

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.15514 of 2011

S.Arokiam

.. Petitioner

Vs

1.The Secretary to Government,
Food, Cooperation & Consumer Protection
Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Civil Supplies,
Chepauk, Chennai - 5.

3.The Accountant General of Tamil Nadu,
Teynampet, Chennai - 18.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records in pursuant to the order of the third respondent in proceedings No.P03/10302887/4/PPO No.R0302887, dated 26.10.2010, and quash the same only to the extent of date of appointment and net qualifying service and consequently direct the respondents to fix the date of appointment of the petitioner as 07.04.1979 and the net qualifying service as 31 years, 2 months and 26 days and accordingly calculate and pay the terminal and pensionary benefits and the arrears of pension with interest.

For Petitioner : Ms.P.V.Rajeswari

For R1 & R2 : Mr.L.P.Shanmugasundaram, Spl.GP

For R3 : Ms.Hema Muralikrishnan,
Standing Counsel

ORDER

The writ petition is directed against the order passed by the third respondent/Accountant General of Tamil Nadu, Chennai, refusing to count the petitioner's services from the

date of his initial appointment.

2. Learned counsel for the petitioner would submit that after the petitioner was appointed to the post of Night Watchman through the employment exchange under the category of Burma Repatriate, he had also produced necessary certificates to that effect. Thereafter, his services were regularized with effect from 10.08.1983 and subsequently, on reaching the age of superannuation, he retired from the service on 30.10.2010. After his retirement, he was also paid with pension, but, while calculating the number of years of service, they have excluded initial four years of service i.e. from 07.04.1979, date of initial appointment, till 10.10.1983, date of regularization. Such action of the respondent is against the G.O.Ms.No.2024, Revenue Department, dated 15.05.1974, which prescribes that persons repatriated from Burma and Srilanka should not be deprived of benefits of seniority, increment etc. accruing from the date of their appointment. Therefore, while calculating the pension, they should take into consideration of their entire services from the date of their initial appointment. But, contrary thereto, in the case on hand, the respondents have counted only 50% of his initial four years i.e. from 07.04.1979 to 10.10.1983 on the ground that it is only a non-provisional service.

3. Relying on the order passed by this Court in W.P.Nos.539 of 2006 and 21465 of 2009, dated 17.03.2015, she further argued that when a similar person repatriated from Burma came to the Court praying a direction to revise his seniority from the date of entry into his services, this Court, applying G.O.Ms.No.2024, Revenue Department, dated 15.05.1974, granted the benefit by directing the respondents therein to count the services of the petitioner therein from the date of his initial appointment. Therefore, by following the same, the petitioner herein also should be given the benefit of G.O.Ms.No.2024, Revenue Department, dated 15.05.1974.

4. Concluding her arguments, she has also referred to a proposal dated 31.08.2015 of the second respondent addressed to the third respondent, whereby the services of the petitioner were counted from the date of initial appointment for calculating pension. By relying the said proposal, she argued that when the second respondent has already made recommendation to count the services of the petitioner from the date of his initial appointment, the third respondent, disregarding such recommendation, cannot refuse to count the entire services of the petitioner for the purpose of pensionary benefits.

5. A detailed counter affidavit has been filed by the third respondent. Learned counsel for the third respondent would submit that so far as the pensionary benefit is concerned, in the case on hand, Rule 11(2) of the Tamil Nadu Pension Rules will apply, irrespective of the fact whether the petitioner is a repatriate from Burma or Srilanka. Accordingly, Rule 11(2) has been applied which says that if a person is in non-provisionalized service, only 50% of the services rendered therein shall be counted and accordingly, his half of the service has been taken into account for the purpose of pensionary benefits. Therefore, the petitioner cannot question impugned order passed by the third respondent.

