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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.21870 OF 2019

AND

W.M.P.NO.21087 OF 2019

M.Natarajan

... Petitioner

-Vs-

1. Government of Tamil Nadu
Represented by its Principal Secretary to Government,
Forest and Environment Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests,
head of Forest Force,
No.1, Jeenis Road,
Panagal Building,
Saidapet, Chennai - 600 015.
3. The District Forest Officer,
Salem Forest Division,
Salem,
Salem District.
4. The Forest Range Officer,
Social Forestry Range,
Wallajapet,
Vellore District.
5. The Accountant General of Tamil Nadu,
Office of the Accountant General,
Anna Salai, Teynampet,
Chennai - 600 018.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of impugned orders passed in G.O.(3D)No.12, Environment and Forest (FR.2-II) Department dated 18.03.2019 by the 1st respondent and its consequential order passed by the 3rd respondent dated 13.05.2019 in Na.Ka.No.7125/2017Pa.3 and quash



the same insofar as the petitioner is concerned and consequently direct the respondents 1 to 4 to send the proposal for the payment of pensionary benefits to the petitioner including gratuity and commuted value of pension to the 5th respondent to authorize the same with all consequential benefits.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.K.Elumalai
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order passed by the 1st respondent dated 18.03.2019 and the consequential order passed by the 3rd respondent dated 13.05.2019 and for direction to the respondents to send the proposal for payment of the pensionary benefits and other terminal benefits to the petitioner.

2.The petitioner was appointed as a Plot Watcher on temporary basis on 01.10.1980. Thereafter, his services were regularized as a Plot Watcher in supernumerary post on 12.07.2012 by G.O.(Ms)No.140, Environment and Forests (FR-2) Department dated 31.05.2012. The petitioner was promoted as Mali on 24.02.2014 and was brought under regular service from that date. The petitioner superannuated on 30.04.2018.

3.The petitioner along with similarly placed persons approached this Court and sought for the relief of counting half of the service rendered by the petitioner as a temporary Plot Watcher along with regular service rendered by him as qualifying services for the purpose of the granting pensionary and other terminal benefits. This Court considered the entire batch of cases and gave the following directions:

9.Accordingly, the respondents are directed to reconsider the case of the writ petitioners, in the light of the observations made in this order, for the purpose of granting the relief of counting of service of 50% of the services rendered on temporary basis and pass appropriate orders after verifying the service records and based on Rule 11 of the Tamil Nadu Pension Rules, 1978 and communicate the decision taken to the writ petitioners as early as possible, preferably within a period of four months from the date of receipt of a copy of this order.



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10. In the event of counting 50% of the past services, the GPF Account has to be opened after closing the CPF Account, opened on account of the cut of date of 01.04.2003, since, the cut of date was already quashed by this Court and there was no appeal against the order.

4. Pursuant to the orders passed by this Court, the 1st respondent considered the case of all the petitioners before this Court and this petitioner was found to be ineligible for pension as per Rule 43(2) of the Tamilnadu Pension Rules, since he has not completed ten year of qualifying service. The petitioner was only found to possess a total qualifying service of 9 years 5 months and 5 days. Consequently, the 3rd respondent also rejected the claim of the petitioner by his communication dated 13.05.2019.

5. The learned counsel for the petitioner submitted that the 3rd respondent has filed counter affidavit before this Court and in the said counter affidavit, the 3rd respondent has stated that the petitioner was appointed as a Plot Watcher only from 01.02.1982. The learned counsel submitted that the basis on which the claim of the petitioner was rejected is wrong. The learned counsel in order to substantiate his submission, brought to the notice of this Court, the seniority list that was drawn by the 2nd respondent wherein it has been clearly stated at Serial No.1012 the date of appointment of the petitioner is on 01.10.1980. That apart, the learned counsel also brought to the notice of this Court the proceedings dated 31.05.2012, through which the petitioner was brought into the time scale of pay in the supernumerary post of Plot Watcher. Even in the list, that was annexed to this proceeding, the name of the petitioner is found at Serial No.33 and it is specifically stated that the date of appointment of the petitioner is on 01.10.1980. The learned counsel submitted that these are documents which are maintained by the respondents and contrary to the official documents, a stand has been taken in the counter affidavit as if the petitioner had been appointed only from 01.02.1982. The learned counsel submitted that if the services of the petitioner is calculated from his actual date of appointment viz., from 01.10.1980, the petitioner will be very much within the qualifying services provided under Rule 43(2) of the Tamilnadu Pension Rules.

6. Per contra Mr.K.Elumalai, the learned Government Advocate appearing on behalf of the respondents submitted that the counter affidavit has been prepared as per the records available



with the Department and it is found that the petitioner had joined as a Plot Watcher only from 01.02.1982. The learned counsel submitted that the qualifying service of the petitioner was calculated strictly in accordance with the directions given by this Court and it was found that the petitioner had put in only 9 years 5 months and 5 days of qualifying service and therefore, he was found to be ineligible for pension under Rule 43(2) of the Tamilnadu Pension Rules. The learned counsel submitted that there are absolutely no merits in this writ petition and the same is liable to be dismissed.

7.The short point that arises for consideration in this writ petition is as to whether the petitioner is eligible for pension as per Rule 43(2) of the Tamilnadu Pension Rules. In order to be eligible for pension, a person should have completed 10 years of qualifying service under this rule. The counter affidavit filed by the respondent shows that the authority calculated the qualifying services by calculating the date of appointment of the petitioner from 01.02.1982. However, it is found from the very records that have been maintained by the 3rd respondent that the petitioner was actually appointed a Plot Watcher w.e.f. 01.10.1980. Both the seniority list maintained by the Department as well as the proceedings in G.O.(Ms)No.140, Environment and Forests (FR-2) Department dated 31.05.2012, clearly shows that the petitioner was appointed on 01.10.1980. Therefore, it is clear that the very basis on which the calculation was done by the 3rd respondent is erroneous. If the 3rd respondent had done the calculation by taking into consideration the actual date of appointment viz., 01.10.1980, the petitioner would have clearly come within the qualifying services.

8.In view of the above discussions, this Court has absolutely no hesitation to interfere with the impugned proceedings of the 1st respondent dated 18.03.2019 and the consequential order passed by the 3rd respondent dated 13.05.2019 and accordingly both these orders are quashed insofar as the petitioner is concerned. There shall be a direction to the 1st respondent to consider the proposal of the petitioner by taking into account the date of appointment of the petitioner as 01.10.1980 and thereafter, calculate the qualifying services of the petitioner in accordance with the directions given by this Court in W.P.Nos.3440, 9226 to 9232, 17298 to 17307, 17419 to 17423 of 2018 dated 13.08.2018. This exercise shall be completed by the 1st respondent within a period of six weeks from the date of receipt of copy of this order. After the orders are passed by the 1st respondent, the 3rd respondent shall immediately pass the consequential orders and the pensionary benefits and other terminal benefits of the petitioner shall be settled thereafter.



9. This writ petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr

To

1. Government of Tamil Nadu
Represented by its Principal Secretary to Government,
Forest and Environment Department,
Fort St. George, Chennai - 600 009.
2. The Principal Chief Conservator of Forests,
head of Forest Force,
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Wallajapet, Vellore District.
5. The Accountant General of Tamil Nadu,
Office of the Accountant General,
Anna Salai, Teynampet,
Chennai - 600 018.

+1cc to Mr.M.R.Jothimaniyan, Advocate, S.R.No.100478

+1cc to the Government Pleader, S.R.No.100520

W.P.No.21870 of 2019
and W.M.P.No.21087 of 2019

SSI(CO)
CS/21/01/2020