and he was liable for termination of service without prior notice. Therefore, the said period has not been taken into account for calculating pension. Since, his service in the post of Office Assistant w.e.f. 31.8.1988 A.N. has been regularised, the same has been counted for calculating his pension. Though the learned Counsel for the appellant contended that the appointment of the appellant in the post of Masalchi-cum-Night Watchman was on permanent basis, he has not produced any documents before this Court to substantiate his stand. Therefore, in the absence of any iota of evidence for the permanent appointment of the appellant from the date of his initial appointment as Masalchi-cum-Night Watchman, his temporary service cannot be taken into account for calculating the pension. Further, as held by the learned Single Judge, after his retirement on 31.3.2010, the appellant has kept quite for 7 long years and thereafter only approached this Court, without approaching the concerned authority to regularise his services in the post of Masalchi-cum-Night Watchman for the relevant period.

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and
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Therefore, in our considered view, the learned Single Judge has rightly dismissed the writ petition. We do not find any infirmity in the order of the learned Single Judge.

9. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs.

(H.G.R.J.)

(M.D.I.J.,)

03.04.2018

Index : Yes\No

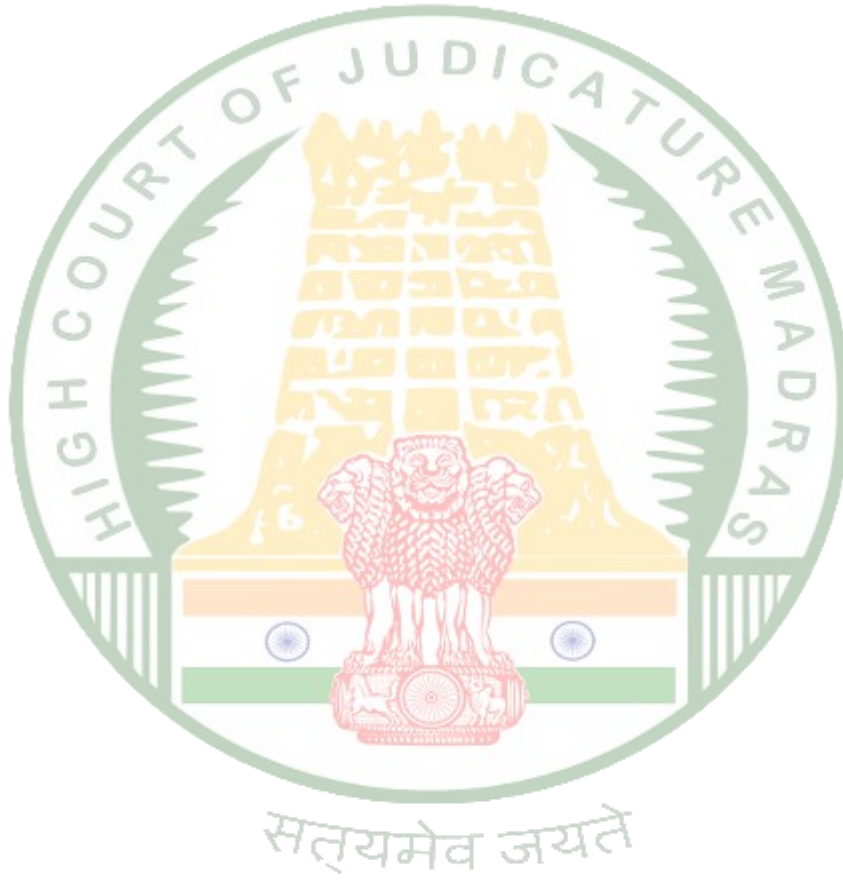
Internet : Yes

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To

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