

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 28967 of 2013

M.John

...Petitioner

.Vs.

1. The Director of Rural Development,  
Kuralagam, Chennai-108

2. The commissioner,  
Thiruvarur Panchayat Union,  
Thiruvarur.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, calling for the records on the file of the 2nd respondent in Na.Ka.No.2464/2013/A3 dated 18.07.2013 and quash the same and direct the respondents to count half of the daily wages service from 15.12.1973 to 15.03.1974, from 09.07.1974 to 31.07.1974, from 03.08.1977 to 30.01.1982 and from 01.03.1983 to 21.03.1987 and condone the break in service and exclude the brake in service as qualifying service for pension as per sub Rule (4) of Rule 11 of the Tamil Nadu pension rules and revise the pension and other retirement benefits accordingly and pay arrears.

For Petitioner : Mr.P.Manikandan

For Respondents : Mr.S.Thangavel , Spl.G.P. For R1  
: Mr.S.Suresh for R2

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ORDER

The writ petition has been filed by the petitioner, to call for the records on the file of the 2nd respondent in Na.Ka.No.2464/2013/A3 dated 18.07.2013 and quash the same and direct the respondents to count half of the daily wages service from 15.12.1973 to 15.03.1974, from 09.07.1974 to 31.07.1974, from 03.08.1977 to 30.01.1982 and from 01.03.1983 to 21.03.1987

and condone the break in service and exclude the brake in service as qualifying service for pension as per sub Rule (4) of Rule 11 of the Tamil Nadu pension rules and revise the pension and other retirement benefits accordingly and pay arrears.

2.The case of the petitioner is that he was initially appointed as Cholera mazdoor in year 1973 on daily wages basis for a period of 3 months. After the said period of three months he was not given any employment. Again he was appointed on 09.07.1974 as Mazdoor in the National Small Pox Eradication Programme for a period till 31.12.1974. Again after a break of few days once again he was appointed by the Commissioner of Tiruvarur Panchayat by order dated 17.06.1977 as Mazdoor of Public Health with effect from 03.08.1977, to assist the Health Inspector (General) in Primary Health Centre. It is further averred by the petitioner that after another break of few days again he was appointed as Cholera Mazdoor, from 1.2.1983 and the same was extended from time to time till 21.03.1987.

2.1.The grievance of the petitioner is that when the petitioner made a representation to regularize his services, the same was not considered by the authorities concerned and thereby, he was constrained to file a writ petition in W.P.No.961 of 1987 before this Court and this Court by order dated 2.2.1987, directed the petitioner to present another representation to the fifth respondent therein, namely, the Commissioner, Thiruvarur Panchayat Union to consider the request of the petitioner for regularization of his services, with a further direction to the fifth respondent to consider the same and to pass orders on merits.

2.2.it is seen that in the light of the above said direction, the petitioner presented his memorandum before the fifth respondent. However, his representation dated 13.02.1987, was not considered, hence the petitioner again sent another representation dated 28.02.1987, but unfortunately, the fifth respondent passed an order dated 5.3.1987, removing the petitioner from services.

2.3.Challenging the said order of termination, the petitioner filed W.P.No.5163 of 1989 which was transferred to the file of the Tamil Nadu Administrative Tribunal and the same was renumbered as T.A.No. 729 of 1993, and the petition was allowed on 23.03.1998 by the tribunal, with a direction to the fifth respondent therein, to post the petitioner in the next vacancy that arises in the category of servant or watchman or any other post equivalent or Cholera Mazdoor. On the basis of the said order passed by the Tribunal, the petitioner was appointed as Night Watchmen with effect from 4.3.1999, and within one year, the services of the petitioner was regularized

on 12.06.2000 and continued in service, as such till he attained the age of superannuation on 31.12.2012.

2.4.The grievance of the petitioner is that his past services rendered by him on daily wages were not taken into account for calculating qualifying service for pension, as per Sub Rule (4) of Rule 11 of the Pension Rules. The petitioner has given a representation on 15.03.2013 and 12.07.2013 to consider his case for pension as per Rule 11(4) of Pension Rules, but the same was rejected on 18.07.2013, stating that there is no provision in the Pension Rules. Aggrieved against the same, the petitioner has filed this writ petition with the above said prayer.

3. Learned counsel appearing for the petitioner submitted that though the petitioner is receiving minimum pension of Rs.3050/- per month, however his past services rendered as Mazdoor under the control of 2<sup>nd</sup> respondent was not taken into consideration for calculation of pensionary benefit. He further submitted that as per the Go.Ms.No.605 dated 26.8.1994, the past services have to be considered for regularization more so, when the past services is extended to regular service. Accordingly he prays for allowing the writ petition.

4. Per contra, learned Special Government Pleader stated that even as per the above Government Order, for the purpose of regularization, the break in service in the contingent post have been considered only for the purpose of regularization and not for the purpose of providing pension and the petitioner's services were regularized in the year 1999 only. Hence he is entitled for pension only from the date of regularization and not prior to that date. Accordingly, he prays for dismissal of the petition.

5.This Court heard the rival submissions made by either side learned counsel and also perused the materials available on records.

