



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.12243 of 2014

and

M.P. (MD) No.1 of 2014

M.Harikaraputhiran

... Petitioner

vs.

1.The Government of Tamil Nadu
rep.by its Secretary
Finance (Pension Department)
St.George Fort, Chennai-9

2.The Government of Tamil Nadu
rep.by its Secretary
Municipal Administration and Water Supply
(MC3) Department
St.George Fort, Chennai-9

3.The Commissioner of Municipal Administration
Chepauk, Chennai-5

4.The Commissioner
Tirunelveli City Municipal Corporation
Tirunelveli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration declaring clause 3 of the Government Order in G.O.Ms. No.408 Finance (Pension) Department dated 25.08.2009 on the file of the 1st respondent as unconstitutional and null and void and further directing the 1st respondent to extend the benefit of G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009 to the Petitioner whose service was regularized in pursuant to the G.O.Ms.No.21 Municipal Administration and Water Supply (MC3) Department dated 23.02.2006.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents: Mr.M.Jeyakumar

Additional Government Pleader for R1 to R3

Mr.Aayiram K.Selvakumar for R4

O R D E R

The Clause-3 of the Government Order in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, is under challenge in the present writ petition.



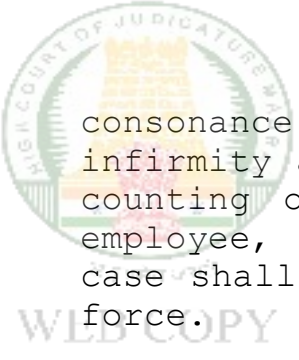
2. The learned counsel for the writ petitioner states that the writ petitioner was appointed as a Nominal Muster Roll (NMR) employee with the third respondent during the year 1992. The writ petitioner was paid daily wages. Subsequently, the service of the writ petitioner was brought under the regular establishment and he was granted with the benefit of regularization on completion of ten years of service as temporary daily wage employee.

3. The claim of the writ petitioner is that the Government Order granting the benefit of counting 50% of the services rendered as daily wage employee / temporary employee is extended to the employees, whose services were regularized before 01.04.2003. On account of the cut-off date prescribed, the writ petitioner is unable to get the benefit of the Government Order for the purpose of reckoning 50% of the services rendered by him as daily wage employee.

4. This Court is of the considered opinion that the cut-off date of 01.04.2003 fixed has got relevance. In fact, the Old Pension Scheme was dismantled and the Contributory Pension Scheme was implemented with effect from 01.04.2003.

5. Secondly, fixing of cut-off date is a prerogative of the administration and fixation of cut-off date cannot be questioned in ordinary circumstances. The principles regarding the fixation of cut-off dates for grant of monetary benefits, revision of pay etc., are well settled now and the Apex Court also has held that fixation of cut-off date cannot be interfered with by the Courts in a routine manner. Only on exceptional circumstances, if the person approaching the Court is able to establish that such a cut-off date is unconstitutional and has no nexus or relevance with the object sought to be achieved, then alone, the judicial review is permissible and not otherwise. This being the legal principles settled, this Court is of the considered opinion that the cut-off date of 01.04.2003 has got a relevance with reference to the closure of the Old Pension Scheme in respect of the employees appointed after 01.04.2003 and the introduction of Contributory Pension Scheme. Thus, there is a purpose and under these circumstances, the fixation of cut-off date cannot be said to be irregular or illegal.

6. As far as the writ petitioner is concerned, the benefit of regularization and permanent absorption itself was given by way of concession. Admittedly, the writ petitioner was appointed as a daily wage employee. Thus, the initial appointment was not in accordance with the Recruitment Rules in force. Thus, the benefit of regularization was a concession and by challenging the present Government Order, the writ petitioner cannot seek any further concession and this apart, the impugned Government Order is in



consonance with the established legal principles and there is no infirmity as such. If at all the writ petitioner is eligible for counting of 50% of the services rendered by him as daily wage employee, as per Rule 11(4) of the Tamil Nadu Pension Rules, his case shall be considered strictly in accordance with the rules in force.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

krk

To:

- 1.The Secretary,
Finance (Pension Department),
St.George Fort, Chennai-9.
- 2.The Secretary,
Municipal Administration and Water Supply
(MC3) Department,
St.George Fort, Chennai-9.
- 3.The Commissioner of Municipal Administration,
Chepauk, Chennai-5.

+1CC TO M/S.G.PRABHU RAJADURAI, ADVOCATE, SR.NO.71045

+1CC TO M/S.AAYIRAM K.SELVAKUMAR, ADVOCATE, SR.NO.71341

W.P.(MD) No.12243 of 2014
and
M.P.(MD) No.1 of 2014
24.06.2019

BUC(08/07/2019) 3P/6C