

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2019
DELIVERED ON : 30.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY
W.P.No.31845 of 2004

T.Sivasubramanian

.. Petitioner

Vs.

1.The Secretary to Government,
Home (Transport) Department,
Fort St.George, Chennai - 9.

2.The Secretary to Government,
Personnel & Adm Reforms Department,
Fort St.George, Chennai - 9.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in letter No.114705/TR/02-10 dated 12.12.2003 and quash the same and direct the respondents to count the services rendered by the petitioner in the Tamil Nadu Agricultural Department and Tamil Nadu Agricultural University for the purpose of pensionary benefits and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr.S.N.Parthasarathi,
Government Advocate

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the 1st respondent dated 12.12.2003 and to quash the same and direct the respondents to count the services rendered by the petitioner in the Tamil Nadu Agricultural Department and Tamil Nadu Agricultural University for the purpose of pensionary benefits and grant him all consequential service and monetary benefits.

2.It is the case of the petitioner that by order dated 21.05.1970, he was appointed as a Drill Supervisor in the Madras Agricultural Engineering Subordinate Services and reported for duty on 28.05.1970. On 19.07.1971, the petitioner was transferred on deputation and posted as Agricultural Engineering Supervisor in Agricultural Engineering College and Research Institute, Coimbatore. The petitioner was serving in the Agricultural University from 29.07.1971 to 20.06.1973. By proceedings dated 20.06.1973, the petitioner was relieved from his duties based on his resignation and his resignation was accepted on 22.06.1973. The petitioner applied for selection to the post of Motor Vehicle Inspector Grade - II and he joined the said post. He was further promoted as Motor Vehicle Inspector Grade - I, the Regional Transport Officer, Deputy Transport Commissioner and finally retired as such on 30.05.2002. The petitioner made representations to the respondents to count his services in the Agricultural University along with the services in the Transport Department for pensionary benefits. By the impugned order dated 12.12.2003, the 1st respondent rejected the claim of the petitioner. Challenging the same, the petitioner has filed the above Writ Petition.

3.Mr.K.Venkatramani, learned senior counsel appearing for the petitioner submitted that the previous service rendered by the petitioner in the Agricultural University should be taken into consideration for the purpose of pensionary benefits as per proviso to Rule 23 (1) and Rule 24 of the Tamil Nadu Pension Rules, 1978.

4.As per Rule 23 (1), the resignation from a service or post entails forfeiture of past service, provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

5.As per Rule 24 (1), the interruptions in service shall not entail forfeiture of past service except when a person was removed or re-employed. The actual interruptions in service shall not, however, count for pension. Further, as per Rule 24 (2), the services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist.

6.The petitioner was appointed as a Drill Supervisor in Agricultural Engineering Department through District Employment Exchange under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services and posted to the Office of the Assistant Agricultural Engineer (Inspection), Coimbatore in

the existing vacancy. The petitioner was appointed in proceedings of the Divisional Engineer (Agricultural Engineering) dated 21.05.1970, wherein it was clearly stated that the appointment of the petitioner was purely under emergency provisions and it would not confer any right for future appointment or promotion. Further, after the creation of new post in the Agricultural Engineering in the Government Order in G.O.Ms.No.1238 dated 19.04.1971, the petitioner was appointed as Agricultural Engineering Supervisor under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. By the proceedings dated 30.06.1971 of the Joint Director of Agriculture (Engineering), the petitioner was appointed as Agricultural Engineering Supervisor and in the said proceedings, it was clearly mentioned that the appointment of the petitioner was purely temporary basis and no claim for future appointment or promotions would be considered. Subsequently, by the proceedings dated 19.07.1971, the petitioner was transferred and posted in the Office of the Assistant Agricultural Engineer (Mechanical), Agricultural College and Research Institute, Coimbatore vice Thiru.U.K.Ramasamy. In the mean time, the petitioner was selected as Assistant Motor Vehicle Engineer in the 1st respondent Department on 26.09.1970. Consequently, the petitioner was relieved from the duty from the post of Agricultural Engineering Supervisor (Mechanical) on 20.06.1973 and the resignation submitted by the petitioner was accepted with effect from 20.06.1973. After serving the Transport Department in various posts from 22.06.1973, the petitioner attained superannuation on 31.07.2002.

