



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. (MD) No. 718 of 2014

M. Lourdhu ... Petitioner/Appellant/Writ Petitioner

-vs-

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai.
3. The Correspondent,
St. Xavier's Higher Secondary School,
Palayamkottai,
Tirunelveli - 627 002.
4. The Secretary to Government,
Industries Department,
Secretariat,
Chennai - 600 009.
5. The Secretary to Government,
Finance Department,
Secretariat,
Chennai - 600 009. ... Respondents/Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 22.01.2014 in W.P. No. 6543 of 2009 on the file of this Court and allow the Appeal and consequently direct the Respondents to sanction pension to the Petitioner.

Prayer in WP(MD). 6543/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari/Mandamus calling for the records relating the



impugned order passed by the 1st respondent in his letter No.24724/D2/2001-1, dated 22/06/2005 and quash the same and consequently direct the 1st respondent to sanction pension to the petitioner taking into consideration of his pensionable service in the Industries Department followed by his non-pensionable service in the State Government undertaking namely Tamilnadu Small Industries Corporation ltd., and his subsequent pensionable service in the Education Department for the purpose of calculation of his pensionable service and for other retirement benefits with the concurrence of the 5th respondent in terms of Rule 820 of the Tamil Nadu Pension Rule.

For Appellant :Mr.R.Rengaramanujam

For Respondents :Ms.S.Srimathy
Special Government Pleader
(For R1, R2, R4 and R5)

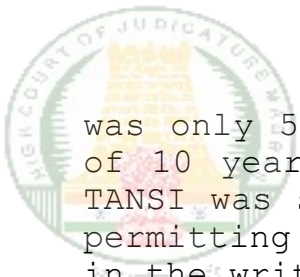
No Appearance (For R3)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The Writ Appeal has been preferred against the order dated 22.01.2014 in W.P. (MD) No. 6543 of 2009 passed by the learned Judge of this Court dismissing the Writ Petition filed by the Appellant challenging the order No. 24724/D2/2001-1 dated 22.06.2005 issued by the First Respondent rejecting the claim of the Appellant for sanction of pension.

2. The Appellant claims to have worked as carpenter in the Industrial Unit, Tirunelveli, after appointment through employment exchange from 22.06.1966, which was Government service. He was thereafter transferred to Tamil Nadu Small Industries Corporation (TANSI Corporation), which is quasi Government service and due to closure of TANSI units, he had resigned his job and was relieved from service on 28.02.1986. He had thereafter re-registered his name in the employment exchange on 12.03.1986 and after a long wait, he was employed as wood work instructor in St. Xavier's Higher Secondary School, Palayamkottai, on 15.02.1996 after necessary approval from the appointing authority and he had retired from service on 13.03.2001 on attaining the age of superannuation. The Appellant had made a claim for the sanction of pension by taking into consideration his entire period of service from 1966 to 1986 and from 1996 to 2001 by condoning the break in service. Despite several representations made, his claim for pension was finally rejected by the First Respondent, viz., the Secretary to Government, Education Department, by order No. 24724/D2/2001-1 dated 22.06.2005 stating that the period of his employment in Government Aided School



was only 5 ½ years, which is less than the minimum required period of 10 years for granting pension. The tenure of his employment in TANSI was said to be un-reckonable as there was no Government order permitting the same. The said order was challenged by the Appellant in the writ petition.

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3. After referring to the various decisions cited by the Appellant, the Learned Judge in the order under appeal held the claim made by the Appellant for pension by treating his entire employment as Government service could not be accepted as it was not a case of re-employment, but fresh employment.

4. We have heard Learned Counsel appearing for the Appellant as well as the Respondents and perused the materials placed on record viz-a-viz the claim made by the Appellant for grant of pension, we find that the order impugned in the Writ Petition has been passed by the First Respondent in the cryptic manner without examining the pointed contentions of the Appellant that his employment in Industrial Unit, Tirunelveli, and subsequently at TANSI, in addition to the service in the aided school would entitle him for grant of pension in terms of clause (4) of Rule 38 of the Tamil Nadu Pension Rules, 1978. Inasmuch as the First Respondent has not adverted to this aspect of the matter, we are of the considered view that the order impugned in the Writ Petition requires to be set aside and the matter reconsidered by the first respondent in the proper legal perspective.

5. Accordingly, the order dated 22.01.2014 in W.P. (MD) No. 6543 of 2009 passed by the learned Judge is set aside and the order No. 24724/D2/2001-1 dated 22.06.2005 issued by the First Respondent is quashed and the matter is remitted to the First Respondent for fresh adjudication. It is made clear that no opinion has been expressed by this Court on the correctness or entitlement of the claim made. The Appellant is permitted to submit a fresh representation along with the copy of this order on or before 31.12.2018 and on receipt of the same, the First Respondent shall after affording an opportunity of personal hearing to the Appellant, dispassionately consider each of the submissions made by the Appellant in support of his claim and pass reasoned orders on merits in accordance with law and communicate the decision taken to the appellant. The aforesaid exercise shall be expeditiously completed and report of compliance filed before the Registrar (Judicial) of this Court by 28.02.2019.

6. The Writ Appeal is allowed and the Writ Petition shall stand disposed on the aforesaid terms. No Costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

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Copy To

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

- 1 CC TO Mr.R.Rengaramanujam, ADVOCATE IN SR No.95836.
+1 cc to Special Government Pleader, SR.No.96115.

Vjt

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