

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.9151 of 2020

R.Parthasarathy, aged 63 years,
S/o.Late.Radhakrishnan,
No.517, Ayanavaram,
Tamil Nadu Housing Board,
Chennai 600 077.

...Petitioner

Vs

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai 600 003.

2.The Zonal Office,
Zone - IV,
Greater Chennai Corporation,
Tondiarpet, Chennai 600 081.

3.The Health Officer,
Greater Chennai Corporation,
Rippon Building,
Chennai 600 003.

4.The Secretary to Government,
Municipal Administration
Water Supply Department
Govt. of Tamil Nadu,
Fort St. George, Chennai 600 009.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to consider the petitioner's representation dated 10.03.2020 and to grant pensionary benefits and terminal benefits by taking account of 50% temporary service of the petitioner served in respondent Corporation from 19.01.1987 to 18.07.1996 as per G.O.Ms.No.408 dated 25.08.2009 Finance (Pension) department and service benefits along with suitable interest to the petitioner.

For Petitioner : Ms.N.Beulah John Selvaraj

For Respondents : Ms.Manimekalai (for R1 to R3)
Standing counsel

O R D E R

The case of the petitioner is that he was appointed as a substitute Malaria Thozhilaliy on 19.01.1987 on temporary basis. His service was regularised on 18.07.1996. According to the petitioner he was employed as SMEP Malaria Thozhilaliy in Division 47, Zone IV under the Greater Chennai Corporation. On attaining the age of superannuation, he is said to have retired from service on 31.12.2017.

2.According to the petitioner, temporary service rendered by him from 19.01.1987 to 18.07.1996 was not taken into consideration for the purpose of pensionary benefits as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. In this regard, the petitioner appears to have approached the authorities on a number of occasions and written representation was also submitted by him recently on 10.03.2020.

3.As the representation did not evoke any response from the respondents, the petitioner is before this Court seeking issuance of Writ of Mandamus.

4.Ms.N.Beulah John Selvaraj, learned counsel appearing on behalf of the petitioner would submit that similar claims for counting 50% of temporary service of employees were considered earlier by this Court and those claims were allowed and this Court has repeatedly given direction to the authorities to count 50% of the temporary service for the purpose of retirement benefits. According to the learned counsel for the petitioner, the issue of counting 50% of temporary service is no more res integra, since the same has been settled in favour of the claimants consistently. The learned counsel would also draw reference to G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 which provided for counting of 50% service of the temporary employment of the employees who were subsequently regularised in service before 01.04.2003. In this case, the petitioner's service was admittedly regularised before the cut off date. Therefore, the petitioner is entitled to the relief, prayed for.

5.Notice was ordered in the Writ Petition. In response to the notice, Ms.Manimekalai, learned counsel has entered appearance. A counter affidavit has also been filed on behalf of the competent authority.

6. In para 6 of the counter affidavit it is clearly averred that pensionary benefits of the temporary service rendered by the petitioner would be settled in terms of the G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009. The averments as contended in para 6 are extracted hereunder.

"I humbly submit that the petitioner joined duty as temporary service on 17.02.1987. Further, it is submitted that the pension benefits for the period of 17.02.1987 to 18.07.1996 will be settled to the petitioner as per G.O.Ms.408 Finance (Pension) Department dated 25.08.2009. The pension benefits for the petitioner to the above said period will be circulated accordingly and the same will be settled to the petitioner. It is further submitted that the claim of the petitioner for suitable interest cannot be entertained as per G.O.Ms.408 Finance (Pension) Department dated 25.08.2009."

7. The learned counsel appearing for respondents 1 to 3 would submit that the Corporation is not however inclined to grant any interest for the pensionary benefits to be payable to the petitioner in terms of the above said G.O. According to the learned counsel, the petitioner had, in fact, not raised this issue at all earlier during the period of his employment. In any event, grant of interest without making any demand by the petitioner, would only result in reopening of several claims in the past which were otherwise settled for good.

8. Considering the above narrative, this Court in acceptance of the submission made on behalf of the respondents, allows the Writ Petition and respondents are directed to grant pensionary benefits to the petitioner after counting of 50% of the service rendered by him from 17.02.1987 to 18.07.1996 in terms of G.O.Ms.No.408, Finance (Pension) Department, Dated 25.08.2009. The order to this effect shall be passed within a period of four weeks from the date of receipt of a copy of this order.

9. It is made clear that the petitioner though claims interest, in the circumstance of the case, is not entitled to the same. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
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+1cc to M/s.N.Beulah John Selvaraj, Advocate, S.R.No.35071

PVS (CO)
RV(03/12/2020)

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