

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.24598 of 2015 and WMP No.18933 of 2016

N.Syed Mubarak

..Petitioner

Versus

1. The Secretary,
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner & Director,
Rural Development,
Panchayat Building,
Saidapet, Chennai 600 015.
3. The Director,
Local Fund Audit,
Kuralagam, 4th Floor, Chennai - 600 008.
4. The District Collector (Development),
Thiruvarur.
5. The Commissioner,
Panchayat Development,
Thiruvarur

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus to call for the records on the file of the 4th respondent in connection with Na.Ka.No.5815/08/A3(Development) dated 04.07.2008 and on the file of the 5th respondent in connection with his proceedings in Na.Ka.No.3020/2005/A3 dated 15.12.2011 and quash the same as illegal and consequently direct the respondents to sanction all terminal benefits including pension with all arrears based on the regularization order in Na.Ka.No.3820/2005/A3 dated 24.06.2009 by calculating the service from 20.11.1969.

For Petitioner : M/s.T.Ananthi

For Respondents : Mr.V.Kadhirvelu

Special Government Pleader for R1 to R4
Mr.P.Chinnadurai for R5

O R D E R

This writ petition has been filed by the petitioner seeking for a certiorarified mandamus to call for the impugned order of the 4th and 5th respondent and quash the same and consequently, direct the respondents to sanction all terminal benefits including pension with all arrears based on the regularization order in Na.Ka.No3820/2005/A3 dated 24.06.2009 by calculating the service from 20.11.1969.

2. The case of the petitioner is that he was appointed originally on 19.12.1969 as an Attender and joined on 20.12.1969 and then promoted as Record Clerk. His service was regularized w.e.f 20.12.1969 and the probation was declared on 18.01.1972. While that being so, he applied for earned leave from 11.05.1987 to 30.06.1987 and it was extended up to 30.06.1988, due to his ill health, he requested to extend the leave as he was advised to have continuous bed rest. Thereafter, whenever he reported in person to rejoin duty, he was not permitted to continue to work and inspite of his repeated attempts from 1987, he was neither permitted to work nor extension of leave has been granted to him. In this regard, he had made a representation dated 06.09.2003 to the respondents and in response to the same, 5th respondent had written letters on various dates viz., 25.11.2002 and 08.12.2003 to the 4th respondent, who in turn called for additional particulars with regard to the petitioner representation, in its letter dated 12.01.2004 and 16.03.2004 and the petitioner replied vide his representation dated 12.07.2004. In the meanwhile, the petitioner attained the age of superannuation on 31.03.2006 and owing to the same, the petitioner submitted a representation dated 23.11.2006 to consider his long 17 years 4 months and 12 days of unblemished service and requested the respondents to permit him to retire and grant all terminal benefits and pensionary benefits. The 5th respondent had also sent proposal cum requisition to the 2nd respondent for extending pensionary benefits, who in turn sought for a clarification and no orders have been passed and when the petitioner approached the 4th respondent as to the stage of his requisition, under RTI Act, he was informed in its letter dated 04.07.2008 that his representation was rejected as directed and finally, the petitioner made a representation to the 1st respondent, which is still pending without any information and hence, the petitioner came forward to file this writ petition.

3. The learned counsel appearing for 3rd respondent has drawn the attention of this Court to the counter affidavit and would submit that the subject referred (rule relaxation) to therein are related to Administration which would be dealt with entirely by the 4th and 5th respondents and therefore, the 3rd respondent has unnecessarily been included as a party in this writ petition and the 3rd respondent has no role to pay.

4. The learned counsel appearing for the 5th respondent has drawn the attention of this Court to the Counter affidavit and would submit that the petitioner went abroad during the said period and he has suppressed the fact and trying to get the benefits on the technical issue, so also, the petitioner has not produced any medical certificate before the competent authority at any point of time and prays for dismissal of this writ petition.

5. Heard the submission of learned counsel appearing for the petitioner, so also, the learned counsel appearing for the respondents.

6. Admittedly the petitioner is having qualifying years of service for pension. Since in this case, though the petitioner remained unauthorisedly absent, still no action was taken against him by the respondents for his unauthorised absence and he was allowed to retire. Such being the case, it is not open to the Commissioner / 2nd respondent to reopen his case stating that since he has been allowed to retire illegally and as such he is not entitled to the relief sought for. Moreso, when no disciplinary proceedings was initiated against him in any manner, this Court is of the view that the impugned orders are liable to be set aside and accordingly, the impugned orders of the 4th respondent in Na.Ka.No.5815/08/A3(Development) dated 04.07.2008 and the proceedings in Na.Ka.No.3020/2005/A3 dated 15.12.2011 of the 5th respondent are set aside. The respondents are directed to reconsider the case of the petitioner with regard to grant of pension, as admissible to him, in accordance with Pension Rules, within a period of eight weeks from the date of receipt of copy of this order. It is made clear that the petitioner is not entitled for any interest amount for delayed sanction of pension, if it is held that he is entitled to pension for the service rendered. But the aforesaid order should not be construed as a mandate to sanction pension if the petitioner is otherwise not qualified to get pension under the relevant rule.

7. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Secretariat, Fort St. George,
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4. The District Collector (Development),
Thiruvarur.
5. The Commissioner,
Panchayat Development,
Thiruvarur

+lcc to Mr.P.Chinnadurai, Advocate, S.R.No.39760
+lcc to M/s.T.Ananthi, Advocate, S.R.No.39292

BM 17/07/2018

W.P.No.24598/2015

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