IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.32884 of 2016

K.Dorairaj .. Petitioner

-vs-

1. District Collector
   Kanchipuram

2. The Accountant General
   Teynampet
   Chennai 600 018
   (R2 is suo motu impleaded as
   per order of Court dated 22.02.2017
   in WP.No.32884/2016) ..Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent to immediately send revised proposals to the Accountant General by supplying the omissions in sending pay drawn particulars etc. and get revised pension payment order for actual eligible pension and also order to give effect to the crucial date for calculating the terminal benefits as 06.02.1982 i.e. date of issue of second absorption order as per Government Order No.432 Finance (BPE) Department dated 11.09.2007.

For Petitioner :: Mr.C.Kanagaraj
for Mr.K.Dorairaj, Party-in-Person

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader for R1
Mr.N.Balamuralikrishnan for R2

ORDER

Mr.K.Dorairaj, the petitioner, who is a septuagenarian aged about 77 years, appearing in person, has come to this Court seeking a mandamus or direction to the District Collector, Kanchipuram, the first respondent herein to send the revised proposals to the Accountant General by supplying the omissions to get his revised pension payment order for actual eligible pension and also to pass an order to give effect to the crucial date for calculating the terminal benefits as 06.02.1982, i.e., the date of issue of the second absorption order as per Government Order No.432, Finance (BPE) Department dated 11.09.2007.

2. Mr.C.Kanagaraj, learned counsel, who was requested by this Court to assist the petitioner/party-in-person, submitted that the petitioner was selected for appointment as Clerk (now called as Junior Assistant) by the Madras Public Service Commission, now called as the Tamil Nadu Public Service Commission, and allotted to Kanchipuram District Revenue Unit. Thereafter, by proceedings bearing Rc.No.46551/1964 A.10 dated 15.9.64, the petitioner was deputed for clerical training for 90 days initially at the Taluk office, Madurantakam, where he also joined on 28.9.64, and as such, he worked in the revenue unit upto 8.8.68 and was also transferred on deputation of service with lien in the District Revenue Unit to the Tamil Nadu Civil Supplies Corporation Limited from 8.8.68 to 1.6.73. After his deputation to the Tamil Nadu Civil Supplies Corporation Limited to a non-pensionable post from 2.6.73 to 1.9.78, he was permanently absorbed in the said Corporation from 1.9.78 and he worked there till he attained the age of superannuation on 30.6.99. At the time of his retirement, the petitioner worked as a Senior Regional Manager at Virudhunagar. However, by subsequent proceedings bearing Rc.E1/46830/99 dated 18.9.2000, the petitioner was deemed to have been retired from service with effect from 30.6.99, after dropping audit objections, based on which he has applied for sanction of his pension under the Employees Provident Fund Scheme, 1995 and the E.P.F. Organisation Sub Regional Office, Tirunelveli also sanctioned the monthly pension of Rs.523/-.

3. It was further stated that since the service register of the petitioner was found missing, the Department was unable to send his pension proposals even after his retirement on 30.6.99. In view of the delay in payment of his pensionary benefits, he filed O.A.No.5827 of 2002 on the file of the Tamil Nadu Administrative Tribunal and after the abolition of the Tamil Nadu Administrative Tribunal, the O.A., was transferred to this Court and re-numbered as W.P.No.5231 of 2007. In the said writ petition, the petitioner made a prayer to sanction his pension and gratuity from 28.9.64 to 1.9.78. After considering the case of the petitioner, this Court, by order dated 18.10.2010, directed the District Collector, Kanchipuram to trace out the petitioner's service records or to re-construct the same, making necessary entries from 28.9.64 to 30.6.99 and thereupon to forward the same to the Accountant General, Chennai within twelve weeks from the date of receipt of a copy of this order. Finally, the Revenue Divisional Officer, Madurantakam and the Tahsildar, Madurantakam re-built his service register and made necessary entries. However, all other heads of officers under whom the petitioner worked from 11.12.64 to 31.8.68 have reported that the records were not traceable in spite of the best efforts taken by them. Hence, based on the reports received from the officers, the service entries for the period from 11.12.64 to August, 1968 have been made in the District Collector's office, Kanchipuram. The entries for the period from September, 1968 to May, 1973 have been got entered from the

office of the Commissioner of Civil Supplies, Chennai. Since the petitioner was ordered to be absorbed in the Tamil Nadu Civil Supplies Corporation Limited on permanent basis on 2.6.73, the Managing Director of the Tamil Nadu Civil Supplies Corporation Limited has made the service entries from 2.6.73 to 30.6.99 in the re-constructed service register. Accordingly, the pension proposals were sent to the Accountant General, Chennai vide office proceeding bearing No.Rc.A3/4700/2011 dated 11.5.2011. Subsequently, the Accountant General, Chennai sought for the following clarifications to assess the admissible pensionary benefits:-

> "(i) Whether the period from 02.06.1973 to 02.09.1978 has been reckoned as qualifying service by the Corporation and the pensionary benefits granted on that basis.
> (ii) Whether any contribution has been remitted by the Corporation to the Government for the period from 02.06.1973 to 02.09.1978.
> (iii) Details of the pay for the period from 11.12.1964 to 31.08.1968.
> (iv) Details of non qualifying service, if any.
> (v) Besides, 3 set of photographs, specimen signature and descriptive rill of the petitioner."

