



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP (MD) No.462 of 2016
and
WMP (MD) No.379 of 2016

N.Chandra ... Petitioner
Vs.

1.The Commissioner of Local Administration,
Chepauk, Chennai - 600 005.

2.The Director of Local Fund Audit,
Kuralagam, 4th Floor, '
Chennai - 600 108.

3.The Commissioner,
Cumbam Municipality,
Cumbum.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent i.e, the Director of Local Fund Audit, Chennai relating to Moo.Mu.No. 11263/Na.O.Sa(2) 2010 dated 30.04.2010 and quash the same and consequently direct the respondents to take immediate action for sanction of family pension to the petitioner without insisting the date on which the petitioner's husband was brought into regular time scale of pay, within a specified time frame that may be fixed by this Court.

For Petitioner	: Mr.S.Visvalingam
For Respondents	: Mr.V.Anand, Government Advocate

ORDER

This writ petition has been filed praying to quash the order passed in Moo.Mu.No. 11263/Na.O.Sa(2)2010 dated 30.04.2010 and consequently direct the respondents to sanction family pension to the petitioner.

2.The grievance of the petitioner is, though the petitioner's husband was employed under the third respondent as early as on 05.04.1990, the family pension to the petitioner is denied and the reason for the same is stated as the services of the petitioner's husband was brought under the time scale of pay, only on 25.02.2006. Challenging such denial, the petitioner is before this Court.



3.The learned Counsel for the petitioner submitted that the issue involved in this writ petition is squarely covered by the decision of this Court in WP No.12656 of 2013, dated 18.06.2014, which came to be confirmed by the Division Bench of this Court reported in **2018(1) CWC 689, [Government of Tamil Nadu and others Vs. K.Sakthivel and another]** in WA(MD)No.51 of 2018 Batch cases, on 27.03.2018 and the relevant portions whereof read thus:

"24.The validity of fixing such a cut-off date was the subject matter of consideration in the case of P.Chinniyan v. State of Tamil Nadu rep. by its Secretary to Government, Forest and Environment (FR-2) Department, Chennai 600 009 and Others reported in (2014)6 MLJ 316 and the Court held that the prescription of cut-off date as 01.04.2003 for absorption into regular service under Rule 11(4) to count half of the service rendered prior to absorption has no rational basis and the same is arbitrary and violative of Article 14 of the Constitution of India.

27.In our considered view, the stand taken by the appellants is wholly unsustainable as the Special Leave Petitions filed against some of the decisions of the Hon'ble Division Bench was not dismissed in limini, but were dismissed on the ground that there were no merits in the appeal. Therefore, the order passed by the Hon'ble Supreme Court has assigned reasons and it is not a dismissal of a Special Leave Petition simpliciter. Therefore, the decisions bind the Government and consequently, the decisions relied on by the learned Special Government Pleader in the cases of Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions, Punjab and Another reported in 1995 Supp (4) SCC 706 and Col.B.J.Akkara (Retd.) v. Government of India and Others reported in (2006)11 SCC 709 are distinguishable on facts."

4.The above submission has not been seriously objected to by the learned Government Advocate for the respondent

5.In view of the above decision, I am of the view that the impugned order is liable to be quashed. Accordingly, the impugned order dated 30.04.2010 is quashed and this writ petition is disposed of with a direction is to the respondents to count half of the service of the petitioner before his absorption on 25.02.2006 along with the regular service for the purpose of pension. It is made clear that such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)



To

1. The Commissioner of Local Administration,
Chepauk, Chennai - 600 005.

2. The Director of Local Fund Audit,
Kuralagam, 4th Floor, '
Chennai - 600 108.

3. The Commissioner,
Cumbam Municipality,
Cumbum.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-48460[F] dated 20/02/2019)

+1 CC to M/s.Special Government Pleader (SR-49152[F] dated
22/02/2019

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20.02.2019

MSI-09.04.2019/3P-6C