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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.4145 of 2011

T.Velayutha Perumal ..Petitioner

Vs

1. The State of Tamil Nadu,
   represented by
   The Secretary to Government,
   Commercial Tax Department,
   Fort St.George,
   Chennai-9.

2. The Secretary to Government,
   Government of Tamil Nadu,
   Revenue Department,
   Secretariat,
   Chennai-9.

3. The Principal Secretary/
   Commercial Tax Commissioner,
   Commercial Tax Department,
   Chepauk,Chennai-5.

4. The Joint Commissioner,
   Commercial Tax Department,
   Tirunelveli.

5. The Commercial Tax Officer,
   Office of the Commercial Tax Office,
   Tirunelveli Bazaar,
   Tirunelveli. ..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent passed in Lr.No.V3/36146/2010, dated 19.10.2010 and to quash the same as illegal and unenforceable and consequently to direct the respondents to take into consideration the entire period of service of the Petitioner in Survey Department from the date of his appointment ie., on 24.12.1983 along with the service of the Petitioner in the Commercial Taxes Department for the purpose of calculating the pension and other service benefits due to him.

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For Petitioner :Mr.M.R.S.Prabhu.

For Respondents 1 to 5 :Mr.R.Sethuraman Special Govt.Pleader

ORDER

The Petitioner has come forward with this Writ Petition to call for the records of the third respondent passed in Lr.No.V3/36146/2010, dated 19.10.2010 and to quash the same as illegal and unenforceable and consequently to direct the respondents to take into consideration of the entire period of service of the Petitioner in Survey Department from the date of his appointment ie., on 24.12.1983 along with the service of the Petitioner in the Commercial Taxes Department for the purpose of calculating the pension and other service benefits due to him.

2.The Petitioner was appointed in service as Section Writer on 24.12.1983 and thereafter, as Surveyor cum Draftsman in Survey Department on 23.9.1984. The Petitioner was relieved from the Survey Department and joined in Commercial Tax Department as Junior Assistant in 1997. He was then promoted as Assistant on 29.9.1998.According to the Petitioner, the persons who are appointed like him in UDR Scheme are regularized in W.P.No.19234 of 2016 and that the entire temporary services were taken into account for the purpose of pensionary benefits. According to the petitioner, the pensionary benefits shall be extended to him and that the respondents have referred to Rule 11 of the Tamil Nadu Pension Rules,1978 for the purpose of calculating the qualifying service and when the fact that the services of the Petitioner has been regularized from the date of initial appointment, the Petitioner is entitled to the benefit of pension and that past service is to be considered only for the purpose of pensionary benefits.

3.The case of the respondents is that there is a Government Order wherein the cut-off date fixed is 1984 and that the Petitioner has joined service prior to 1984 and services regularised in terms of the said Government Order. If the regularization takes place prior to 1984, 50% of service alone will be taken into account for the purpose of pensionary benefits and the same has to be extended to the Petitioner. There is no need for the entire service to be taken into account for the purpose of pensionary benefits, as the petitioner was employed on contract basis. In terms of G.O.Ms.No.996, dated 22.09.1984, the Petitioner was employed only on contract basis and that the Petitioner would not be entitled to any benefits.

4.From the records, it appears that the Petitioner joined the service in the year 1983.The above Government Order is also very clear that the services rendered on temporary basis w.e.f. 25.6.1984 has to be regularized. It appears that the Petitioner has been appointed on contractual basis and that the respondents drawn

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attention to Annexure to Rule 11 of Tamil Nadu Pension Rules and that only 50% of the service have to be taken into account for pensionary benefits. This Court by order dated 3.9.2012 reported in ***(2013) 2 MLJ 399(V.Ganapathy, No.584(Old No.18F/82, Kanyakumari District .vs. State of Tamil Nadu, represented by its Principal Secretary to Government,Revenue Department,Chennai and others)***held that Rule 11 allowing only 50% of service rendered on temporary basis for grant of pensionary benefit is hit by Article 14 of the Constitution of India. In this case, though the word contractual is mentioned, the entire service have been rendered by the Petitioner to the respondents on temporary basis and the Court has got to see whether his service falls under the category contract for service or contract of service. The Petitioner was employed by way of different nomenclature and the Petitioner has been employed from 1983. As per Rule 11 of the Tamil Nadu Pension Rules depriving 50% of service is held to be bad in terms G.O.Ms.No.996, dated, 22.09.1984, Services rendered by the Petitioner from 25.6.1984 has to be taken into account only for the purpose of pensionary benefits and not for any other benefits including the terminal benefits. Hence I find much force in the contention of the Writ Petitioner.

5.Even though the Petitioner was regularised in terms of the Government Order regularizing the Government Service from 25.6.1984, it is applicable to the employees like that of the Petitioner, who is said to be on contract basis,admittedly who are working on contract of service and not on contract for service.

6.Accordingly, the Writ Petition is allowed to the extent indicated above. The respondents are directed to pay the arrears of pension, if any, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(RECORDS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Secretary to Government,
   Government of Tamil Nadu,
   Commercial Tax Department,
   Fort St.George,
   Chennai-9.

2. The Secretary to Government,
   Government of Tamil Nadu,
   Revenue Department,
   Secretariat,
   Chennai-9.

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3. The Principal Secretary/
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   Commercial Tax Department,
   Chepauk, Chennai-5.

4. The Joint Commissioner,
   Commercial Tax Department,
   Tirunelveli.

5. The Commercial Tax Officer,
   Office of the Commercial Tax Office,
   Tirunelveli Bazaar,
   Tirunelveli.

+1cc to Mr.M.R.S.Prabhu, Advocate Sr.No.78934

+1cc to SPL.Govt.Pleader, Sr.No.79107

VSN

MK/RSK/SAR2/05.12.2018/4P/8C

ORDER MADE IN
W.P(MD)No.4145 OF 2011
16.08.2018