6. It is seen from the records that pursuant to the orders of the Tribunal, the petitioner was given posting at Night Watchman on 4.3.1999 and his services were regularized with effect from 4.3.1999 and thereafter the petitioner has submitted a letter dated 11.04.2001 requesting arrears and service benefits from 14.5.1981, as given to other person viz., R.Sundararaman, Armugam, Selvam and Perumal, but the Commissioner of Thiruvarur Panchayat Union, Thiruvarur in his memo dated 6.7.2001 clearly informed to the petitioner that his services in the post of night watchman would alone be regularized with effect from 12.6.2000 as per the orders of Tamilnadu Administrative Tribunal and, thereby, the petitioner

was permitted to retire from service on attaining the age of superannuation on 31.12.2012. After his retirement the petitioner submitted a representation dated 15.03.2013 and 12.7.2013 to consider his past services on daily wages for calculating qualifying service for pension as per G.O. Ms.No.4 of Rule 11 of the Tamil Nadu Pension Rules 1978, clearly states that :

"4. Half of the service rendered under the state government in non-provisionalised service consolidated Pay honorarium or daily wages basis or on after 1<sup>st</sup> January 1961 in respect of Government employees abroad in regular service before the first April 2003 shall be counted for their benefits along with regular service subject to the following conditions:

(i) Service rendered in non-provisionalised service, consolidated honorarium or daily wages basis shall be in a job involving whole employment;

(ii) Service rendered shall be on consolidated Pay, honorarium or daily wage basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provisionalised service, consolidated honorarium or daily wages basis shall be followed by absorption in regular before 1<sup>st</sup> April 2003 without a break"

7.A careful perusal of the above rule reveals that the rule is applicable to all employees who attended service under the State Government in non-provisionalised service, consolidated pay, honorarium or daily wages basis on or after 1<sup>st</sup> January, 1961 and absorbed in regular service before 1<sup>st</sup> April 2003, where there was a break in service before the absorption in regular service before 1<sup>st</sup> April, 2003. Further, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break shall not be counted for the purpose of pensionary benefits. Accordingly, as per the above rules, the temporary service rendered by the petitioner with break in service is not eligible to be counter for pensionary benefits. In such a backdrop, without there being any specific rule, this Court cannot issue a direction or mandamus to the respondents to consider the petitioner's break in service for the purpose of calculating regular pension.

8. For the reasons aforesaid, this writ petition is dismissed. However that shall be no order as to costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director of Rural Development,  
Kuralagam, Chennai-108

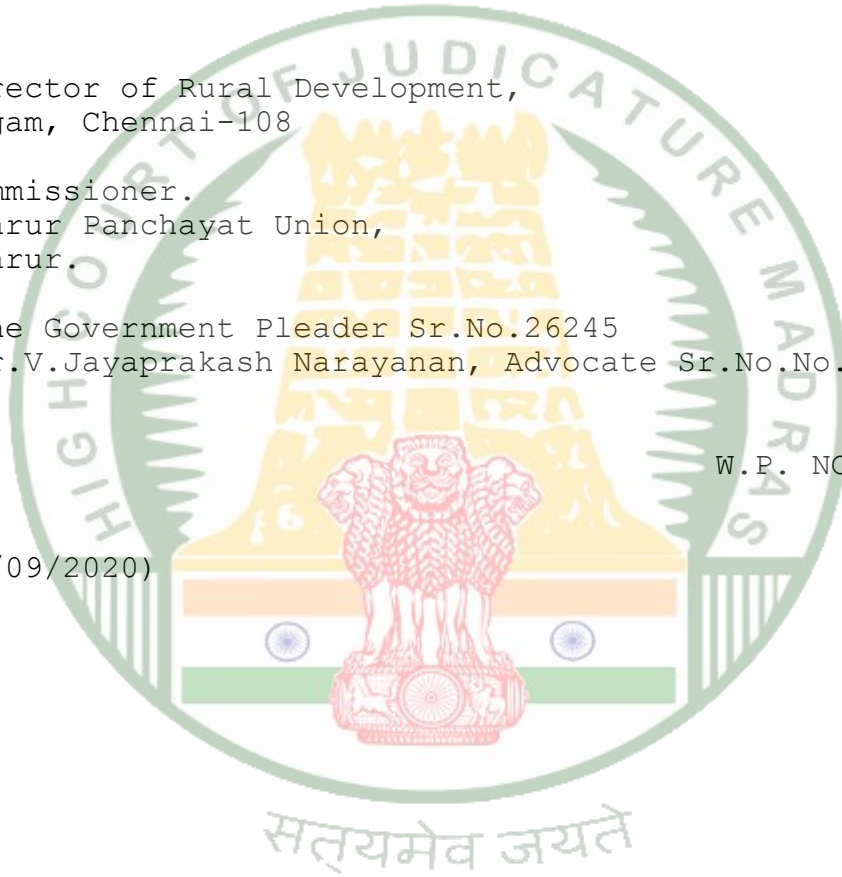
2. The Commissioner.  
Thiruvarur Panchayat Union,  
Thiruvarur.

+1cc to the Government Pleader Sr.No.26245

+1cc to Mr.V.Jayaprakash Narayanan, Advocate Sr.No.No.26030

W.P. NO.28967/2013

mr (co)  
rr ii (10/09/2020)



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