6. Heard the learned counsel appearing on either side.

7. The Government passed G.O.Ms.No.2024, Revenue Department, dated 15.05.1974, granting certain benefits to repatriates from Burma and Srilanka, who are employed in Government Services. Paragraph 3 of the said Government Order is extracted hereunder:

"3. When the Government have recognized the need for relaxing certain rules prescribed for the recruitment to various jobs in Public Services in favour of the repatriates they should not be deprived of the benefits, like seniority increments etc., accruing out of making such relaxations effective from the date of their appointment to such posts, by making them effective from the date of the order. Government, therefore, direct that the relaxation of rules relating to age and educational qualification made in favour of repatriates appointed to various categories in Public Services should be made effective from the date of their appointment to such posts. Government also direct all the Administrative Departments to review all the orders issued by them earlier relaxing the rules in favour of the repatriates and to take action, wherever necessary, suitably revised them so as to make the relaxation effective from the date of their appointment. In such cases the repatriates should be eligible for drawing increments, arrears of pay etc., from the date of their appointment."

A bare reading of the aforesaid G.O. abundantly states that the repatriates from Burma and Srilanka are eligible for drawing

increments, arrears of pay etc. from the date of their appointment.

8. Besides, as stated above, the second respondent, vide his proceedings dated 31.08.2010, had already sent a pension proposal to the third respondent requesting to count the services of the petitioner from the date of his initial appointment i.e. from 07.04.1979, date of his initial appointment, till 30.06.2010, date of his superannuation, totally 31years, 2 months and 26 days for the purpose of counting pensionary benefits.

9. When a similar issue came up before me, following the above said G.O., I have directed the respondents therein to count the services of the petitioner therein from the date of initial appointment. Relevant portion of the order thereof is extracted below:-

"2.....However, as he was a repatriate from Burma, separate order was passed with reference to G.O.Ms.No.2024, Revenue Department, dated 15.05.1974 and based on the above Government order in G.O.Ms.No.2024, the Joint Director of Civil Supplies in his proceedings in Na.Ka.(A1)/37116/92 dated 06.11.1992 regularised the services of the petitioner from the initial date of appointment, namely 26.07.1982. However, the grievance of the petitioner is that his seniority has not been fixed from the date of regularization. The petitioner submitted a representation on 12.12.1991 with a request to fix his seniority in the cadre of Junior Assistant on the basis of G.O.Ms.No.2024, Revenue Department, dated 15.05.1974 in which the Government has made it clear that the services of the persons who are repatriate from Sri Lanka and Burma should be regularized from the date of joining the Department. Accepting the said request, his services in the cadre of Junior Assistant were regularized with effect from 26.07.1982 by Letter No.23273/, 2/2001-3 dated 17.09.2001. The Government directed the Civil Supplies Department to fix the seniority of the petitioner from the date of his regularization of service in the cadre of Junior Assistant. Therefore, the petitioner came to his Court challenging the impugned order dated 11.11.2002

which refused the request of the petitioner to fix the seniority from the date of his regularisation, namely 26.07.1982. This Court, agreeing with the case of the petitioner that the petitioner being Burma repatriate, rightly following the Government order dated 17.09.2001, allowed the writ petition by order dated 29.10.2008 and set aside the impugned order dated 11.11.2002 and directed the second respondent to re-fix the seniority of the petitioner in the light of the Government letter dated 17.09.2001 and this Court also found that the impugned order is cryptic and non-speaking order. Aggrieved by the same, a writ appeal in W.A.No.956 of 2009 was filed by the petitioners in W.P.No.21465 of 2009. The Hon'ble Division Bench, on the ground that the appellants were not impleaded as respondents in the writ petition that they were not afforded an opportunity and that they were aggrieved, allowed the writ appeal by setting aside the order of the learned Single Judge dated 29.10.2008 and remanded the writ petition back to this Court.

