

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33731 of 2013

And

M.P.No.2 of 2014

S.Vedamanickam

... Petitioner

Vs.

1.The State of Tamil Nadu rep.
by The Secretary to the Government,
Municipal Administration & Water Supply
Department,
Fort St.George,
Chennai 09.

2.The Commissioner of
Municipal Administration,
Chepauk,
Chennai 05.

3.The Commissioner,
Arakonam Municipality,
Vellore District.

4.The Director of Local Fund Audit,
4th Floor,
Kuralagam,
Chennai 108.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 4th respondent in proceeding Mu.Mu.No.48242/Na.O.Sa3/2013 dated 20.12.2013 and quash the same and consequently direct the respondents to count the period of services of the petitioner from 13.11.2000 to 31.06.2012 as qualifying service for pensionary benefits and pension and accordingly sanction pension under the Old Pension Scheme.

(Prayer amended as per order dated 6.7.18 by VPNJ in MP.1/14 in WP.33731/13)

For Petitioner : Ms.Swathi Subramaniam
for M/s.R.Prem Narayan

For Respondents: Mr.A.N.Thambidurai for R1, R2 and R4
Special Government Pleader
Mr.M.Anbalagan for R3
for Dr.S.S.Swaminathan

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the fourth respondent in proceedings Mu.Mu.No.48242/Na.O.Sa3/2013 dated 20.12.2013 and to quash the same and to consequently direct the respondents to count the period of services of the petitioner from 13.11.2000 to 30.06.2012 as qualifying service for pensionary benefits and pension and accordingly to sanction pension under the Old Pension Scheme.

2.The case of the petitioner is that the petitioner was initially appointed as Electrician in Tamil Nadu Steels Limited on 12.09.1984 and voluntarily retired from service on 13.11.2000. Subsequently, the petitioner joined as Wireman in Arakonam Municipality on 13.11.2000 under the time scale of pay. The petitioner was appointed by the third respondent. Thereafter, the petitioner was brought under the consolidated pay with effect from 01.03.2006 and once again brought under time scale of pay.

3.It is the further case of the petitioner that challenging the impugned actions, he filed O.A.No.1478 of 2002 before the Tamil Nadu Administrative Tribunal and on abolition of the Tribunal, the said original application was transferred to the file of this Court and re-numbered as W.P.No.11609 of 2007 and the said writ petition was allowed by this Court on 14.10.2009. Thereafter, the entire service period of the petitioner was treated as regular service. The petitioner retired from service on 30.06.2012. However, the period from 13.11.2000 to 30.06.2012 was not treated as qualifying service for calculating pensionary benefits. Aggrieved by the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner would submit that the third respondent forwarded the petitioner's pension proposal to the fourth respondent, however, the fourth respondent returned the same stating that the petitioner is not entitled for pension under the Old Pension Scheme since the petitioner was brought under regular establishment only from

01.03.2006.

5.The learned counsel appearing for the petitioner would further submit that though the petitioner was brought under the consolidated pay with effect from 01.03.2006, challenging the same, the petitioner filed O.A.No.1478 of 2002 before the Tamil Nadu Administrative Tribunal, which, on abolition of the Tribunal, was transferred to the file of this Court and re-numbered as W.P.No.11609 of 2007 and the said writ petition was allowed by this Court on 14.10.2009 and the entire service period of the petitioner was ordered to be treated as regular service.

6.The learned counsel appearing for the petitioner would further submit that the petitioner was the regular employee of the third respondent from 13.11.2000 till the date of his retirement on 30.06.2012. Hence, as per Rule 11 of the Tamil Nadu Pension Rules, the petitioner has rendered minimum qualifying service for calculating pensionary benefits. Hence, the rejection order passed by the fourth respondent is non-est in law.

7.The learned counsel appearing for the third respondent would submit that the petitioner was a regular employee from 13.11.2000 till the date of his retirement on 30.06.2012 and hence the third respondent forwarded the petitioner's pensionary proposal to the fourth respondent for disbursal of pensionary benefits in favour of the petitioner.

8.The learned Special Government Pleader would submit that he is not able to get any instructions from the fourth respondent.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The un-disputed facts are that the petitioner was appointed by the third respondent and he joined as Wireman in the Arakonam Municipality on 13.11.2000 under the time scale of pay. Thereafter, the petitioner was brought under the consolidated pay with effect from 01.03.2006 and once again he was brought under time scale of pay. Challenging the impugned actions, the petitioner filed O.A.No.1478 of 2002 before the Tamil Nadu Administrative Tribunal, which, on abolition of the Tribunal, was transferred to the file of this Court and re-numbered as W.P.No.11609 of 2007 and the said writ petition was allowed by this Court on 14.10.2009 and the entire service period of the petitioner was ordered to be treated as regular service.

