BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **21.03.2018**
CORAM:
THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P(MD)No.7761 of 2013
and
MP(MD)No.1 of 2013

D.Thangavelu ... Petitioner

Vs.

1. The Secretary to Government,
   Government of Tamil Nadu,
   Commercial Tax Department,
   Chennai.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai -5.

3. The Deputy Commissioner of Commercial Taxes,
   Office of the Commissioner of Commercial Taxes,
   Karur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned G.O.(2D).No.171 dated 07.9.2012 passed by the 1st respondent and quash the same in so far as the petitioner is concerned and consequently direct the 1st respondent to regularize the petitioner's service and disburse the petitioner's retirement benefit forthwith.

For Petitioner : Mr.S.Anwar Sameem
For Respondents : Mrs.VPM.Vaishnavi,
Government Advocate.

ORDER

The relief sought for in this writ petition is to call for the records relating to G.O.(2D).No.171 dated 07.9.2012 passed by the 1st respondent and quash the same in so far as the petitioner is concerned and to direct the 1st respondent to regularize the petitioner's service and disburse the petitioner's retirement benefit forthwith.

2. The writ petitioner was appointed as Masalji / Night Watchman in the Commercial Tax Department in the year 1974. Thereafter, he was appointed as Office Assistant in the Regional Deputy Commissioner (Commercial Tax) in proceedings dated 08.11.1982. The service register was opened and the petitioner was awarded with the benefit of Selection Grade, on completion of 10

years of service in the post of Office Assistant. The Special Grade was awarded on completion of 20 years of service. The writ petitioner was allowed to retire from service on 30.06.2009, on attaining the age of superannuation.

3.The grievance of the writ petitioner is that the ratification of appointment in respect of other colleagues were granted by the Government. The petitioner was allowed to retire from service on 30.06.2009. The case of the writ petitioner alone was omitted by the Government for grant of ratification. In view of the omission the writ petitioner is deprived of his terminal and pensionary benefits and now he is aged about 70 years and unable to get his pensionary benefits.

4.The learned counsel for the writ petitioner states that the respondents have admitted that the services of the writ petitioner had also been regularised in the post of Office Assistant and the writ petitioner was drawing annual increments and selection grade and special grade were also granted in the post of Office Assistant. Thus, the writ petitioner is entitled for the benefits, on par with his colleagues, who were already granted with the similar benefits. In this regard, on similar set of facts, this Court passed on order in WP(MD)No.12245 of 2009, on 30.09.2012 and the relevant paragraphs are extracted hereunder.

> "11. There is no dispute that the petitioner was appointed as temporary Masalji-cum-Watchman on 20.06.1972, but his appointment was not through employment exchange. Subsequently, on his representation, the Board of Revenue (CT), Chennai, now, the Commissioner of Commercial Taxes, Chennai has issued orders on 04.02.1977, to the Deputy Commissioner (CT), now, designated as Joint Commissioner (CT), Trichy for issuance of appropriate posting order and accordingly posting orders have been issued to the Petitioner, on 19.08.1977, vide orders in RC.No.28889/BS/B4/, dated.22.01.1986, the Deputy Commissioner, Commercial Taxes, Trichy has regularised the services of the writ petitioner.
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> 12.Materials on record arise shows that at para No.6, the Deputy Commissioner(CT) (FAC), Karur, the second respondent herein, has categorically admitted that the services of the petitioner have been regularised and as per the regularisation order, he was granted annual increments, selection grade and special grade in the post of Office Assistant. Though the Deputy Commissioner (CT) (FAC), Karur, the second respondent herein has contended that the appointment of the writ petitioner is irregular, as it was not through employment exchange, it is too late to make such contention. The petitioner has joined in the department on 28.11.1972 and after a break of five years, he had been continuously working in the Commercial Tax

> Department and paid regular scale of pay. The contention that the petitioner was only relieved on 28.02.2008 and that he was not allowed to retire, cannot be accepted. Having, regularised the services of the petitioner and granted regular scale of pay with periodical increment, it is no open to the respondents to contend that once again a fresh order of regularisation is required. If there is any irregularity in appointing the petitioner, action should have been taken against the officer concerned.
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> 13.At this juncture, it should also be noted that the Head of the Department, The Commissioner of Commercial Tax, Chennai, 1977 had directed the Deputy Commissioner (CT), Trichy, now, designated as Joint Commissioner of Commercial Taxes, to issue appropriate posting orders. The petitioner, having served in the department for many years and paid regular scale of pay with periodical increments, in the post of Masalchi and Office Assistant, including selection and special grade scales of pay, cannot be now said to be irregular, appointee, and denied pension and other benefits, on the ground of fresh regularisation order from the Government, it cannot also be contended that after so many years, the department came to know that he was not sponsored through employment exchange. Disbursement of the retirement benefits cannot be postponed on the ground that the Government have to once again issue orders for regularisation or ratification. Therefore, having gone through material on record and the proceedings states supra, this Court is of the view that the writ petitioner has made out a case for issuance of a mandamus and accordingly, a mandamus is issued to the respondents to disburse the pensionary and retirement benefits payable to the petitioner within a period of three months from the date of receipt of a copy of this order. The respondents shall get appropriate ordered from the Government within such time.

5.Challenging the order passed in the above said writ petition, the Department filed appeal in WA(MD)No.556 of 2014 and the same was also dismissed on 10.04.2014. Further, the respondents preferred SLP No.17599 of 2014 and the Hon'ble Apex Court of India, dismissed the same on 10.11.2014. Thus, the matter reached finality and the benefits in respect of other colleagues were already granted. In this view of the matter, the writ petitioner is also entitled for all the benefits on par with his colleagues, who filed the writ petition cited supra.

6. Accordingly, the impugned order issued in G.O.(2D).No.171 dated 07.9.2012 issued by the first respondent is quashed as far as the writ petitioner is concerned and the respondents are directed to issue suitable orders granting all terminal and

pensionary benefits to the writ petitioner in accordance with the rules in force. Such an exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

7. In the result, writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Government of Tamil Nadu,
   Commercial Tax Department,
   Chennai.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai -5.

3. The Deputy Commissioner of Commercial Taxes,
   Office of the Commissioner of Commercial Taxes,
   Karur.

+1cc to Spl.Government Pleader Sr.No.57258
+1cc to Mr.T.Antony Arul Raj, Advocate Sr.No.57041

DSK

VB/KKR/SAR1/04.04.2018/4P/6C

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