

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
10.09.2020	11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18910 of 2010
and M.P.No.1 of 2010

B.Shanmukham

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by the Secretary,
Home (Police 18) Department,
Fort St.George, Chennai-600 009.

2.The Director,
Forensic Sciences Department,
Mylapore, Chennai-600 004.

3.The Accountant General (Accounts & Entitlement),
No.361, Anna Salai,
Chennai-600 018.

.... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records relating to the 1st respondent's order made in G.O.(2D) 158 Home (Police 18) Department dated 31.03.2009 and the 2nd respondent's proceedings made in PRO No.A5/40577-A/2009 dated 08.07.2009, to quash the same and consequently, direct the respondents 1 to 3 to revise and refix the pension and other benefits by treating the period of superannuation as 31.03.2009, instead of 30.06.2007 and to extend all service and monetary benefits forthwith.

For Petitioner : Mr.L.Chandrakumar

For R1 & R2 : Mr.K.Magesh

Spl. Govt. Pleader

For R3

: M/s.T.S.Selvarani, Senior Counsel

O R D E R

This Writ Petition has been filed, challenging the order of the Government made in G.O.(2D) No.158 dated 31.03.2009 and also

the proceedings of the 2nd respondent in Pro.No.A5/40577A/2009 dated 08.07.2009, by which the services of the petitioner from 01.07.2007 to 31.03.2009 were directed to be treated as re-employment and the excess pay and allowances paid during re-employment were ordered to be recovered from the petitioner.

2. It was the case of the petitioner that he joined the service on 06.03.1974 and on 04.06.1976, he made an application for altering his date of birth from 01.07.1949 to 23.03.1951, which was returned back by the respondents on the ground that after regularization of his services, it would be accepted and he was asked to wait till his regularization. It is the further case of the petitioner that though his services were regularized with effect from 06.11.1982, proceedings to that effect were issued only in the year 1993 and thereafter, he made an application for change of date of birth on 29.10.1993 along with necessary documents. It was also the case of the petitioner that based on the facts and taking note of Rule 49 as stated in Paragraph No.3 of the affidavit, the date of birth has been altered in the Service Register. Since the application has been made within 5 years and that there is an alteration of date of birth by the respondents in the Service Register, the petitioner was allowed to continue his work beyond 30.06.2007 and he attained the age of superannuation on 31.03.2009 as per the altered date of birth. Therefore, the action of the respondents in treating the period of service from 01.07.2007 to 31.03.2009 as re-employment is not correct and in that process, the petitioner was paid full wages for the period mentioned supra and by virtue of the impugned order, the respondents attempt to recover Rs.27,000/- from the petitioner, which is the difference in amount paid as wages beyond pension amount. Challenging the same, the petitioner is before this Court.

3. The respondents have filed a counter affidavit, in which it was stated that by virtue of the order of the 2nd respondent dated 23.09.1997, the date of birth of the petitioner was muted in the Service Register as 23.03.1951 and was permitted to continue his duties and when the proposal was sent to the Government on attaining the age of superannuation, the Government refused to accept the proposal on the ground that the change of date of birth of the petitioner was contrary to Rule 49(a), 49(b) and 49(c) of Part-II of the Tamil Nadu State and Subordinate Service Rules. It was also stated in the counter affidavit that the petitioner cannot try to take advantage of the lapses of the 2nd respondent and in order to protect the interest of the petitioner, though his pensionary benefits were restricted to 30.06.2007, the excess period was ordered to be treated as re-employment. Therefore, the petitioner is not entitled to any relief and the Writ Petition is liable to be dismissed.

4. Learned counsel for the petitioner submitted that the respondents, having extracted the work from the petitioner in the same post, cannot go back to say that his period of excess service can only be treated as re-employment without extending the actual monetary benefits and the act of the respondents in converting the period of regular employment as re-deployment beyond 01.07.2007 is utter prejudicial to the interest of the petitioner.

5. Per contra, Mr.K.Magesh, learned Special Government Pleader appearing for the respondents contended that the petitioner had not made application for alteration of his date of birth within five years of his regularization and his services have been regularized as early as in 1982, by issuing necessary proceedings on the same year itself. That being the case, for the erroneous entry by the Department, the petitioner would not be entitled to full wages beyond 30.06.2007 and therefore, it was rightly treated as re-employment and the excess amount was sought to be recovered, paid over and above the pension amount. Learned Special Government also produced a copy of the order, showing the regularization of the services of the petitioner with effect from 06.03.1974 on 06.11.1982 itself.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The petitioner was directly recruited as Scientific Assistant Grade-II through Employment Exchange and he joined the services on 06.03.1974, by duly intimating his date of birth as 01.07.1949. Subsequently, an application was forwarded by the petitioner for altering his date of birth as 23.03.1951 and the same was returned with an instruction to the petitioner to re-submit it after his regularization. The main plea taken by the petitioner was that though his services were regularized on 06.11.1982, the order to that effect was served only in the year 1993 and immediately thereafter, he applied for alteration of his date of birth and therefore, it was applied within the prescribed time stipulated under the relevant provisions of the Act.

8. This Court has gone through the document (purported to be the relevant page of the Service Register of the petitioner) produced by the learned Special Government Pleader, from which it could be seen that the date of his regularization was duly entered in it on 06.11.1982 itself. The contention of the petitioner that the order of his regularization was communicated to him only in the year 1993, is unbelievable, as an employee will not normally work for more than a decade without knowing whether his services were regularized or not. In the Government service, certain benefits would be extended only to those employees, whose services have been duly regularized and

therefore, it cannot, at any stretch of imagination, be said that he was not aware of his own regularization with effect from 06.11.1982.

9. Admittedly, the petitioner, after his regularization, applied for change of date of birth only on 18.12.1993 and the petitioner has not produced any documentary proof in support of his submission that the order of his regularization was served only in the year 1993. Considering the fact that there is a delay in submission of application beyond five years and that he had been paid wages for the services rendered, this Court is of the view that for the period over and above the actual date of retirement, namely, 30.06.2007, the benefits cannot be taken into account for any terminal benefits and the respondents are entitled to recover the excess amount, if not already done.

10. In the result, the Writ Petition is dismissed. The excess amount shall be recovered from the petitioner in twelve (12) instalments, commencing from January, 2021. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The State of Tamil Nadu,
Rep. by the Secretary,
Home (Police 18) Department,
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 - 2.The Director,
Forensic Sciences Department,
Mylapore, Chennai-600 004.
 - 3.The Accountant General (Accounts & Entitlement),
No.361, Anna Salai, Chennai-600 018.
- +1cc to Mr.L.Chandrakumar, Advocate, S.R.No. 36689
+1cc to the Government Pleader, S.R.No. 36931

W.P.No.18910 of 2010

BP(CO)
GN(19/11/2020)