IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.10965 of 2013
and
W.M.P.No.1660 of 2020

D.Murali .. Petitioner

Vs.

1. State of Tamil Nadu,
Represented by its Principal Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai-600009.

2. Secretary to Government of Tamil Nadu,
Personal and Administrative Reforms Department,
Fort St.George, Chennai – 600 009.

3. Secretary to Government of Tamil Nadu,
Finance Department,
Fort St.George, Chennai – 600 009.

4. The Commissioner,
Directorate of Rural Development and Panchayat Raj,
Panagal Building, Anna Salai,
Saidapet, Chennai-600015.

5. District Collector,
Nagapattinam District,
Nagapattinam. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceedings in Letter No.23932/E6/(1)/2010 – 3 dated 19/04/2012 and the records of the 5th respondent in his proceedings in Na.Ka.10228/U Va.2/2009, dated 27/11/2012 and quash the respective orders therein and direct the respondents to take the period between 01/05/1993 and 22/01/1997 i.e., during the period the petitioner was ousted from service for want of vacancy for his pensionary benefits and fix his pension in accordance with law.

For Petitioner : Mr.A.Muthukumar

For Respondents: Mr.P.Chinnadurai
Additional Government Pleader

ORDER

Writ petition has been filed challenging the order passed by the first respondent dated 19.04.2012, and the subsequent order passed by the fifth respondent dated 27.11.2012, and also seeks for a consequential direction to regularise petitioner's service from the initial date of appointment, taking into consideration his break-in-service between 01.05.1993 and 22.01.1997.

2. According to the petitioner, he was appointed as a Special Revenue Inspector on temporary basis. Thereafter, he got himself qualified in the Special Qualifying Examination conducted by the Tamil Nadu Public Service Commission on 24.06.1995, and was appointed as Junior Assistant on 23.01.1997. Petitioner's service was regularised on 23.03.1999 w.e.f. 23.01.1997. Subsequently, he was promoted as Assistant on 20.12.1999 and then as Extension Officer on 13.07.2005 and retired from service as a Deputy Block Development Officer on 30.09.2008.

3. While the petitioner was working as Special Revenue Inspector, he was ousted from service from 01.05.1993 to 22.01.1997, for want of vacancy. Now, according to the petitioner, the above said period was not included for the purpose of calculating pensionary benefits, on the ground that he was not in service at that period. According to the petitioner, even though he has passed the qualifying examination on 24.06.1995, due to some delay on the part of Tamil Nadu Public Service Commission, which conducted the examination, the results were published only on 25.02.1996. Had the Government acted in time, the petitioner would have got qualified in time and there would not have been any break in service. In this regard, the petitioner sent a representation to the District Collector, the fifth respondent herein and the fifth respondent by his proceedings dated 15.05.2010, sent a recommendation to the Commissioner, Directorate of Rural Development and Panchayat Raj, the fourth respondent herein, to consider the case of the petitioner for regularising the period of service from 01.05.1993 to 22.01.1997. The fourth respondent by his proceedings dated 02.09.2010 sought clarification from the first respondent. The first respondent rejected the request of the petitioner holding that, G.O.Ms.No.124, P & AR Department, dated 12.09.2009, is not applicable to the petitioner and rejected the petitioner's contention. Thereafter, the petitioner filed a review application and the same was also rejected by the fifth respondent. Challenging the above orders, the present writ petition has been filed.

4. The respondents have filed a counter affidavit stating that originally the petitioner was appointed as Special Revenue Inspector (Check post), Vellalangudi, Peravurani Taluk on 13.01.1990, on temporary basic. Thereafter, for want of

vacancy, the petitioner was ousted from service on 30.04.1993. Subsequently, the Tamil Nadu Public Service Commission selected the petitioner for appointment as Junior Assistant and the petitioner was appointed as Junior Assistant at Thirumarugal Panchayat Union on 18.01.1997, and the petitioner also joined duty as Junior Assistant in the regular time scale of pay in the Rural Development Unit on 23.01.1997. The petitioner retired from service as Deputy Block Development Officer and his qualifying service has been reckoned as 14 years 6 months and 28 days excluding the period of break from service i.e., from 01.05.1993 to 22.01.1997, during the period petitioner was out of service and pensionary benefits was not calculated for that period. Even though the petitioner relied upon Rule 24(1) of the Tamil Nadu Pension Rules and G.O.Ms.No.124, P & AR Department, dated 12.09.2009, according to the respondents, the same are not applicable to the case of the petitioner.

