

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4092 of 2015

K. Murali

..Petitioner

Vs

- 1.The Secretary to Government,
Forest & Environment Department,
Fort St. George, Chennai-9.
- 2.The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet, Chennai - 15.
- 3.The Director of Municipal Administration and
Water Supply Department,
Chepauk, Chennai - 5.
- 4.The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 9. ..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to count the entire service rendered by the petitioner in Municipal Administration and Water Supply Department as a Cleaner in the Nagapattinam Municipality for the purpose of pensionary benefits in the light of the representation made by the petitioner dated 25.10.2014 within a reasonable time.

For Petitioner : Mr.K.Venkataramani
Senior Counsel for
Mr.M.Muthappan

For RR 1 and 2 : Mr.S.V. Vijay Prasanth
Additional Government
Pleader

For RR 3 and 4 : Mr.S.Thangavel
Special Government Pleader

This writ petition has been filed by the petitioner seeking for a direction to the respondents to count the entire service rendered by the petitioner in Municipal Administration and Water Supply Department as a Cleaner in Nagapattinam Municipality for the purpose of pensionary benefits in the light of the representation made by the petitioner, dated 25.10.2014 within a reasonable time.

2. According to the petitioner, he was appointed as a Technical Assistant on NMR basis in the Nagapattinam Municipality for the period from 01.11.1989 to 19.04.2000 by Municipal Administration Department, Nagapattinam. Subsequently, he was appointed as a Cleaner on regular basis and thereafter, his service was regularized and brought into time scale of pay by the proceedings of the Municipal Commissioner, Nagapattinam in Na.Ka.No.3935/96/2-1/C1, dated 20.04.2000. Based on the employment exchange seniority, he was appointed as Assistant Draughtsman in the Forest Department by the order of the Principal Chief Conservator of Forest, Chennai in Na.Ka.No.S1/9169/2007, dated 22.03.2007. Thereafter, he reported for duty in the aforesaid post on 12.12.2007 without any break of service. His service in the cadre of Assistant Draughtsman was regularized by the proceedings of the Wild Life Warden on 19.07.2010. It is submitted that the service was rendered by the petitioner has to be taken into consideration for the purpose of pensionary benefits prior to the absorption in the Forest Department. It is submitted that even though the petitioner joined the service as Assistant Draughtsman in the Forest Department in 2007, the earlier service was rendered in Municipal Administration and Water Supply Department is on regular basis from 20.04.2000 to 12.12.2007 will have to be taken into consideration, which is prior to 01.04.2003, otherwise, the subsequent date on which he has joined the Forest Department is counted i.e. 13.12.2007 as a first appointment, and in view of the new pension system was introduced, whereby the employee joined will have no pensionary benefit except the contributory pension awarded by the Government. Thereafter, the petitioner sent a representation to the respondents on 25.10.2014. On receipt of the said representation, no order has been passed on the said representation so far. Hence, the petitioner has come forward with the present writ petition.

3. According to the learned Senior Counsel appearing for the petitioner submitted that the petitioner's service was regularised prior to 01.04.2003 in the Municipal Administration and Water Supply Department, Nagapattinam Municipality. Subsequently, the petitioner was appointed in the Forest Department in the year 2007. The learned Senior Counsel has also relied upon the Tamil Nadu Pension Rules, 1978, wherein it is stated that Rule No.23, Forfeiture of Service on resignation which is extracted hereunder:

(1) Resignation from a service or post entails

forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1) due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.

4. The learned counsel appearing for the Respondents submitted that if any such representation being made by the petitioner and the same shall be considered by the respondents in accordance with law.

5. In view of the aforesaid submission made by the parties concerned as well as the learned Senior Counsel has also relied upon the decision rendered by the Hon'ble Full Bench of this Court in the case of The Government of Tamil Nadu and Ors v. R.Kaliyamoorthy, reported in 2019-5-L.W. 673, dated 03.12.2019 and the relevant paragraph No.45 of the order, which is extracted hereunder.

"45. In the light of the above, we answer the reference as follows:-

(i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259, dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of

determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

6. In view of the above, the first respondent is directed to consider the petitioner's representation dated 25.10.2014 and pass appropriate orders on merits and in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Secretary to Government,
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+1 cc to Mr.M.Muthappan,advocate,sr.17565

+1 cc to Special Govt.Pleader,sr.18070

+1 cc to Govt Pleaders,sr.18252

gj(co)
krd 25/6

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