



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.3877 of 2015

Chandrasekaran

... Petitioner

Vs.

1.The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, direct the respondent to consider the petitioner's claim for the salary for the two years (ie., 29.02.2008 to 29.02.2010) with increment and other monetary benefits and to sanction the pensionary benefits by taking into account the said 2 years also and to pass suitable orders in accordance with the law within a period that may be fixed by this Court.

For Petitioner : Mr.V.Kannan

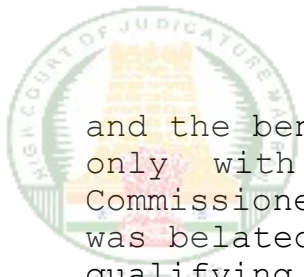
For Respondent No.1 : Mr.Aayiram K.Selvakumar
Additional Government Pleader

For Respondent No.2 : Mr.D.Muruganantham
Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to consider the claim of the writ petitioner for payment of salary for two years ie., from 29.02.2008 to 29.02.2010 with increment and other monetary benefits by taking into account the said two years also for the purpose of disposing the terminal and pensionary benefits.

2.The writ petitioner was initially appointed as daily wage employee during the year 1993 in Tirunelveli Municipal Corporation



and the benefit of regularisation was granted to the writ petitioner only with effect from 28.08.2007, through the order of the Commissioner, Tirunelveli Municipal Corporation. The writ petitioner was belatedly regularised and therefore he is not having the minimum qualifying service for the purpose of grant of pension. Though, the services of the writ petitioner was regularised on 28.08.2007, he attained the age of superannuation on 29.02.2008 and allowed to retire from service at the age of 58 years.

3. Challenging the retirement, the learned Counsel for the writ petitioner states that as per the basic service rules, the age of retirement of the last grade servants is 60 years. When the basic rules provides that 60 years is the age limit for retirement, the writ petitioner was pre-maturely retired by the respondent Corporation and therefore, he lost services of two more years in the Corporation. Though, the writ petitioner has approached the authorities to continue his services till he attains 60 years, the respondents have not taken any action to consider the representation of the writ petitioner. The writ petitioner also filed W.P.No.12013 of 2008. This Court passed an order on 06.12.2013, giving liberty to the petitioner to seek proper remedy as provided under law. Accordingly, the writ petition was withdrawn by the petitioner.

4. Subsequently, the writ petitioner approached the authorities on 29.03.2014 to pay salary for the period of two years and accordingly, consider his case for grant of pensionary benefits by considering 50% of the temporary services rendered by him as daily wage employee, with reference to Tamil Nadu Pension Rules. None of his claims were considered. Thus, he is constrained to move the present writ petition.

5. Learned Additional Government Pleader appearing on behalf of the respondent Corporation made a submission that the writ petitioner was allowed to retire from service at the age of 58 years. This apart, his services were regularised in proceedings dated 28.08.2007. The writ petitioner was allowed to retire on 29.02.2008. Thus, the petitioner is not having minimum required qualifying service for the purpose of grant of pension and as far as the other benefits are concerned, the same are already settled. Thus, the writ petition is to be rejected.

6. This Court is of the considered opinion that the learned Additional Government Pleader for the respondent Corporation is unable to dispute the basic service rules regarding the prescription of the retirement age of the basic servants. When the learned Additional Government Pleader for the respondent Corporation is unable to dispute the same in respect of the employees of the municipal Corporation, the retirement of the writ petitioner based on the Government orders cannot be accepted. The Basic Service Rules prevail over all the Government Orders. Admittedly, the rules are



not amended and even now, the age of retirement for the basic servants is 60 years. This being the factum, the writ petitioner was prematurely retired by the respondent Corporation in violation of the basic service rules.

7. This apart, the amended Rule 11(4) of the Tamil Nadu Pension Rules states, 1978 that 50% of the temporary services rendered by these employees can be taken into account for the purpose of reckoning the qualifying services. Counting of the 50% services undoubtedly is subject to the satisfaction of the terms and conditions stipulated in Rule 11(4) of the Tamil Nadu Pension Rules, 1978. Thus, in the event of fulfilling the terms and conditions stipulated in Rule 11(4) of the Pension Rules, the case of the writ petitioner is to be considered for counting 50% of temporary services for the purpose of reckoning qualifying services and the period from 29.02.2008 to 29.02.2010 also to be taken into account for the purpose of qualifying service along with 50% services reckoned in respect of the temporary services.

8. In the event of calculating all these services, if the writ petitioner is made eligible to get pension, then necessary steps are to be taken to send the pension proposals enabling him to get the same. This being the factual aspect, the respondents are directed to consider the case of the writ petitioner for counting 50% of the services rendered by him as temporary employee strictly in accordance with Rule 11(4) of the Tamil Nadu Pension Rules, 1978 and further count the two years service from 29.02.2008 to 29.02.2010 as a qualifying service for grant of pension and to calculate both the periods together and if the writ petitioner is found eligible for pension, then the case of the writ petitioner is to be considered for sending pension proposals in accordance with the rules in force.

9. In respect of the claim of the writ petitioner for payment of salary for two [2] years. ie., 29.02.2008 to 29.02.2010, this Court is of an opinion that the writ petitioner was illegally prevented by the respondents from rendering service. Though, the age of the writ petitioner is 60 years, he was allowed to retire prematurely by the respondent Corporation on 29.02.2008. This being the illegality committed by the respondents, the petitioner is entitled for the benefits for two years. However, taking into account the fact that the writ petitioner has not served and taking note of the fact that he is a last grade employee, this Court is inclined to grant 50% of the salary in respect of the period of two [2] years. Applying the principle of equity and further considering the fact that the writ petitioner was prevented from working in the post of sanitary worker and he was prematurely retired, the respondents are directed to pay 50% of the salary for the period from 29.02.2008 to 29.02.2010. The said payment of 50% of the salary is to be paid within a period of 12 weeks from the date of receipt of a copy of this order.



10. With the above directions, the writ petition stands disposed of. No costs.

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Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.

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

+1. C.C. to Mr. V. KANNAN Advocate SR.No.82240

+1. C.C. to Mr. AAYIRAM. K. SELVAKUMAR Advocate SR.No.82500

+1. C.C. to SPECIAL GOVERNMENT PLEADER Advocate SR.No.82445

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MR

TK/15.10.2019/4P/6C