5. Earlier the Government issued an order in G.O.Ms.No.433, P & AR Department, dated 14.12.1993, for conduct of Special Qualifying Examination for those persons who were temporarily appointed in the Government Department so as to observe them in the regular vacancy. Based on the Special Qualifying Examination conducted by the TNPSC, petitioner was selected and appointed as Junior Assistant and joined duty on 23.01.1997. However, the service rendered by the petitioner in the Revenue Department from 18.01.1990 to 30.04.1993, has been taken into account for the purpose of pensionary benefits. Accordingly, the temporary service and regular service in the time scale has been calculated as 14 years 6 months and 28 days and pensionary benefits have already been authorised. As the petitioner was out of service from 01.05.1993 to 22.01.1997, the petitioner cannot claim right to regularize the period of out of service and the petitioner cannot find fault with the Tamil Nadu Public Service Commission for not conducting the qualifying examination in time.

6. Initially the petitioner was appointed only on temporary basis and the appointment was made subject to the condition that the petitioner should not claim any preference in future employment. Hence, the period of service for about 4 years cannot be reckoned as qualifying service for the purpose of granting pensionary benefits. That apart, the petitioner did not make any claim immediately after termination of service in the year 1993, now after retirement, petitioner cannot make such a claim nearly after 20 years. Further, his continuity of service cannot be assessed at this distance point of time and the petitioner cannot claim for retrospective regularisation of service on this flimsy ground.

7. The Government has already fixed minimum pension of Rs.3050/- p.m. in respect of Government employees in superior service vide G.O.Ms.No.235, Finance (PC) Department, dated

01.06.2009. The petitioner is getting retirement benefits more than that of the minimum pension and sought for dismissal of the writ petition.

8. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioner and Mr.P.Chinnadurai, learned Additional Government Pleader appearing for the respondents and also perused the records carefully.

9. The main grievance of the petitioner is that the petitioner was appointed as Special Revenue Inspector on temporary basis from 18.01.1990 to 30.04.1993 and thereafter his service was discontinued for want of vacancy. Thereafter, he was appointed as Junior Assistant in the year 1997. Hence, the break in service between 01.05.1993 to 22.01.1997 should be regularised and the said service should be taken into account for the purpose of calculating pensionary benefits. But that contention was refuted by the respondents on the ground that his earlier appointment was only on temporary basis and for want of vacancy, he was ousted from service for four years and thereafter, he was appointed as Junior Assistant on his passing the Special Qualifying Examination as per G.O.Ms.No.433, P & AR Department, dated 14.12.1993. However, the service rendered by the petitioner temporarily between 18.01.1990 to 30.04.1993 in the Revenue Department, was taken into account for the purpose of pensionary benefit as there is no pension rules or Government Orders, for calculating the break in service also for the purpose of calculating pension, and the period from 01.05.1993 to 22.01.1997 was not taken into account. Even though the petitioner has relied upon G.O.Ms.No.124, P & AR Department, dated 12.09.2009, the respondents have stated that the said G.O. is not applicable to the petitioner and that the said G.O. is applicable only to those persons who have failed in the Special Qualifying Examination 1995 and who have obtained interim orders from this Court directing to regularise their service from the date of their initial appointment.

10. In this case, admittedly there is break in service for nearly four years. The petitioner has not come to the Court with relevant Pension Rules or Government Orders enabling the respondents to count the break in service for the purpose of pensionary benefits.

11. In the above circumstances, I do not find any illegality or irregularity in the orders passed by the respondents refusing to calculate the break in service for the purpose of pensionary benefits. I do not find any merit in the writ petition and the same is liable to be dismissed and accordingly dismissed. At his stage, Mr.A.Muthukumar, learned counsel appearing for the petitioner submitted that even though the petitioner is entitled for pensionary benefit for the period he has rendered temporary service, but the respondents have not calculated the pension correctly, but the

same is disputed. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner is getting pension as per his entitlement. If the petitioner has any grievance with regard to the pension, it is always open for him to make a representation to the concerned authority and if the petitioner makes any such representation, the respondents shall consider the same in accordance with law and pass appropriate orders. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
   Rural Development and Panchayat Raj Department,
   Fort St.George, Chennai-600009.

2. The Secretary to Government of Tamil Nadu,
   Personal and Administrative Reforms Department,
   Fort St.George, Chennai – 600 009.

3. The Secretary to Government of Tamil Nadu,
   Finance Department,
   Fort St.George, Chennai – 600 009.

4. The Commissioner,
   Directorate of Rural Development and Panchayat Raj,
   Panagal Building, Anna Salai,
   Saidapet, Chennai-600015.

5. The District Collector,
   Nagapattinam District,
   Nagapattinam.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No. 19064

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PP(CO)
GN(01/07/2020