

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16800 of 2019

G. Viswanathan

... 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 Director,
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 for issuance of a Writ of Mandamus, directing the respondents to grant minimum pension to the petitioner by treating his period of regular service in the Public Health Engineering and Municipal Works Department and Dairy Development Department from 16.12.1970 to 31.01.1981 (9 years 11 months and 9 days) along with arrears and interest on delayed payment of pension and all other consequential benefits.

For Petitioner : Ms. T.Hemalatha

For Respondents: Mrs. K.Bhuvaneswari
Additional Govt. Pleader [R1]

Mr. Bala Ramesh [R2]

Mrs. Hema Muralikrishnan [R3]

ORDER

This writ petition has been filed for a writ of mandamus directing the respondents to grant minimum pension to the petitioner by treating his period of regular service in the Public Health Engineering and Municipal Works Department and Dairy Development Department from 16.12.1970 to 31.01.1981.

2. It is the case of the petitioner that he was appointed as a Junior Assistant in the year 1970 and he was thereafter promoted as an Assistant in the year 1973. The petitioner was given further promotion as Superintendent in the year 1979 and ultimately the petitioner superannuated on 31.07.2006 as a Selection Grade Assistant General Manager(Admn) from the Virudhunagar Co-operative Mill Producers' Union Limited.

3. The petitioner had completed 9 years, 11 months and 9 days of regular service and he was not granted pension. The petitioner also made a representation to the respondents requesting for sanctioning of the pension. Since, there was no response from the side of the respondents, the present writ petition has been filed before this Court.

4. Ms.T.Hemalatha, learned counsel appearing for the petitioner submitted that the petitioner had completed 9 years, 11 months and 9 days of regular service and in accordance with Rule 43(3) of the Tamil Nadu Pension Rules, length of qualifying service, which is a fraction of a year equal to three months and above should be treated as a completed one half year. The learned counsel submitted that if this Rule is applied, the petitioner clearly satisfies minimum qualifying service and he is entitled for pension.

5. The learned counsel in order to substantiate her submissions, relied upon the judgment of this Court in the case of R.Haridoss vs. The Government of Tamil Nadu & ors. made in W.P.No.31539 of 2012 dated 20.11.2019. The relevant portions of the judgment is extracted hereunder:

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.No.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 service as 10 years under the provision 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."

6. The learned counsel by relying upon the above judgment submitted that the above judgment will squarely apply to the facts of the present case and she concluded her arguments by stating that the respondents must be directed to bring the petitioner within the entitlement to receive pension and other consequential benefits.

7. Per contra, Mr. Bala Ramesh, learned Special Government Pleader appearing on behalf of the second respondent submitted that the petitioner did not satisfy the minimum qualifying service required to be considered for receipt of pension. The learned counsel further submitted that the petitioner had superannuated in the year 2006 and he has approached this Court with a considerable delay and therefore the writ petition is liable to be rejected on the ground of laches.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. There is no dispute with regard to the fact that the petitioner had put in 9 years, 11 months and 9 days of regular service. The qualifying service for receiving pension is 10 years. The Rule 43(3) of the Tamil Nadu Pension Rules specifically deals with a case of this nature. It provides that while calculating the length of qualifying service, the fraction of a year equal to three months and above should be treated as completed one half year and reckoned as a qualifying service.

10. This provision has been taken into consideration by this Court in the judgment extracted supra and this Court categorically found that the writ petitioner in that case had completed 9 years, 9 months and 3 days and he is eligible for continued the period of calculating the service as one full year and this Court gave a finding to the effect that the petitioner therein had completed 10 years of service for the purpose of grant of pension. The very same reasoning will apply to the present case also and in fact the petitioner stands on a better footing.

11. In view of the above discussion, the petitioner is entitled for pension under the Tamil Nadu Pension Rules and the second respondent is directed to grant pension to the petitioner by treating the period of qualifying service as 10 years under the provisions of the Tamil Nadu Pension Rules and accordingly, calculate the pensionary benefits and disburse the same with arrears as applicable under the Rules within a period of twelve (12) weeks from the date of receipt of a copy of this order.

This writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Animal Husbandry,
Dairying and Fisheries Department,
Fort St. George,
Chennai - 600 009.
2. The Director,
Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.
3. The Accountant General (A & E)
Chennai - 600 018.

+lcc to Mr.V.Suthakar, Advocate sr.102988
+lcc to Government Pleader SR.NO. 102504

W.P.No.16800 of 2019

vba(co)
nr 06/01/2020

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