

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.07.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.27733 OF 2013

Dr. T.Somu

.. Petitioner

- Vs -

The Agricultural Production Commissioner
(Secretary to Government)
Agricultural Department
Fort St. George
Chennai – 9.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the proceedings of the respondent in its Letter No.36410/AAI/2007-10 dated 23.1.2013 and quash the same and consequently direct the respondent to revise and refix pension by taking into account the service rendered by the petitioner from 4.9.1979 to 2.1.1983 and from 20.8.1986 to 5.4.1990 as duty.

For Petitioner : Mr. Vijay Shankar

For Respondents : Mr. Thangavel, Spl. GP

ORDER

It is the case of the petitioner that he had served in the Agricultural Department and superannuated after putting in 33 years of service. While he was so employed, the petitioner, through proper channel, applied for pursuing Ph.D. Course and on 3.9.1979, the petitioner was relieved from the Department on his being selected to do Ph.D. Course. The petitioner completed his course and submitted his doctoral thesis during January, 1983. On 28.9.1986, the petitioner was appointed as Agriculture Economist in the newly created post and the petitioner was the first person to hold the said post being appointed by the Government. The petitioner was brought back to the parent department on 30.3.1990 and he attained the age of superannuation on 31.8.1992. However, while calculating his retirement benefits, the period from 4.9.1979 to 2.1.1983, when he undertook Ph.D. Course after obtaining permission and the period from 20.08.1986 to 5.4.1990 the period during which he was functioning as Deputy Director of Agriculture (Agriculture Economist) were not taken into account. In spite of several representation, since no orders were passed, he filed W.P. No.6118/06 and this Court vide order dated 3.9.10 directed the respondent to pass orders on the representations. In compliance of the order, the respondent rejected the representation filed by the petitioner aggrieved by which the

present petition is filed.

2. Learned counsel appearing for the petitioner submitted that the petitioner, after obtaining the necessary permission, had undertaken the Ph.D. Course and, therefore, the period between 4.9.79 and 2.1.83 ought to have been regularised as period of duty for the purpose of calculating his service for the purpose of retirement benefits. In the same length, it is the submission of the learned counsel for the petitioner that even the post of Agriculture Economist, which is equivalent to the post of Assistant Director and the said post was a newly created post in which the petitioner was accommodated based on the Government Order and, therefore, the period during which the petitioner was functioning in the said post as Agriculture Economist, viz., 20.8.86 to 5.4.90 also should be taken into account for the purpose of calculating the service for the purpose of retirement benefits. Though the representation of the petitioner is clear on this aspect, which representation has been directed to be considered in accordance with law by this Court vide its earlier order, however, without proper application of mind, the representations of the petitioner were rejected by the impugned order, which deserves to be interfered with.

3. Learned Special Government Pleader appearing for the respondent submitted that the period between 1986 and 1990 for about 5 years, which is sought to be regularised by the petitioner, cannot be regularised for the reason that the petitioner has not completed 7 years of service as Assistant Director of Agriculture and the post of Agriculture Economist lapsed on 20.5.91. Learned Special Government Pleader further submitted that no permission has been granted to the petitioner to undergo the Ph.D. Course. However, for the purpose of regularisation of the said period between 1979 and 1983, this Court may direct the petitioner to submit a fresh representation and the respondent may be directed to consider the said representation in accordance with law within a time frame fixed by this Court.

4. This Court heard the learned counsel appearing on either side and perused the materials available on record.

5. The facts in issue are not in dispute. It is the case of the petitioner that he pursued his Ph.D. Course after submitting application for permission and that

no orders have been passed on the said application. However, it is the case of the respondents that no permission has been granted to the petitioner. In this regard, it is to be pointed out that the petitioner has not produced any proof to the effect that he has filed application for pursuing Ph.D course. However, it is also evident from the records that no action has been initiated against the petitioner till date and that he has been permitted to retire from service. The grievance of the petitioner is only to the limited extent that the period between 1979 to 1983, when he was pursuing his Ph.D. course be regularised for the purpose of computation of terminal and retirement benefits. In such a backdrop, this Court is of the considered view that the period between 4.9.1979 and 2.1.1983, when the petitioner was undergoing Ph.D. Course, the petitioner could be permitted to submit a representation, and the respondents be directed to consider the same in accordance with law and pass appropriate orders within a time frame.

6. Insofar as the contention of the petitioner with regard to regularisation of service for the period 20.8.1986 to 5.4.1990, a perusal of the impugned order reveals that the petitioner has not completed 7 years of service as Assistant Director of Agriculture and that the post of Agriculture Economist lapsed on

20.5.91 and that the Special Rules issued in G.O. (Ms) No.866, Agriculture Department dated 15.11.1989 mandates completion of 7 years service for the period in the said post to be considered for regularisation. The petitioner not having put in 7 years in the post of Agriculture Economist nor seven years as Assistant Director of Agriculture and the post of Agriculture Economist having lapsed on 20.5.91, the petitioner would not be entitled for regularisation of his service and for counting the said period for the purpose of pensionary and other retirement benefits. Therefore, the relief of regularisation sought for by the petitioner for the period 20.8.1986 to 5.4.1990 cannot be acceded to.

7. For the reasons aforesaid, this writ petition is disposed of by rejecting the relief sought for by the petitioner for regularisation of service for the period 20.8.1986 to 5.4.1990, but, however, insofar as the relief sought for by the petitioner for counting the service from 4.9.1979 to 2.1.1983, the petitioner is directed to submit a representation along with a copy of this order within a period of two weeks from the date of receipt of this order and on such representation being filed, the respondents are directed to consider the representation and pass orders thereon, on merits and in accordance with law

within a period of three months thereafter.

8. This writ petition is disposed of with the aforesaid observation and directions. There shall be no order as to costs.

28.07.2020

Index : Yes/No

Internet : Yes/No

GLN

To

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(Secretary to Government)
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M.DHANDAPANI, J.

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