

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.20615 of 2015 and
W.M.P.No.1 of 2015

M. Munidevan

..Petitioner

Vs

- 1.The Secretary to Government,
School Education Department,
Secretariat, St. George Fort,
Chennai - 600 009.
 - 2.The Director of School Education,
DPI Compound,
College Road, Chennai - 600 009.
 - 3.The District Educational Officer,
Tindivanam, Villupuram District.
 - 4.The Accountant General (A & E),
Anna Salai, Chennai - 600 018.
 - 5.The Head Master,
Government Higher Secondary School,
Marakkanam,
Villupuram District - 604 303.
- ..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 to 4 herein and to consider the petitioner's representation dated 04.06.2015 within a stipulated period.

For Petitioner : Mr.P. Ayyam Perumal

For RR 1 to 3 & 5 : Mr.P. Kavitha
Government Advocate

For R4 : No Appearance

ORDER

This writ petition has been filed by the petitioner seeking for a direction to the respondents 1 to 4 herein to

consider the petitioner's representation dated 04.06.2015 within a stipulated period.

2. According to the writ petitioner, he was appointed as Night Watchman in the third respondent's office by the Cuddalore District Employment Exchange. Thereafter, the third respondent issued an order of appointment as Night Time Watchmen contingencies on 29.03.1976 by directing him to join in the Government High School, Peravallur. On 01.04.1976, the petitioner joined in the said school. Thereafter, his service was regularized on 01.04.1982 and he got promotion. Thereafter, the petitioner had been working 35 years continuously without any break. The petitioner's last drawn wages totally comes Rs.12,720/- per month. He retired from service on 31.03.2011. Thereafter, he submitted pension proposal on 31.03.2011 and now he is getting pension of Rs.6,144/- per month. In the meantime, the fifth respondent issued proceedings by mistakenly noting that he is eligible for 29 years service period from receiving pension i.e., 01.04.1982 to 31.03.2011 and he received benefits only for 29 years service, pension etc., Hence, he approached the authorities and informed the above mistake committed by the fifth respondent. Thereafter, three years pension was paid from 01.04.1979 to 31.03.1982. The remaining three years i.e. 01.04.1976 to 31.03.1979 pension and other benefits had not been paid. Therefore, the petitioner submitted his representation on 04.06.2015 requesting the respondents to pay the pension from the year 1976 - 1979 for three years including the other benefits. Since no order had been passed by the respondents in this regard, he has come forward with the present writ petition for the relief stated supra.

3. A counter affidavit had been filed by the third respondent stating that the petitioner was originally appointed as full time Watchman under contingencies, by order dated 29.03.1976 of the third respondent and posted at the Government High School, Peravallur. He joined duty on 01.04.1976 and continued as such till 31.03.1982. Subsequently, he was brought into regular time scale of pay from 01.04.1982. Thereafter, he was transferred to the Government High School, Kottakuppam and joined there on 14.12.1984. Subsequently, he was transferred to the Government High School, Anumandai and posted as Office Assistant, and he joined duty on 13.04.1989. Then, he was promoted as Laboratory Attender and posted at the Government Higher Secondary School, Marakkanam and then as Junior Assistant and posted at the High School, Thaiyur. He joined duty in the respective posts on 05.10.1990 and 01.09.2004. After several transfers and promotions, he retired from service on attaining the age of superannuation on 31.03.2011. Before the retirement of the petitioner, necessary proposal for sanction of pensionary benefits, was sent to the fourth respondent/Accountant General herein, by the fifth respondent on 03.01.2011, taking into account the period of regular

service only rendered by him amounting to 29 years. The 4th respondent had admitted and sanctioned the pensionary benefits in his order No.P11/11103535/4/R1103535/408, dated 22.2.2011 as follows:

- (i) Pension (for 29 years of service) ...Rs.6144/-
- (ii) Retirement Gratuity (for 58 half years=29 years) ... Rs.2,67,235/-
- (iii) Family Pension Enhanced Rate upto 23.03.2018 ... Rs.6144/-
- (iv) Family Pension Normal Rate from 24.03.2018 ... Rs.3813/-
- (v) Commutation Value of Pension ...Rs.2,05,726/-