11.The petitioner retired from service on 30.06.2012. Thereafter, the third respondent forwarded the petitioner's pension proposal to the fourth respondent, however, the fourth respondent returned the same stating that the petitioner is not entitled for pension under the Old Pension Scheme since the petitioner was brought under regular establishment only from 01.03.2006, which, in the opinion of this Court is unsustainable, since the entire service period of the petitioner was directed to be treated as regular service by this Court in W.P.No.11609 of 2007 on 14.10.2009.

12.Hence, the petitioner was a regular employee of the third respondent from 13.11.2000 till the date of his retirement on 30.06.2012 and as per Rule 11 of the Tamil Nadu Pension Rules, the petitioner has rendered minimum qualifying service for pension under the Old Pension Scheme and for calculating pensionary benefits. Therefore, this Court is inclined to set aside the impugned order dated 20.12.2013 passed by the fourth respondent.

13.Hence, this writ petition is allowed. The impugned order passed by the fourth respondent in proceedings Mu.Mu.No.48242/Na.O.Sa3/2013 dated 20.12.2013 is hereby set aside. The respondents are directed to count the period of services of the petitioner from 13.11.2000 to 30.06.2012 as qualifying service for pensionary benefits and pension and to sanction pension under the Old Pension Scheme. The respondents are directed to disburse the pensionary benefits due to the petitioner, in favour of the petitioner, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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1.The The Secretary to the Government,
Municipal Administration & Water Supply
Department,
Fort St.George,
Chennai 09.

2.The Commissioner of
Municipal Administration,
Chepauk,
Chennai 05.

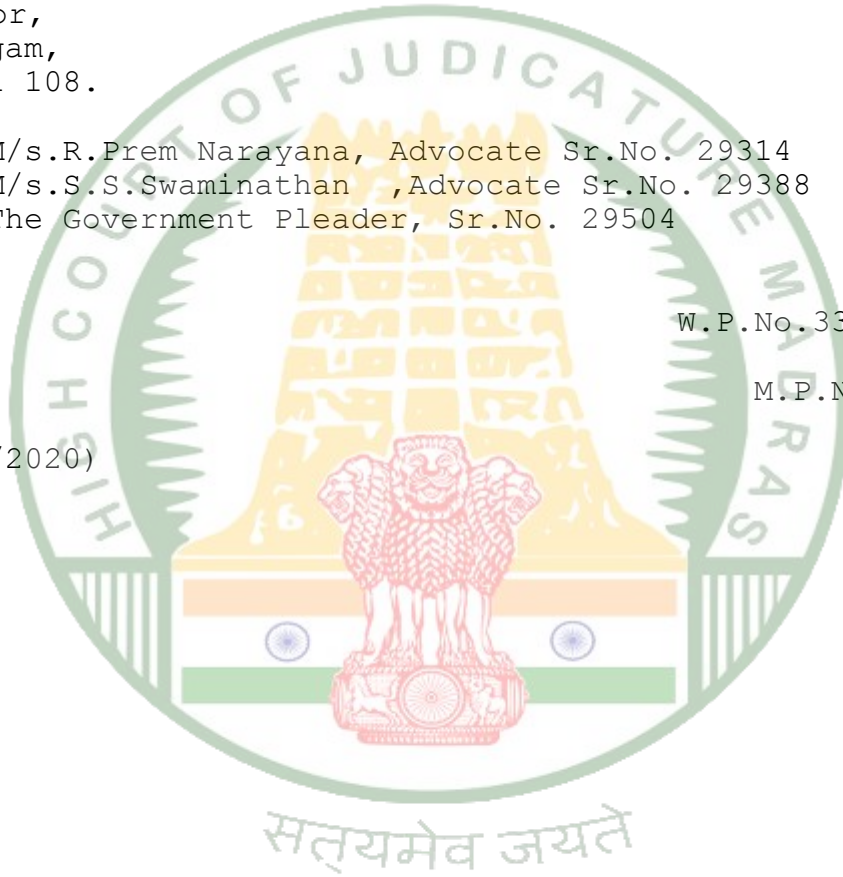
3.The Commissioner,
Arakonam Municipality,
Vellore District.

4.The Director of Local Fund Audit,
4th Floor,
Kuralagam,
Chennai 108.

+1 cc to M/s.R.Prem Narayana, Advocate Sr.No. 29314
+1 cc to M/s.S.S.Swaminathan ,Advocate Sr.No. 29388
+1 cc to The Government Pleader, Sr.No. 29504

W.P.No.33731 of 2013
And
M.P.No.2 of 2014

JP (CO)
RMP (16/10/2020)



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