

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 05.03.2018****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.13859 of 2017**

S.Perumal

... Petitioner

Vs.

1. The Commissioner of Municipal Administration,
Cheppauk,
Chennai-600 006.

2. The Municipal Commissioner,
Virudhunagar Municipality,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to pass order to include petitioner's name as a member under the old pension scheme from the date of regularization of his service w.e.f. 21.12.2001 and to provide all his service benefits by considering his representation dated 24.06.2017, within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

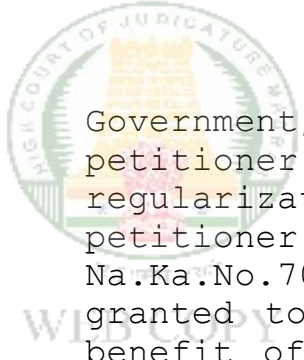
For R1 : Mr.M.Muthu
Additional Government Pleader

For R2 : Mr.M.Muthugeethayan

ORDER

The relief sought for in this writ petition is for a direction to direct the respondents to pass orders to include the petitioner's name as a member under old pension scheme from the date of regularization of his service w.e.f. 21.12.2001 and to provide all his service benefits by considering his representation dated 24.06.2017.

2. The learned counsel for the writ petitioner states that the writ petitioner was engaged as a Gang Mazdoor in the office of the second respondent in the year 1974 and he was continuously working as daily wage employee. Based on the scheme formulated by the



Government, the time scale of pay was granted to the writ petitioner with effect from 21.12.2002, however the benefit of regularization and permanent absorption was extended to the writ petitioner with effect from 15.12.2009 vide proceeding Na.Ka.No.7038/09 E1. Accordingly, regular time scale of pay was granted to the writ petitioner with effect from 21.12.2002, the benefit of counting of the past service rendered by him for the purpose of reckoning the qualifying services was not granted.

3. The learned counsel for the respondents states that undoubtedly the writ petitioner was engaged as a daily wage employee with effect from 1974. However, the benefit of regular time scale was provided with effect from 21.12.2002, but the permanent absorption was granted only in proceeding dated 15.12.2009 and therefore the writ petitioner cannot claim the benefit under the old pension scheme. The writ petitioner was allowed to retire from service on 30.06.2015 and therefore the representation submitted by the writ petitioner after the lapse of two years from the date of retirement on 24.06.2017 cannot be considered.

4. This Court is of an opinion that the claim of the writ petitioner for retrospective regularization cannot be granted. The regularization and permanent absorption granted to the writ petitioner itself is a concession, thus the question of extending the benefit of retrospective regularization does not arise at all. The writ petitioner was initially appointed as daily wage employee and the initial appointment was not in accordance with the recruitment Rules in force. Thus the benefit of regularization already granted is a concession and therefore this Court is not inclined to consider the retrospective regularization as a claim in this writ petition.

5. However, the Government of Tamil Nadu amended the Rule 11 of the Tamil Nadu Pension Rules, for the purpose of granting the benefit of counting of 50% of the temporary service rendered by the employees. In other words, employees served on temporary basis in a full time post can be considered for the purpose of counting of 50% of their temporary service as qualifying service for the purpose of granting the pensionary benefits. Thus the writ petitioner is at liberty to submit a fresh representation in respect of the calculation of the 50% of the temporary service rendered by him prior to the date of regularization.

6. In this regard, if any representation is preferred by the writ petitioner, the respondents are bound to consider the same on merits and in accordance with law and pass orders within a reasonable period of time and communicate the same to the writ petitioner. Thus the writ petitioner is permitted to submit a fresh representation within three weeks from the date of receipt of a copy of this order and the second respondent is directed to



consider the representation if any received on merits and in accordance with law and pass orders within 12 weeks thereafter.

7. Accordingly, this writ petition stands disposed of. No costs.

WEB COPY

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Municipal Administration,
Cheppauk,
Chennai-600 006.

2. The Municipal Commissioner,
Virudhunagar Municipality,
Virudhunagar District.

+ 1 cc TO Mr.A.Haja Mohideen , Advocate in SR No. 52888
+ 1 cc TO Mr.M.Muthu Geethayan , Advocate in SR No. 52761
+ 1 cc TO The Special Government Pleader in SR No. 53614

pnn
AE/KKR/SAR3/14.03.2018/3P/6C

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