

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.11.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.8033 of 2009

M.Saravanamuthu

... Petitioner

vs.

1. Government of Tamilnadu,
Represented by Secretary to Government,
Animal Husbandry, Dairying and Fisheries
Department, Secretariat,
Chennai-600 009.
 2. The Director of Fisheries,
Tenampet,
Chennai-600 006.
 3. The Chairman and Managing Director,
Tamilnadu Fisheries Development Corporation,
129, Ramakrishna Mutt Road,
Raja Annamalaipuram,
Chennai-600 028.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records culminating in impugned proceedings of the second respondent in No.Na/ka/S4/49987/2006-2 dated 06.07.2007 issued by the second respondent and quash the same and direct the respondents to enhance petitioner's pension by adopting the formula applicable to State Government servants.

For Petitioner : Mr.S.Namasivayam

For Respondents: Mr.G.K.Muthukumar, Spl. Govt. Pleader
for R1 & R2
Master Ganesh for R3

O R D E R

The Petitioner was appointed in the Fisheries Department in 1969 and initially sent on deputation to the Tamil Nadu Fisheries Development Corporation (the third Respondent) in 1974. He retired on 31.10.2002 from the services of the third Respondent and made a claim for enhanced pension to the Director of Fisheries, the second Respondent,

which was rejected by order dated 06.07.2007, which is under challenge herein.

2. I heard the learned counsel for the Petitioner and the learned Special Government Pleader for Respondents 1 and 2 and the learned counsel for the third Respondent Corporation.

3. The learned counsel for the Petitioner submitted that the Petitioner joined the services of the Fisheries Department in the Work Charged Establishment under the control of Respondents 1 and 2 in the year 1969. He was subsequently deputed to the third Respondent on 29.07.1974. With specific reference to the order of deputation dated 29.07.1974, the learned counsel pointed out that the persons listed in the annexure to the deputation order were sent to the third Respondent Corporation and that the said list contains the name of the petitioner at Sl.No.45 at page 7 of the typed set of papers. He also invited the attention of the Court to the specific statement in the deputation order to the effect that 10% of the total emoluments of the incumbents other than compensatory allowance paid by the foreign employer, shall be paid as the pension contribution in respect of the deputationists.

4. His next contention is that he was specifically requested under letter dated 27.11.2006 as to whether he consented to be transferred permanently to the rolls of the third Respondent and, in response thereto, by communication dated 06.12.2006, he informed the second Respondent that he did not give his consent to be transferred to the third Respondent Corporation. On this basis, the learned counsel contends that he is entitled to pension inasmuch as he continued to be an employee of the aforesaid Department which is a pensionable establishment.

5. On the contrary, the learned counsel for Respondents 1 and 2 submits that the Petitioner was initially sent on deputation to the third Respondent Corporation under proceedings dated 29.07.1974. However, subsequently, he was absorbed in the third Respondent Corporation in the year 1981 and he was posted as Junior Assistant under the control of the Deputy Manager, Fishmeal Plant, Mandapam on 08.02.1981. He further submits that the documents on record evidence conclusively that the Petitioner was absorbed as an employee of the third Respondent Corporation. In this connection, he invited the attention of this Court to the document at Page 8 of the typed set of papers, which is a communication from the third Respondent Corporation stating that the Petitioner was permitted to retire from service on attaining the age of superannuation on 31.10.2002. He also referred to the communication dated 28.10.2002 at page 9 of the typed set of papers in respect of earned leave encashment of the Petitioner

as an employee of the third Respondent Corporation. Likewise, he submitted that gratuity of Rs.1,62,351/- was paid to the Petitioner under orders issued by the Managing Director of the third Respondent Corporation as would be evident from pages 11 to 13 of the typed set of papers. In addition, he pointed out that the Petitioner was elevated to the Selection Grade Post of Assistant upon completion of 10 years of service in the post of Assistant and this was conveyed to him by memorandum dated 11.10.2002. Therefore, he submits that the documents on record evidence conclusively that the Petitioner was subsequently absorbed as an employee of the third Respondent Corporation from the year 1981 and, upon such absorption, he received salary and other monetary benefits such as earned leave, gratuity, etc. in the capacity of an employee of the third Respondent Corporation. Therefore, he submits that the Petitioner cannot be treated as an employee of the Fisheries Department and, consequently, is not entitled to pension benefits from the Government.

6. The learned counsel for the third Respondent Corporation submitted that the order of deputation dated 29.07.1974 does not apply to non-gazetted posts and is confined to gazetted posts. He also submitted that the Petitioner was an employee of the third Respondent Corporation and retired from the said Corporation on 31.10.2002 upon attaining the age of superannuation. All service benefits were settled upon his retirement including terminal benefits. As such, the writ petition is liable to be rejected.

7. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

8. The principal question that arises for consideration is whether the Petitioner is entitled to pension benefits from the Fisheries Department. According to the learned counsel for the Petitioner, the Petitioner was sent on deputation to the third Respondent Corporation under proceedings dated 29.07.1974. Upon perusal of the said proceedings, the contention of the learned counsel for the Petitioner, in this regard, appears to be well founded. In other words, there is a clear indication in the said proceedings that the Petitioner was sent on deputation to the third Respondent Corporation. Nonetheless, one needs to take into consideration the relevant facts that followed. From the communication dated 11.10.2002, it is clear that it is a memorandum relating to the elevation of the Petitioner to the selection grade post of Assistant after completion of 10 years of satisfactory service from the ordinary grade post of Assistant. The said communication also states that the Petitioner was regularized in the post of Assistant with effect from 21.09.1992. In addition, the communication

relating to the payment of earned leave and gratuity discloses conclusively that the Petitioner was an employee of the third Respondent. Moreover, it is evident that the third Respondent is a limited company incorporated under the Companies Act, 1956, from the proceedings dated 29.07.1974. As such, it is an independent legal entity. Thus, the documents on record clearly establish that the Petitioner was an employee of the third Respondent Corporation notwithstanding the fact that he was initially sent on deputation under the proceedings dated 29.07.1974.

9. The learned counsel for the Petitioner also relied upon the communication dated 27.11.2006 from the Director of the Fisheries Department wherein the Petitioner was asked whether he had consented to the transfer to the third Respondent Corporation and to his reply dated 06.12.2006 wherein he stated that he had not consented to such transfer. These communications were exchanged in the 2006, which is about 4 years after the Petitioner's retirement. Between 1981 and 2002, the documents on record disclose that the Petitioner was appointed as an Assistant and regularized in the said post and upgraded to the selection grade. During this time, he received the service and monetary benefits arising out of employment in the third Respondent Corporation. In these circumstances, the Petitioner cannot be permitted to approbate and reprobate by claiming pension benefits from the State Government as if he continued to be an employee of the Fisheries Department.

10. For all the above reasons, I find that the Petitioner has failed to establish his case for grant of relief.

11. In the result, the writ petition fails and the same is dismissed. No costs.

Sd/-
सत्यमेव जयते Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Animal Husbandry, Dairying and Fisheries
Department, Secretariat,
Chennai-600 009.

2. The Director of Fisheries,
Tenampet,
Chennai-600 006.

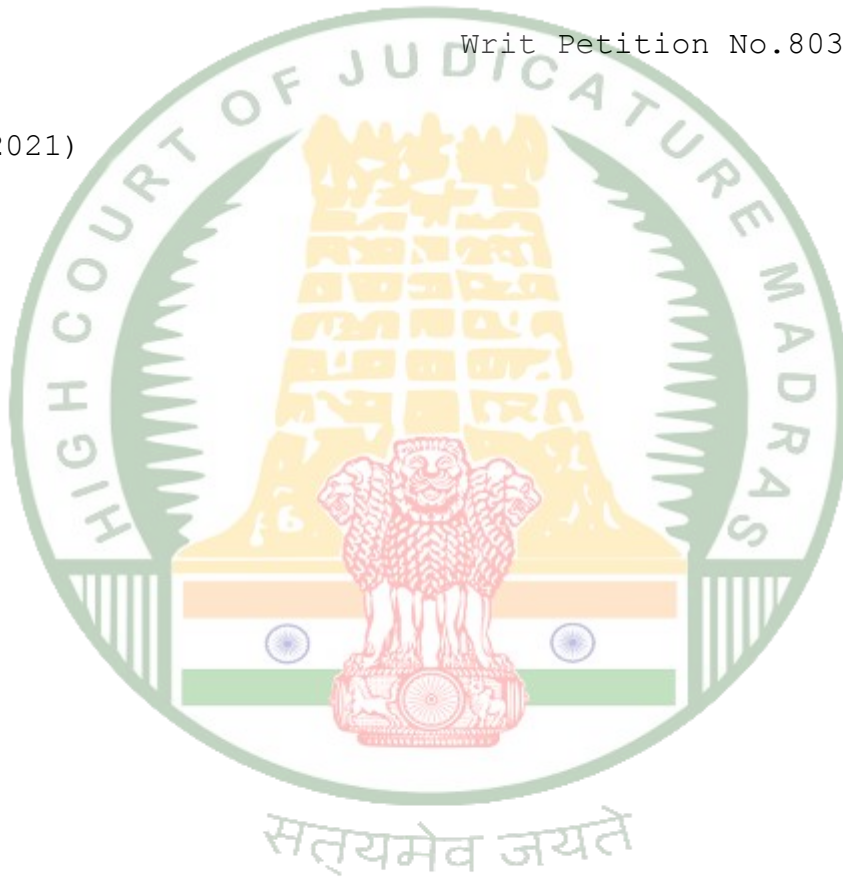
3. The Chairman and Managing Director,
Tamilnadu Fisheries Development Corporation,
129, Ramakrishna Mutt Road,
Raja Annamalaipuram,
Chennai-600 028.

+1cc to M/s.S.Namasivayam, Advocate SR.36974

+1cc to the Government Pleader SR.36966

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RR(CO)
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