3. Mr.S.R.Raghunathan, learned counsel for the petitioner in W.P.No.539 of 2006, taking support from Paragraph 9 of the Counter affidavit filed by respondents 1 and 2 would submit that the petitioners in W.P.No.21465 of 2009 were appointed on 28.04.1986, 09.06.1986, 25.04.1986 and 16.05.1986 respectively, whereas the petitioner in W.P.No.539 of 2006 was appointed on 26.07.1982 and since D.Joseph Benedict, the petitioner in W.P.No.539 of 2006 was appointed 4 years prior to the appointment of the petitioners in W.P.No.21465 of 2009, based on the Government Letter dated 17.09.2001 and keeping in mind that D.Joseph Benedict is a repatriate from Burma, he has been placed appropriately in Sl.No.105-A and consequently, the panel for the post of Assistant for 1986 has been rightly revised. Therefore, when the letter of the Government dated 17.09.2001 has been rightly followed in the present case, the private respondents cannot have any grievance. He has also submitted that the petitioners 1 and 4 in W.P.No.21465 of 2009 had retired from service and only the petitioners 2 and 3 are in

service on that basis, he prayed for dismissal of W.P.No.21465 of 2009.

4. Per contra, the learned counsel appearing for the petitioners in W.P.No.21465 of 2009 and respondents 3 to 6 in W.P.No.539 of 2006 would submit that when all these persons were appointed through Tamil Nadu Public Service Commission on 28.04.1986, 09.06.1986, 25.04.1986 and 16.05.1986, they should be placed above D.Joseph Benedict, who was appointed temporarily under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules on 26.07.1982. After he was temporarily promoted as Assistant under Rule 39(a)(1), he was regularised as Assistant with effect from 1987. When he was regularised with effect from 1987, the Commissioner of Civil Supplies and Consumer Protection ought not to have entertained the representation given by D.Joseph Benedict for regularization of his service by taking into account that he is a Burma repatriate and therefore, he should be regularised from the date of his appointment. On the date of regularization of D.Joseph Benedict, the petitioners in W.P.No.21465 of 2009 have already been recruited as direct Assistant by the Tamil Nadu Public Service Commission and joined in the Department during 1986 and therefore, due seniority should be reckoned only from the date of appointment which was in the year 1986.

5. But this Court hardly finds any justification. The reason is that the private respondents in W.P.No.539 of 2006 / petitioners in W.P.No.21465 of 2009 were appointed through the Tamil Nadu Public Service Commission on 28.04.1986, 09.06.1986, 25.04.1986 and 16.05.1986 respectively, whereas Joseph Benedict was appointed on 26.07.1982 as a Junior Assistant under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. Subsequently, he was temporarily promoted as Assistant under Rule 39(a)(1) on 17.06.1987. During this time, the private respondents were recruited as direct Assistant through Tamil Nadu Public Service Commission and joined the Department much later as mentioned above. Therefore, the official respondents 1 and 2, rightly following the Government Letter dated

17.09.2001 taking into account that Joseph Benedict's services were regularized from 26.07.1982, have rightly placed the petitioner above the private respondents, hence, this Court does not find any merit in W.P.No.21465 of 2009. Needless to mention that as the matter has been pending for a long time, respondents 1 and 2 should give effect to G.O.(2D) 59 Cooperation, Food and Consumer Protection Department, dated 26.06.2009."

10. Following the above said order as well as the G.O.Ms.No.2024, Revenue Department, dated 15.05.1974, the impugned order passed by the third respondent refusing to count the initial four years service of the petitioner for the purpose of pensionary benefits cannot be sustained and accordingly, the impugned order is set aside. Consequently, the respondents are directed to count the services of the petitioner from the date of his initial appointment i.e. from 07.04.1979 and settle all the consequential monetary benefits within a period of 12 weeks from the date of receipt of a copy of this order.

In fine, the writ petition stands allowed. No Costs.

Sd/-

Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Food, Cooperation & Consumer Protection
Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Civil Supplies,
Chepauk, Chennai - 5.

3.The Accountant General of Tamil Nadu,
Teynampet, Chennai - 18.

+1cc to Ms.P.V.Rajeswari, Advocate SR.20077
+1cc to Mrs.Hemamurali Krishnan, Advocate SR.19982
+1cc to Special Government Pleader(Co-Op) SR.20198

W.P.No.15514 of 2011

SR(CO)
CB(18/06/2020)