

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.14294 of 2015

E.Rose Mary

..Petitioner

Vs

1.The Principal Secretary,
Government of Tamil Nadu,
Environment and Forest Department,
Fort St. George, Chennai - 600 009.

2.The Chairman,
Tamil Nadu Pollution Control Board,
Poonamallee High Road, Chennai-600 029.

3.The Member Secretary,
Tamil Nadu Pollution Control Board,
Poonamallee High Road, Chennai-600 029.

..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pay the pensionary benefits to the petitioner as per the G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009.

For Petitioner : Mr.S. Gunaseelan

For R1 : Mr.M. Elumalai
Government Advocate

For RR 2 & 3 : Mr. Abdul Saleem

ORDER

This writ petition has been filed by the petitioner seeking a direction to the respondents to pay the pensionary benefits to the petitioner as per the Government Order in G.O.(Ms)No.408, Finance (Pension) Department, dated 25.08.2009.

2. The petitioner was appointed as Typist on 02.04.1991. She has passed the departmental test during the year November, 1991. Her service was regularized on 04.12.1991. However, inspite of her service being regularized on 17.03.1992. She was ousted from her service on the ground that she did not possess Tamil typewriting higher qualification. While ousting the petitioner from service she was given six months time to acquire the qualification. In the meantime, the petitioner was permitted to continue as Non Muster Roll (NMR) category employee from 17.03.1992. During the month of December, 1992, the petitioner passed typewriting higher grade. By acquiring qualification, by proceedings dated 30.12.1993 the appointment of the petitioner was ratified by a resolution dated 15.12.1993. Consequently, the petitioner was re-appointed on 15.12.1993. From 15.12.1993 the petitioner was ousted from service and on 13.12.2012, she attained the majority of supperannuation and retired from service on 30.01.2012.

3. The grievance of the petitioner is that she had put in 19 years of regular service for getting the qualifying service for the purpose of disbursement of pension. Now, she seeks for including the 21 months period during which her service was treated as NMR employee.

4. According to the petitioner, if half of the service rendered under NMR category is taken into account. She will get regular pension passed determining her total qualifying service as 20 years. In this context, the petitioner submitted a representation to the second respondent on 04.04.2008, followed by another representation dated 10.04.2008 to the third respondent. The third respondent in turn sent a letter to the first respondent on 03.08.2012 recommending for disbursement of pensionary benefit to the petitioner. However, the letter dated 03.08.2012 of the third respondent has not been acted upon till date. Hence, the petitioner has come forward with the present writ petition.

5. The learned counsel for the petitioner would submit that the Government issued G.O.(Ms).No.408, Finance (Pension) Department, dated 25.08.2009 wherein, it was stated that the persons who are working in the various departments under NMR category and whose services were regularized before 01.04.2003 are entitled for counting half of the service rendered on daily wages, consolidated pay or honorarium basis on or after 01.01.1961.

6. Heard Mr.S. Gunaseelan, learned counsels appearing for the petitioner as well as Mr.M.Elumalai, learned Government Advocate, appearing for the first respondent and Mr.Abdul

Saleem, learned counsel appearing for the respondents 2 and 3 and perused the materials available on record.

7. The petitioner was appointed in a regular cadre post originally on 02.04.1991. Subsequently, for want of passing the requisite qualification, she was ousted from service. After acquiring the requisite qualification, she was reappointed as Typist on 15.12.1993. From 15.12.1993, the petitioner was working in regular service till her retirement. In other words, the service of the petitioner was regularized prior to 01.04.2003 and therefore, as per the decision of the Full Bench of this Court, if the petitioner is entitled for counting half of the service rendered by her for about 21 months.

8. The learned counsel for the petitioner has also relied upon the Full Bench decision of this Court in case of The Government of Tamil Nadu v. R. Kaliyamoorthy reported in 2019 (5) LW 673 = 2019 (6) CTC 705, to contend that as per the Full Bench decision. The petitioner is entitled to get 21 months of service rendered by her counted for the purpose payment of pension. He has also relied upon the decision of the Full Bench of this Court in para No.45 which reads thus:-

45. (i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of W.A.No.158 of 2016 etc., batch proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.(Ms).No.259, dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

9. Per contra, the learned counsel appearing for the respondents 1 to 3 submitted that as per the statement in the appointment order passed by the second respondent/Department dated 12.07.1991, the service of the petitioner was regularised with effect from 15.07.1991. If the petitioner satisfies the criteria in para No.45(i), (ii), (iii) and (iv) of the Full Bench decision, her claim for counting the past service will be considered.

10. In the light of the aforesaid submissions of the learned counsel appearing on either side and the decision of the Full Bench of this Court in case of The Government of Tamil Nadu v. R. Kaliyamoorthy (cited supra) is squarely applicable to the facts of the present case, the respondents are directed to consider the claim of the petitioner afresh and the respondents shall pass appropriate orders on merits and in accordance with law, as expeditiously as possible within a period of twelve weeks (12) from the date of receipt of a copy of this order.

11. Accordingly, the writ petition is disposed of. No cost.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

msm

To

1.The Principal Secretary,
Government of Tamil Nadu,
Environment and Forest Department,
Fort St. George, Chennai - 600 009.

2.The Chairman,
Tamil Nadu Pollution Control Board,
Poonamallee High Road, Chennai-600 029.

3.The Member Secretary,
Tamil Nadu Pollution Control Board,
Poonamallee High Road, Chennai-600 029.

+1 CC to Mr.S. Gunaseelan, Advocate sr 105869

+1 CC to Govt. Pleader sr 106633, 106703.

W.P.No.14294 of 2015

SP(17/07/2020)