



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2018

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THE HON'BLE MR.JUSTICE S.VAIDYANATHANW.P.(MD)No.18739 of 2018

A.Vadivel Asari,
S/o.Arunasala Asari,
Retired Assistant Examiner of
Local Fund Accounts,
(Subsequently Re-designated as
Assistant Director of Local Fund Audit),
No.155/J (635), Sikkandar Street,
A.V.Thomas Nagar,
Nagercoil - 629 004,
Kanyakumari District.

... Petitioner

-vs.-

1.The Director of Local Fund Audit,
Integrated Financial Complex,
IV Floor,
Nandanam,
Chennai - 600 035.

2.The Accountant General (A & E) TamilNadu,
361, Anna Salai,
Chennai - 600 018.

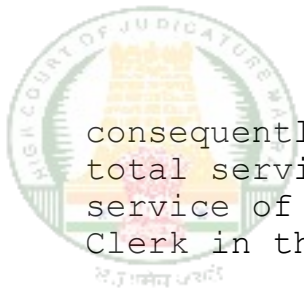
... Respondents

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to include petitioner's past service of 5 years 3 months and 22 days served as Lower Division Clerk in the Prohibition and Enforcement Wing at Nagercoil and consequently direct the 2nd respondent to revise his pension for the total service of 37 years 5 months and 12 days including his past service of 5 years 3 months and 22 says served as Lower Division Clerk in the Prohibition and Enforcement Wing at Nagercoil.

For Petitioner : Mr.P.Vembadian
For R-1 : Mr.R.Sethu Raman
Special Government Pleader
For R-2 : Mr.P.Gunasekaran

O R D E R

The Petitioner has come forward with this Writ Petition seeking to direct the first respondent to include petitioner's past service of 5 years 3 months and 22 days served as Lower Division Clerk in the Prohibition and Enforcement Wing at Nagercoil and



consequently direct the 2nd respondent to revise his pension for the total service of 37 years 5 months and 12 days including his past service of 5 years 3 months and 22 days served as Lower Division Clerk in the Prohibition and Enforcement Wing at Nagercoil.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioner, he has joined the Audit Department on 11.03.1962 and retired from service on 31.07.1994 and the total number of service is 32 years 1 month and 20 days. Further, he has stated that prior to joining in the Local Audit Fund Department, he was working in the Prohibition Enforcement Wing at Krishnankovil, Nagercoil, as Lower Division Clerk, selected by the erstwhile Travancore Public Service Commission and his service was regularised with effect from 16.11.1956. After serving in this office for 5 years, 3 months and 22 days, he resigned from the post on 08.03.1962 with proper permission of Superintendent of Police, Nagercoil, to join in the Local Fund Audit Department under the Tamil Nadu Government.

4. The learned counsel appearing for the petitioner stated that the petitioner retired as Assistant Examiner of Local Audit Fund Accounts (Subsequently redesignated as Assistant Director of Local Fund Audit) under the Administrative Control of Examiner of Local Fund Accounts, Chennai, redesignated as Director of Local Fund Audit, Chennai in Tamil Nadu Government from the office of the Assistant Examiner of Local Fund Accounts, Tirunelveli, on 31.07.1994 and he was drawing pension since 01.08.1994.

5. The learned counsel appearing for the petitioner further stated that taking into account the service rendered in the District Excise and Prohibition Office, Enforcement Wing, Krishnankovil, Nagercoil and the services rendered in the Tamil Nadu Local Fund Audit Department and taking into account the days, 09th and 10th March, 1962, being Saturday and Sunday, which was taken for travelling to join in Local Fund Audit Department, the petitioner has rendered more than 33 years of service, which would entitle him with full pensionary benefits.