7.Mr.S.N.Parthasarathi, learned Government Advocate appearing for the respondents submitted that as per Rule 12(1) of the Tamil Nadu Pension Rules, 1978, the service of a Government servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions determined by the Government. Further, the learned Government Advocate submitted that the petitioner's service was not regularized by the Competent Authority and also that the appointment issued to the petitioner for the post in Tamil Nadu Agricultural Engineering Department was purely temporary under Rule 10(a)(i). The petitioner is not entitled to claim the pensionary benefits for the period upto 20.06.1973.

8.On a perusal of Rule 12(1) of the Tamil Nadu Pension Rules, it is clear that the service of a Government servant shall not qualify for pension, unless his duties and pay are regulated by the Government or under conditions determined by the Government.

9.As per Rule 3 (o) of the Tamil Nadu Pension Rules, the qualifying service means permanent or officiating service (including service under emergency provisions) rendered in a post included in a pensionable establishment.

10.In the case on hand, the petitioner was appointed as a Drill Supervisor in the Agricultural Engineering Subordinate Services on temporary basis under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services on 21.05.1970. In the appointment order itself, it has been clearly stated that the appointment of the petitioner is purely under emergency provisions and will not confer any right on him for future appointment or promotion. Thereafter, the petitioner was transferred to the Agricultural University on 19.05.1971.

11.After tendering resignation on 20.06.1973, the petitioner applied for selection to the post of Motor Vehicle Inspector Grade - II and his resignation was also accepted. When the petitioner was working as a temporary employee under Rule 10(a)(i) as a Drill Supervisor, he applied for selection to the post of Motor Vehicle Inspector Grade - II and got selected in the year 1973 and also joined the said post on 22.06.1973. When the petitioner had resigned his temporary employment as a Drill Supervisor, the interruption in service caused by the resignation cannot be condoned. Further, in the case on hand, the resignation submitted by the petitioner entails forfeiture of past service. The resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly, the petitioner has not obtained any permission from the Tamil Nadu Agricultural Engineering Department prior to joining the Transport Department as Motor Vehicle Inspector Grade - II. When the petitioner had resigned from Tamil Nadu Agricultural Engineering Department without obtaining any permission for continuity of service, the period in which he worked with the Agricultural Department cannot be counted for pensionary benefits. On resigning from employment, the petitioner entails forfeiture of past service.

12.As per Rule 12(1), the service of a Government servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions determined by the Government. Admittedly, the petitioner's service was not regulated by the Government till the petitioner resigned from the Agricultural Engineering Subordinate Services on 20.06.1973. When the petitioner's service was not regularized by the Government and when there is a specific clause in the order of appointment dated 21.05.1970 issued to the petitioner to the

effect that the temporary appointment will not confer on him any right for future appointment or promotion, the claim made by the petitioner cannot be granted. The 1st respondent has rightly rejected the claim of the petitioner. The petitioner was appointed on 21.05.1970 under Rule 10(a)(i) on temporary basis and he continued as a temporary employee till 20.06.1973, on which date, the petitioner resigned from the employment. When there is no regularization of the service, the petitioner is not entitled to claim for counting of the service rendered by him as a temporary employee under Rule 10(a)(i) with the Madras Agricultural Engineering Subordinate Services. The Tamil Nadu Pension Rules does not provide for extending the pensionary benefits to the temporary employees appointed under Rule 10(a)(i) in another Department when the employee had resigned from the previous employment. In case the petitioner's service was regulated in the Agricultural Department itself, in such case, the petitioner could have claimed the pensionary benefits for the relevant period.

13. Though the petitioner has joined the employment in the Transport Department on 22.06.1973 itself, he gave his first representation for counting the service rendered by him in the Tamil Nadu Agricultural Department only on 03.09.2002 (i.e.) after attaining superannuation on 31.07.2002. In the absence of any specific Rule to support the case of the petitioner, I do not find any error in the order passed by the 1st respondent. In these circumstances, the Writ Petition is dismissed. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Home (Transport) Department,
Fort St. George, Chennai - 9.

2. The Secretary to Government,
Personnel & Adm Reforms Department,
Fort St. George, Chennai - 9.

+1 CC to Mr. M. Muthappan, Advocate sr 90083.

W.P.No.31845 of 2004

NR (CO)

SP (27/11/2019)