Subsequently, a proposal for the revision of pensionary benefits of the petitioner, taking into account 50% of the service rendered by him under contingencies, was sent to the fourth respondent by the fifth respondent on 24.03.2011. The fourth respondent had admitted the revised proposal (including 50% of the contingent service amounting to 32 years of service) and sanctioned the revised pensionary benefits as follows:-

- (i) Pension (full pension equal to $\frac{1}{2}$ pay last drawn) ... Rs.6355/-
- (ii) Retirement Gratuity (for 64 half years) ... Rs.3,07,072/-
- (iii) Family Pension Enhanced Rate upto 23.03.2018 ... Rs.6355/-
- (iv) Family Pension Normal Rate from 24.03.2018 ... Rs.3813/-
- (v) Commutation Value of Pension ...Rs.2,12,758/-

The above mentioned pensionary benefits were sanctioned in P11/211035/4/R1103535/22, dated 25.05.2011. The amount of arrears of the revised gratuity of Rs.39,837/- was drawn and paid immediately to the petitioner by the 5th respondent. It is submitted that in accordance with the provisions contained in Rule 12 (7) of the Tamil Nadu Pension Rules, 1978 and as per the orders contemplated in G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988 and G.O.No.955 (Finance) Department, dated 23.12.1991, half of the contingent service of three years along with the regular service of 29 years rendered by the petitioner, was taken into account for calculation of pensionary benefits and the same was duly sanctioned and paid to him. It is presumed that the petitioner has misconstrued that the period of service may be calculated for pension from 01.04.1976, the date of his initial appointment as full time contingent watchman. As per the provisions of the Tamil Nadu Pension Rules, 1978 and the orders contained in the Government Orders stated supra, the eligible period of half of the service rendered as full time contingent watchman, had been added with regular service for calculation of pension and other pensionary benefits such as retirement gratuity, etc. Maximum period of service for the sanction of full pension is 60 half years = 30 years. If a Government servant had put in more than 30 years including

half of the contingent service, maximum of full pension will be sanctioned on the basis of maximum number of 66 half years of service. In the instant case, he was sanctioned full pension and gratuity in accordance with Rules. There is no provision in the Rules for taking into account the full contingent service like regular service for calculation of pension and other pensionary benefits and hence, the claim of the petitioner was not considered with regard to the representation dated 04.06.2015, and the claim of the petitioner is not covered by the Rules and relevant Government orders. Such action of the respondents in not having taken the full contingent service of the petitioner, is perfectly in order as per the Tamil Nadu Pension Rules 1978, which does not affect the rights of the petitioner in any way. Such kind of action is legal, just and also not in violation of principles of natural justice.

4. Considering the aforesaid facts and circumstances of the case, as the respondents had reconsidered the request made by the petitioner and revised the proposal including 50% service rendered during the aforesaid period i.e., 01.04.1976 to 31.03.1982 and in view of the fact that no such provisions have been contemplated in the Tamil Nadu Pension Rules, 1978 and the said period under Rule 11 of the Tamil Nadu Pension Rules, 1978 and the revised pensionary benefits were paid to the petitioner on 25.02.2011. Now, the petitioner's grievance is that the respondents had to consider the entire period by taking into account the qualifying service for the said period which he had rendered under the contingencies service. From the above facts and taking into consideration the averments made in the counter affidavit, the contention of the petitioner cannot be accepted and is liable to be rejected, as the same is unsustainable in law and on facts.

5. The respondents had duly considered the case of the petitioner and had duly paid the necessary emoluments, which in the considered view of this Court does not warrant any interference by this Court.

6. For the reasons stated supra, the writ petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

msm

To

1. The Secretary to Government,
School Education Department,
Secretariat, St. George Fort,
Chennai - 600 009.

2. The Director of School Education,
DPI Compound,
College Road, Chennai - 600 009.

3. The District Educational Officer,
Tindivanam, Villupuram District.

4. The Accountant General (A & E),
Anna Salai, Chennai - 600 018.

5. The Head Master,
Government Higher Secondary School,
Marakkanam, Villupuram District - 604 303.

+1 C.C. to MR.P.AYYAMPERUMAL Advocate SR.NO. 17400/2020

+1 C.C. to The Government Pleader, High Court, Madras 104
SR.NO. 17788/2020

W.P.No.20615 of 2015

VGI (CO)
VS 19.12.2020

सत्यमेव जयते

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