

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

W.P. No. 7892 of 2013

M. Masilamani

... Petitioner

-Vs-

1. The Corporation of Chennai,
Represented by its Commissioner,
Ripon Building,
Chennai - 600 003.

2. The Corporation of Chennai Zone-VI,
Represented by its Zonal Officer,
Ayanavaram,
Chennai - 600 079.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus and call for the records the first respondent vide No. Ma.Aa8Na.Ka.No. C1/11273/2012 dated 13.12.2012 and quash the same and direct the first respondent to calculate the service period from the date of original appointment 15.06.1973 to 30.06.2008 and to the till date of superannuation and also pay consequential benefits with interest to the petitioner.

For Petitioner : Mr. N. Beulah John Selvaraj

For Respondents : Dr. C. Ravi Chandran
Chennai Corporation

O R D E R

The prayer sought for herein is for a writ of Certiorarified Mandamus, calling for the records of the first respondent vide No. Ma.Aa8Na.Ka.No. C1/11273/2012 dated 13.12.2012 and quash the same and direct the first respondent to calculate the service period from the date of original appointment i.e., 15.06.1973 till the date of superannuation i.e., 30.06.2008 and also pay consequential benefits with interest to the petitioner.

2. It is the case of the petitioner that he was appointed as a "Road Thozhilalai" on 15.06.1973 in the first respondent office / Corporation of Chennai. He was unauthorizedly absent

for the duty from 24.09.1981 to 01.07.1983, due to illness and he was reinstated to service on 01.07.1983, as per orders of the Commissioner vide Memo D.O.(N)C.14945/1983. The petitioner states that he was superannuated from service on 30.06.2008 and that he was in service for more than 35 years. However, the pensionary benefits were calculated only for 20 years and 09 months and 25 days (i.e., from 01.07.1983 to 30.06.2008)

3. According to the petitioner, earlier he has filed a Writ Petition in W.P. No. 3923 of 2011 and the same was ordered on 08.10.2012 and a copy of the order was served to the first respondent on 20.11.2012. Even after receiving the order copy, the first respondent has passed an impugned order stating that, in his service register, his date of appointment was mentioned as 01.07.1983 (reinstated for duty as new entrant). But the original date of appointment is 15.06.1973 only. The petitioner also submits that the pension benefits were settled to him by calculating his service period from the date of reinstatement of service i.e., on 01.07.1983 and not from the date of his initial appointment i.e., 15.06.1973.

4. The learned counsel for the petitioner submits that the service register discloses the fact that the petitioner is unauthorizedly absent from 24.09.1981 and was reinstated to service on 01.07.1983. Therefore, the petitioner is entitled for all eligible benefits viz., (gratuity and pensionary benefits) while calculating entire period of service. Without taking note of the said facts, the impugned order passed by the first respondent / Corporation of Chennai is illegal and is liable to be quashed.

5. Per contra, the learned counsel appearing for the respondents submits that the impugned order passed by the first respondent / Corporation of Chennai is very clear and it is stated that the petitioner has been reinstated as new entrant from 01.07.1983. As per the orders of the Commissioner, the said condition has been imposed at the time of reinstatement in the year 1983. The learned counsel appearing for the respondents has stated before this Court that reinstatement order was not found place in the typed set of papers filed in the Writ Petition.

6. On the other hand, the learned counsel for the petitioner placed a copy of the service register of the petitioner. The respondents / Corporation also filed the original records in respect of the petitioner. A perusal of the same also makes it clear that the petitioner has been reinstated as new entrant from 01.07.1983. Since the general rule for counting the service for pension is excluding the period of unauthorized absence followed by reinstatement, the qualifying service shall commence from the date he takes change of the post

to which he is first appointed.

7. Hence, this Court is of the view that, the impugned order passed by the first respondent is liable to be quashed. Accordingly, the impugned order passed by the first respondent is quashed.

8. The first respondent is directed to pass appropriate order by taking into account the entire service of the petitioner from the date of initial appointment excluding the period of his unauthorized absence and grant pensionary benefits and other benefits to the petitioner. The respondents are directed to settle the arrears, pensionary benefits and other benefits as claimed by the petitioner from the date of initial appointment excluding the period of his unauthorized absence, within a period of twelve weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition is allowed and the impugned order passed by the first respondent is quashed. No costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

vji
To

1. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

2. The Zonal Officer,
Corporation of Chennai Zone-VI,
Ayanavaram,
Chennai - 600 079.

+1 CC to Dr.C. Ravichandran, Advocate sr 100627

+1 CC to Mr. N. Beulah John Selvaraj, Advocate sr 100627

W.P. No. 7892 of 2013

EV(CO)
SP(29/01/2020)