4. After receiving the particulars in respect of the aforementioned clarification in serial nos.1 & 2 from the General Manager, Tamil Nadu Civil Supplies Corporation Limited, Chennai in letter No.AE1/31368/2011 dated 7.7.2011, the Tahsildar, Madurantakam also reported that the petitioner had drawn and paid with the pay of Rs.90/- plus allowances for the month of October, 1964 and November, 1964, based on which the report was sent to the Accountant General, Chennai in office letter No.A3/4700/2011 dated 8.7.2011. In turn, the Accountant General, Chennai also, in his letter No.(PPO C419165 Rev) PO1/5/rtd/2011-12/10101496 dated 18.7.2011 also sanctioned the monthly pension of Rs.1,414/- and D.C.R.G., of Rs.5,427/- and finally the petitioner was paid interest of Rs.12,466/- for the belated payment of gratuity, as per the G.O.(1D) No.261, Revenue (Service2(3) Department dated 5.8.2013. Aggrieved by the same, the petitioner filed W.P.No.30415 of 2013 seeking a prayer to direct the respondents to pay interest for the belated payment of pension from 1999 to 2011. Accepting the case of the petitioner that there was a delay in the payment of pension, by order dated 17.2.2015, this Court directed the respondents to pay interest on the pension at the rate of 9% per annum from the date of entitlement till the date of actual payment to the petitioner and finally the Government also issued G.O.(1D) No.550, Revenue (Ser.2(3) Department dated 12.11.2015 sanctioning interest of Rs.37,511/- for the belated payment of pension to the petitioner.

5. Learned counsel assisting the party-in-person further submitted that the respondents have wrongly taken Rs.90/- as his pay instead of Rs.102/-. Secondly, as per G.O.No.432, Finance (BPC) Department dated 11.9.2007 and G.O.Ms.No.284, Finance (CFC) Department dated 31.3.80, the petitioner is entitled to the pensionary benefits for the Government service from 6.2.82, the date of absorption in the Tamil Nadu Civil Supplies Corporation Limited, but he was wrongly paid the pensionary benefits from 1.7.99, namely, the date of his retirement from the Tamil Nadu Civil Supplies Corporation Limited. Therefore, a direction be issued, he pleaded.

6. A detailed counter affidavit has been filed by the second respondent. The learned counsel for the second respondent urged this Court to dismiss the writ petition, as the prayer in the writ petition is wholly misconceived and not maintainable. While pointing out to the original prayer of the petitioner in the erstwhile O.A.No.5827 of 2002 seeking an order of sanction of his pension and gratuity from 28.9.64 to 1.9.78, which was considered by this Court on transfer of his O.A., as re-numbered W.P.No.5231 of 2007, he submitted that this Court, by order dated 18.10.2010 has directed the District Collector, Kanchipuram to trace out the records relating to his service particulars and then to re-construct the service register making necessary entries from 28.9.64 to 30.6.99 and thereafter to forward the same to the Accountant General, Chennai. In obedience to the said order, the duplicate service registers were re-constructed and the pension proposals were sent to the Accountant General, Chennai, who in turn, vide authorisation No. (PPO C.419165 Rev) PO1/5/rtd/2011-12/10101496 dated 18.7.11 has correctly sanctioned the pension and DCRG to the petitioner by taking the last pay drawn at Rs.670/- and the gross and net qualifying service for pension and DCRG at 13 years, 11 months, 5 days, namely, 28.9.64 till 1.9.78. Moreover, the service records maintained in the Tamil Nadu Civil Supplies Corporation Limited also revealed that his pay was fixed at Rs.410/- in the Superintendent cadre with effect from the date of his absorption in the Corporation viz., 2.9.78. Thereafter, his pay was fixed in the Assistant Manager cadre on his promotion and his pay was increased to Rs.450/-. Subsequently, in the revised scale, his pay was fixed at Rs.660/-. That shows that the Accountant General has correctly taken his last drawn pay at Rs.670/-, as he was permanently absorbed in the Tamil Nadu Civil Supplies Corporation Limited with effect from 2.9.78. From the order of permanent absorption issued on 28.1.80 in the proceedings of the Managing Director, Tamil Nadu Civil Supplies Corporation Limited, Chennai, he was paid with the pension, gratuity and interest on gratuity. Only after receipt of this, he filed the aforementioned O.A., to take into account his date of absorption in the Tamil Nadu Civil Supplies Corporation Limited from 6.2.82 instead of 2.9.78. When the petitioner has been receiving pension for his government service as well as for his services in the Tamil Nadu Civil Supplies Corporation Limited from 1.7.99

after his retirement, he cannot separately ask for government pension from 6.2.82, namely, the date from which he was absorbed in the Corporation. Such a claim is not tenable, he pleaded.