6. The learned counsel appearing for the petitioner has relied on G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999 and in terms of G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999, if the documents are not available and destroyed on account of efflux of time, the Accountant General may be asked to provide the details for the purpose of identifying the designation of the post last held and scale of pay at the time of retirement or death of the employer. The relevant clause reads as under:

(12) Wherever the old records in respect of old retirees were destroyed due to efflux of time or lost due to various reasons, such cases shall be referred to the Accountant General, Tamil Nadu to



furnish the net qualifying service and designation. The office may also make use of relevant documents produced, if any, by the pensioner / family pensioner to identify the designation of the post last held and scale of pay at the time of retirement / death.

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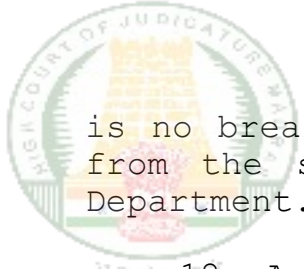
7. According to the petitioner, he is 86 years old now and that in terms of the above said G.O., the petitioner would be entitled to get full pensionary benefits and the respondents are bound to add the service rendered in the District Excise and Prohibition Office, prior to joining in the Audit Department and that he has taken LIC Policy on 03.10.1960, wherein his designation and the name of the working place have been mentioned. Hence, it is stated that the petitioner shall be granted full pensionary benefits for the total service of 37 years 5 months and 12 days.

8. Even though the respondents have not filed a counter-affidavit, it has been stated by the learned counsel appearing for the respondents that the petitioner has resigned from the Department of District Excise and Prohibition Office after serving 5 years, 3 months and 22 days. Once he has resigned from service, the past period shall not be taken into account for any purpose. That apart, there is no evidence to establish that while joining in the Local Fund Audit Department, the petitioner's past service would be taken into account for the purpose of pension. The petitioner has made a representation to the District Excise Department and the Assistant Commissioner has replied that the pay bill relating to the petitioner for the period from 16.11.1956 to 08.03.1962 has not been received from the District Excise and Prohibition Officer, Nagercoil, or anywhere in the office and that the details about the petitioner is also not available in the bill books. Similarly, the petitioner made a representation to the Accountant General Office, Tamil Nadu, and in reply dated 09.01.2018, it is stated that no service records are available for the purpose of revision of pension as per the above said G.O. referred to by the petitioner.

9. Heard both sides.

10. It is not in dispute that the petitioner has joined service in the Local Audit Fund Department on 11.03.1962 and has rendered 32 years, 1 month and 20 days of service, for which, he is getting pension. It is true that G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999, clearly states that if the documents are not available with the Department, the petitioner can call for the records from the Accountant General Office for the purpose of granting pensionary benefits. In the instant case, even according to the Accountant General Office, the documents are not available.

11. The above said G.O., makes it very clear that if the documents are available with the Audit Accountant General Office, only then, the service could be taken into account, provided there



is no break in service. In this case, the petitioner has resigned from the service and joined in the service of Local Audit Fund Department.

12. As could be seen from the averment made by the petitioner, the documents are not available. It cannot be presumed that he has rendered service earlier. He may not have rendered service. When he has retired from service in the year 1994, nothing prevented the petitioner from approaching the Court much earlier and should not have waited for 24 years. The petitioner, having slept over for more than 25 years, cannot be now permitted to contend that his past service should be taken into account for the purpose of full pension.

13. As stated supra, the above said G.O., is very clear that the office of the Accountant General may produce the documents provided if the same is available. Taking note of the fact that the documents are not available with the District Excise and Prohibition Office, Nagercoil, and also with the Local Fund Audit Department and also the Audit Accountant General Office, this Court cannot grant the relief sought for by the petitioner. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

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To:

The Director of Local Fund Audit,
Integrated Financial Complex,
IV Floor,
Nandanam,
Chennai - 600 035.

+2cc to Mr.P.Vembadian, Advocate in SR No.80698
+1cc to Mr.P.Gunasekaran, Advocate in SR No.80852
+1cc to Spl Government Pleader, SR No.81287

W.P.(MD) No.18739 of 2018

NM/SKN/SAR II/22.11.18/4P/6C.