

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1589 of 2018

K.Thanigaivel

.. Petitioner

..vs..

1. The Government of Tamil Nadu,
Rep.by its Secretary to Government,
Animal Husbandry,
Dairying and Fisheries Department,
Fort St.George, Chennai - 600 009.
2. The Commissioner for Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.
3. The Accountant General (A & E),
Chennai - 600 018

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to call for the records of the second respondent bearing Na.Ka.No.7020/Aa5/2013 dated 07.04.2016 and quash the same and further direct the respondents to grant minimum pension to the petitioner by treating his period of regular service in the Dairy Development Department from 01.04.1971 to 31.01.1981 (9 years 10 months and 25 days) along with arrears and interest on delayed payment of pension and all other consequential benefits.

For Petitioner :Mr.V.Suthakar & T.Hemalath

For Respondent :Mr.L.P.Shanmugasundaram
Special Government Pleader for R1 & R2
Mrs.T.S.Selvarani for R3

O R D E R

The relief as such sought for in the present writ petition is for a direction to direct the respondents to grant minimum pension to the petitioner by treating his period of regular service in the Dairy Development Department from 01.04.1971 to

31.01.1981 (9 years 10 months and 25 days) along with arrears and interest on delayed payment of pension and all other consequential benefits.

2. The writ petitioner was retired from service as Special Grade Deputy Managers from the Tamil Nadu Cooperative Milk Producers' Federation. The grievance of the writ petitioner is that before his joining in the Tamil Nadu Cooperative Milk Producers' Federation, he was employed in the Department of Animal Husbandry and served about 9 years 10 months and 25 days. Therefore, the case of the writ petitioner is to be considered by calculating the length of qualifying service as 10 years, and accordingly, the pension under the Pension Rules must be granted to the writ petitioner.

3. As stated in the Paragraph No.13 of the affidavit, this Court earlier considered the issue in W.P.No.31539 of 2012, dated 20.11.2017 and the relevant paragraphs in the said order are extracted here under:

"3.The learned counsel for the writ petitioner states that the writ petitioner has served as Junior Mazdoor from 30.12.1970 to 26.04.1971(118 days). In this regard, the claim of the petitioner is that half of the services on contingency employment to be reckoned for pension as per Rule 11 of the Tamil Nadu Pension Rules. Further, the petitioner continued as Compressor Man from 27.04.1971 to 31.01.1981(9 years, 9 months 3 days). However, the respondents have erroneously calculated the qualifying services and the right of pension has been denied to the writ petitioner. This Court has earlier considered the same issue in the case of S.Renukarani Vs. The Government of Tamil Nadu rep. By its Secretary, Transport(RW1) Department in W.P.Nos.8702 to 8707 of 2016 dated 11.09.2017 and the relevant paragraph 3 is extracted hereunder:

"3.However, the learned counsel for the writ petitioners submitted that the Government issued G.O.Ms.No.24, Finance(Pension) Department dated 13.01.1986, in respect of calculating the length of qualifying service for the purpose of pension benefits. Following the aforesaid Government Order, the Tamil Nadu Pension Rules, 1978 was amended. The amended Rule 43(3) of the Tamil Nadu Pension Rules, reads as follows:

"43(3) In calculating the length of qualifying service, fraction of a year equal to [three months] and above shall be treated as completed one half year and reckoned as qualifying service".

4.It is made clear that the writ petitioner has completed 9 years, 9 months and 3 days. Thus, the writ petitioner is eligible for continuing the period of calculating the services as one full year and accordingly, it has to be construed as if the petitioner had completed 10 years service for the purpose of grant of pension under the Tamil Nadu Pension Rules 1978. In view of this matter, the writ petitioner is entitled for pension as applicable under the Tamil Nadu Pension Rules and the respondents are directed to grant pension to the petitioner by treating the period of qualifying services as 10 years under the provisions of the Tamil Nadu Pension Rules as stated supra and accordingly, calculate the pensionary benefits and disburse the same with arrears as applicable as per rules within a period of twelve weeks from the date of receipt of a copy of this order.

5.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs."

4. The said order in W.P.No.31539 of 2012 was challenged and the Hon'ble Division Bench passed an order dated 30.11.2018 in W.A.No.2668 of 2018, confirming the order passed by this Court in the above said writ petition and dismissed the writ appeal.

5. This being the factum, the present writ petition is also to be considered. Accordingly, the respondents are directed to grant pension to the writ petitioner by treating the period of qualifying service as 10 years under the provisions of Tamil Nadu Pension Rules, as stated supra and calculate the pensionary benefits and disburse the same with arrears as applicable as per rules within a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

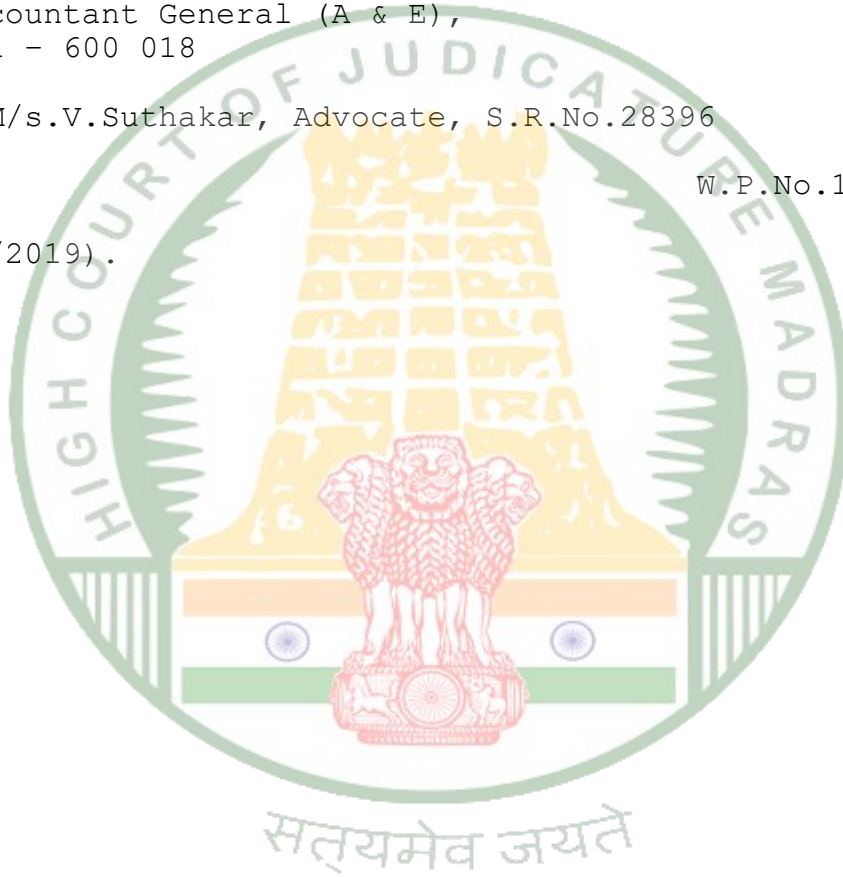
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To

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 3. The Accountant General (A & E),
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- +1 cc to M/s.V.Suthakar, Advocate, S.R.No.28396

W.P.No.1589 of 2018

PPA (CO)
SSM(03/05/2019).



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