7. I find merits in his contentions. Firstly, let me see the prayer made by the petitioner/party-in-person in the O.A.No.5827 of 2002 filed before the Tamil Nadu Administrative Tribunal. It is the admitted case of the petitioner that after he was allotted to the District Revenue unit vide MPSC Chennai letter No.1593.E1/64-3 dated 25.8.64, he was deputed for clerical training for 90 days initially at Taluk office, Madurantakam and he joined in the District Revenue unit on 28.9.64. After working in the revenue unit upto 8.8.68, he was transferred on deputation of service with a lien in the district revenue unit to the Tamil Nadu Civil Supplies Corporation Limited from 8.8.68 to 1.6.73 and thereafter, he was deputed to the Tamil Nadu Civil Supplies Corporation Limited to a non-pensionable post from 2.6.73 to 1.9.78 and then he was permanently absorbed in the Tamil Nadu Civil Supplies Corporation Limited from 1.9.78 till the date of his attaining the age of superannuation on 30.6.99. After he served as Senior Regional Manager in Virudhunagar, he was allowed to retire with effect from 30.6.99. Therefore, after his retirement, he filed O.A.No.5827 of 2002 seeking a prayer to sanction pension and gratuity from 28.9.64 to 1.9.78. When this Court by its order dated 18.10.2010, while disposing of the re-numbered W.P.No.5231 of 2007, directed the District Collector, Kanchipuram to trace out his records relating to his service or reconstruct the same, making necessary entries from 28.9.64 to 30.6.99 and to forward the same to the Accountant General, Chennai, his duplicate service register was re-built and the pension proposals were sent to the Accountant General, Chennai. On receipt of the same, the Accountant General, Chennai, in his authorisation No.(PPO C.419165 Rev) PO1/5/rtd/2011-12/10101496 dated 18.7.11 has correctly sanctioned the pension and DCRG to the petitioner taking into account his last pay drawn at Rs.670/- and the gross and net qualifying service for pension as 13 years, 11 months, 5 days, namely, the service from 28.9.64 till 1.9.78. This is in accordance with Rule 34 of the Tamil Nadu Pension Rules, which is given as under:-

> "Rule 34. Pension on absorption in or under a Corporation, Company or body:- A Government Servant who has been absorbed in a service or post in or under a Corporation or company wholly or substantially owned or controlled by the Government/Central Government or in or under a body controlled or financed by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined in

accordance with the orders of Government applicable to him;

The pro rata pension etc., admissible in respect of the service rendered under the Government (will be calculated at the time of transfer, but payable only on retirement of the Government Servant from the State owned Corporation/Boards)."

8. Secondly, when the petitioner pressed his claim before this Court in the re-numbered W.P.No.5231 of 2007, this Court, after considering each and every issue raised by him, has directed the settlement of his claim, in its order dated 10.10.2010, holding thus:-

"2. The petitioner was appointed as Graduate Junior Assistant in Chengalpattu Revenue District as per the allotment order issued by the Tamil Nadu Public Service Commission and he joined in service on 28.9.1964. Petitioner worked in Chengalpattu Revenue District till 8.8.1968 and he was transferred on deputation of service with lien to the Tamil Nadu Civil Supplies department from 8.8.1968 to 1.6.1973. Thereafter he was deputed to Tamil Nadu Civil Supplies Corporation from 2.6.1973 to 1.9.1978 and he was permanently absorbed in the Tamil Nadu Civil Supplies Corporation from 1.9.1978.

3. It is the case of the petitioner that for his services rendered in the Revenue Department as well as Tamil Nadu Civil Supplies Department and for the period of service rendered in Tamil Nadu Civil Supplies Corporation on deputation basis, he is entitled to be sanctioned with pension and other benefits. The petitioner attained the age of superannuation on 30.6.1999. Since the petitioner has been permanently absorbed in the Tamil Nadu Civil Supplies Corporation from 1.9.1978 in a non-pensionable post, he is eligible to get pension from the date of his superannuation from the Revenue Department after 30.6.1999. The same having been not sanctioned and paid, petitioner has filed the original application before the Tamil Nadu Administrative Tribunal, which is subsequently transferred to this Court.

6. In the light of the said submission, this writ petition is disposed of with direction to the second respondent to construct the service records of the petitioner, making

> necessary entries from 28.9.1964 till 30.6.1999 and forward the same to the 5th respondent within a period of twelve weeks from the date of receipt of copy of this order and he 5th respondent is directed to scrutinise the service records and sanction eligible pension to the petitioner with arrears from 1.7.1999 and pay the same, within four weeks therefrom.
> The writ petition is ordered with the above directions. No costs."

9. Pursuant to the above order, the second respondent has also settled the pension to the petitioner. Therefore, the petitioner cannot once again rake up the issue after a period of six years and his prayer in this writ petition is wholly misconceived. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.No.34218 of 2016 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
   Kanchipuram

2. The Accountant General
   Teynampet
   Chennai 600 018

+1cc to Mr.V.Vijay Shankar, Advocate SR.No.5933

MP(CO)
sm:16.2.2018