

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.02.2020
CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 10267 of 2013

R.Chandrasekaran

..Petitioner

Vs

1. The Commissioner of Labour,
DMS Complex,
Teynampet, Chennai -6.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai -1.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to count 50% of the petitioner services on daily wages from 17.1.97 to 31.7.2001 with the respondent as qualifying service and consequently sanction regular pension w.e.f.1.8.2011 and pay arrears of pension.

For Petitioner : M/s.Muthupandian

For Respondents : Mr.S.Thangavel, Spl.GP - R1

: Dr. M.Devendran, SC for TNPSC -R2

O R D E R

The prayer sought for in the Writ Petition is to direct the 1st respondent to count 50% of the petitioner services on daily wages from 17.1.97 to 31.7.2001 with the respondent as qualifying service and consequently sanction regular pension 1.8.2011 and pay arrears of pension.

2. Brief facts leading to the case is that the writ petitioner has joined as Section Writer on 17.01.1997 on daily wages and continuously worked upto 31.07.2001 in the 2nd respondent/Service Commission. Thereafter he was selected as Junior Assistant/Typist through TNPSC and joined in the 1st respondent department on 28.01.2002 and subsequently retired from service on superannuation on 31.07.2011. Though he had put 9 years and 6 months of

service, the Accountant General has rejected his pension proposal by stating that the writ petitioner has not put 10 years of service . Challenging the same, the present writ petition is filed.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the documents available on record.

4. According to the learned counsel for the petitioner, the writ petitioner had worked on daily wages from 17.01.1997 to 31.07.2001 with the 2nd respondent and thereafter his appointment was regularised from 28.01.2002. As per Rule 11(4) of the Tamil Nadu Pension Rules, half of the services rendered from 17.01.1997 to 31.07.2001 has to be taken as qualifying service for pension. He had put total service of 9 years and 6 months. If the 50% services of 2 years and 3 months rendered as daily wages is added, the writ petitioner's total period of service will be 11 years and 2 months and he will be entitled for pensionary benefits.

5. The learned Standing Counsel appearing for the respondent would submit that the writ petitioner's service is only on temporary basis and he had worked as daily rated Section Writer for a period of two years three months with intermittent breaks. The daily waged Section Writers were discharged from service in a phased manner having regard to the requirement of their services consequent on the lapse of sanction of temporary sections during 2002. Therefore, the aforesaid period cannot be treated as qualifying service.

6. Admittedly, in the counter affidavit filed by the respondents, no particulars have been specifically stated with regard to the eligibility of service as qualifying service for considering pensionary and other monetary benefits of the writ petitioner. Further, the writ petitioner has also not made any representation to the respondents seeking aforesaid benefits.

7. The Hon'ble Division Bench of this Court has already rendered a decision on the similar issue and rounded off the service to 10 years, who had put 9 years, 7 months and 17 days of service. Hence it would be proper to direct the respondents to consider the case of the writ petitioner in the light of the aforesaid decision.

8. It is useful to extract the relevant paragraphs of the Judgment of the Hon'ble Division Bench of this Court. I. In the case of The Secretary to Government, Planning, Development & Special Initiatives Department & Other Vs.R. Baskaradass in W.A.No.1122 of 2013 dated 27.03.2014.

"21. In an unreported judgment dated 06.12.2013 made in W.P.No.29896 of 2013, as stated supra, the Division Bench of this Court, exhaustively considered the said issue and, it is useful and relevant to extract Paragraph 8 to 11 in the said judgment:-

"8.The learned counsel for the first respondent also relied on the judgment of the Division Bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India, rep. by the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 v.M.R.Palanisamy), wherein in similar issue was raised by an E.D.Staff, who served for 29 years before his permanent absorption as Group "D" staff and he was ordered to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D. Staff service. The said judgment was challenged before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008. Thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 9.10.2009.

9. Even though the order of the Division Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the relief only to the first respondent in the said Writ Petition, another Division Bench of this Court in by the Department.

10. Again, in the order dated 14.2.2013 passed by this Court in Writ Petition No.22496 of 2009 (Union of India, rep. by the Secretary, Department of Posts, Dak Bhawan, New Delhi 110 001 and others v.G.Thulasidasan), similarly placed person was ordered to be granted pension, considering the long number of years of service as E.D. staff, though the person was not having ten years of completed pensionable

service.

11. A Division Bench of Karnataka High Court by order dated 25.3.2013 in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order."

22. In the considered opinion of this Court, the ratio laid down in the above cited decision is ipso facto applicable to facts of the present case. Though it was under an analogous scheme, namely, Contributory Pension Scheme under Central Civil Services (Pension) Rules. The respondent herein had put in 9 years, 7 months and 17 days of service and therefore, the said service is to be rounded off to 10 years and in that event, the new pension scheme will not apply and consequently, the respondent herein is entitled to the relief as prayed for in the writ petition."

9. In the light of the aforesaid decision of the Hon'ble Division Bench cited supra and considering the fact that the writ petitioner had put total service of 9 years and 6 months, this Court is of the considered opinion that the respondents cannot reject the claim of the writ petitioner on the ground that he did not possess qualifying service of ten years. Accordingly, this Court issues the following directions;

i. The writ petitioner is directed to make fresh representation to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order.

ii. On receipt of such representation, the 2nd respondent shall consider the same in the light of the aforesaid judgment of the Hon'ble Division Bench and pass reasoned orders as expeditiously as possible.

iii. The decision taken by the 2nd respondent shall be communicated to the 1st respondent to take further action at their end.

10. With the above observations and directions, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Labour,
DMS Complex,
Teynampet, Chennai -6.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai -1.

+1cc to Mr.Muthu pandian , Advocate SR.No. 8870

+1cc to Dr.M.Devendran , Advocate SR.No.8889

+1 cc to Government Pleader Sr.No. 9514

W.P.No. 10267 of 2013

A.SK(01/10/2020)



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