

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.14679 of 2014

R. Thangarasu

.... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Fort. St. George, Chennai - 9.

2. The Special Commissioner & Commissioner
of Revenue Administration,
Chepauk, Chennai - 5.

3. The District Revenue Officer,
Thanjavur District, Thanjavur.

4. The Revenue Divisional Officer,
Kumbakonam.

5. The Tahsildhar,
Thiruvidadaimarudur Taluk,
Thanjavur District.

..... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, directing the respondents to sanction pensionary benefits to the petitioner by taking into consideration the service rendered by him w.e.f. 07.12.1992 to 31.01.2013.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.M.Karthikeyan

Additional Government Pleader
for RR1 to 5

ORDER

This writ petition has been filed seeking for a direction to the respondents to sanction pensionary benefits to the petitioner by taking into consideration the service rendered by him w.e.f. 07.12.1992 to 31.01.2013.

2. The petitioner was appointed to the post of Village Assistant at Sathanur Village after conducting proper interview by the Tahsildhar vide Proceedings in Na Ka. No.13036/92/AC, dated 07.12.92. However, his appointment was challenged by one Kannan by preferring an appeal to the Revenue Divisional Officer, Kumbakonam. The Revenue Divisional Officer on an

erroneous reasoning cancelled the appointment of the petitioner and in his place appointed the said Kannan. Aggrieved by the same, the petitioner filed an appeal before the District Revenue Officer, Thanjavur. According to the petitioner, during the pendency of the appeal filed by the said Kannan before the Revenue Divisional Officer, Kumbakonam or during the pendency of the appeal preferred by him before the District Revenue Officer, Thanjavur, he was not allowed to continue his work as Village Assistant. Aggrieved by the refusal on the part of his employer in allowing him to continue his work, the petitioner has filed O.A. No.1672 of 1996 before the Tamil Nadu Administrative Tribunal and on abolition of the Tribunal O.A. No. 1672 of 1999 stood transferred to this Court and re-numbered as Writ Petition No. 27766 of 2005. When the writ petition was taken up for final hearing, in order to be enlighten about the vacancy, if any, to the post of Village Assistant, this Court directed the respondents to find out the vacancy position. Accordingly, it was reported before this Court that there are 119 vacancies in Thiruvaidaimarudur Taluk. Based on the same, by order dated 02.11.2010, this Court directed the third respondent to appoint the petitioner as one among the Village Assistants with a condition that he will not be entitled for any backwages but only the pensionary benefits from the date of original appointment. Accordingly, the petitioner was appointed as Village Assistant on 13.08.2010 and he reached the age of superannuation and retired from service on 31.01.2013. However, after his retirement, he was not paid pension on the ground that he had rendered service for a period of only around three years. In such circumstances, the petitioner has filed this writ petition.

3. Opposing the relief sought for in the writ petition, the respondents have filed a counter contending that the petitioner joined duty on 13.08.2010 and retired on 31.01.2013 and thus he had rendered service only for a period of 2 years, 5 months and 18 days and therefore, he cannot be paid pension. The petitioner's service in the regular establishment can be reckoned only from 14.08.2010 and till his retirement, he had rendered less than three years of service and therefore, he cannot be qualified for payment of pensionary benefits. The respondents also disputed the fact that this Court in the writ petition filed by the petitioner observed that the petitioner is entitled for service benefits from the date of his initial appointment and therefore prayed for dismissal of the writ petition.

4. Heard the learned counsel for both sides. Admittedly, the petitioner was appointed on 07.12.1992, however, his appointment came to be rescinded by an order passed by the Revenue Divisional Officer on 29.10.1993. As against the same, the petitioner filed an appeal before the District Revenue Officer, Thanjavur and the same was also dismissed on

16.04.1994. Thereafter, the petitioner filed Original Application before the Tribunal which culminated in WP No. 27766 of 2005, in which an order dated 12.07.2010 was passed with the following direction:-

"5. This Court after going into the records produced by both sides, having seen that the Date of Birth certificate produced by the petitioner being not adverted by the 3rd respondent Tahsildar, to meet the ends of Justice, by taking into account the availability of 119 vacancies in Thiruvidadaimarudur Taluk, directs the 3rd respondent, Tahsildar, being the appointing authority for the post of Village Assistant, to appoint the petitioner as one among the 119 Village Assistants with a condition that the petitioner will not claim any backwages but only the pensionary benefits from the date of original appointment"

5. In the order dated 12.07.2010, this Court has specifically observed that the petitioner is not entitled for backwages however, his service can be reckoned and considered for the purpose of pensionary benefits. When such an observation was made by this Court in the order dated 12.07.2010 and it had attained a finality, it is futile on the part of the respondents to contend that the petitioner is not entitled for payment of pensionary benefits after his retirement as he has put in only less than three years of service in the regular establishment. Therefore, the respondents cannot dispute that on the basis of the order passed by this Court, the petitioner is entitled for calculating the period of qualifying service from the date of his original appointment as Village Assistant on 07.12.1992 till the date of his superannuation.

6. In the light of the above, this Court is of the view that the petitioner is entitled for reckoning his service from the date of his original appointment on 07.12.1992 till his retirement for the purpose of payment of pensionary benefits as observed by this Court in the order dated 12.07.2010 passed in WP No.27766 of 2005. Therefore, there is no hesitation in holding that the petitioner is entitled for pensionary benefits. The petitioner is therefore directed to submit an application in the prescribed format to the first respondent, within a period of four weeks from the date of the receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the application as expeditiously as possible on or before 31.10.2019 and to pass appropriate orders thereof by taking note of the qualifying service of the petitioner from 07.12.1992 to 31.01.2013.

7. Accordingly, the writ petition is disposed of. No costs.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

vsi2

To

- 1.The Secretary to Government,
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2. The Special Commissioner & Commissioner
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3. The District Revenue Officer,
Thanjavur District, Thanjavur.
4. The Revenue Divisional Officer,
Kumbakonam.
5. The Tahsildhar,
Thiruvidaimarudur Taluk,
Thanjavur District.

+1cc to Government Pleader sr.22667
+1cc ot Mr.M.Muthappan, Advocate sr.22332

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pvs(co)
nr 28/06/2019

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