

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2020

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3731 of 2017
and
W.M.P.No.20823 of 2017

S.Perumal ... Petitioner
Vs.

- 1.The Secretary to Government,
Planning & Development Department,
Fort St. George, Chennai 600 009
2. The Deputy Commissioner.
Commercial Tax Department,
Karur (North), Karur 639 001.
3. The Superintending Engineer,
Tamilnadu Generation and Distribution
Corporation Ltd., (TNEB), Generation Circle,
Kundah Bridge (Post),
The Nilgiris 643 219. Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus or any other appropriate Writ, Order or direction in the nature of Writ, calling for the records relating to the proceedings of the 2nd respondent vide Letter Na.Ye.4181/2015/A6 dated 14.07.2015 and quash it and consequently direct the respondents to regularise the service of the petitioner from the date of his initial appointment to date of his retirement (01.08.1972 to 31.08.2004), revise the pension accordingly and pay arrears of pension within a time frame.

For Petitioner : Mr.N.Sundaramurthy

For Respondent : Mr.J.Ramesh, Addl. Gov. Pleader,
(for R1)

: Mr.M.Hariharan,
Addl.Gov. Pleader (T)
(for R2)

: Mr. P.R.Dhilipkumar, TNEB (for R3)

O R D E R

This petition has been filed to quash the proceedings of the 2nd respondent vide Letter Na.Ye.4181/2015/A6 dated 14.07.2015, consequently direct the respondents to regularise the service of the petitioner from the date of his initial appointment to date of his retirement (01.08.1972 to 31.08.2004) and revise the pension accordingly and pay arrears of pension within a time frame.

2. The case of the writ petitioner in nutshell is as follows:

The petitioner is a repatriate from Srilanka and based on the Srimao Bandaranayaki Agreement entered into between India and Sri Lanka during the year 1964, he registered his name in the Employment Exchange, Tricity as a repatriate. He was appointed as Junior Assistant in the Commercial Tax Office, Karur (North) on 01.10.1972 and he was ousted for want of vacancy on 22.10.1972. Subsequently, he was appointed as Typist in the Tamil Nadu Electricity Board, Nilgiris on 01.10.1981 and he retired on superannuation on 31.08.2004.

2.1. Recently, the petitioner came to know that as per G.O.Ms.No.1223, Public (Services-A) Department dated 25.06.1965, the Government directed that the repatriates from Burma, who are employed in Government Service should be allowed to continue in long standing vacancies and in case, any repatriates were to be discharged for want of vacancy, the appointing authority should explore the possibility of giving some other job in the same department and the appointing authority, who are subordinate to the Head of Department should consult the Head of Department in this regard. The above said order was extended to the repatriates from Sri Lanka also, as per the G.O.Ms.No.2149, Public (Service-A) Department dated 11.08.1973.

2.2. The Honourable High Court has also ordered in W.A.No.989 of 2009 dated 21.01.2011 that the service of repatriate should be regularised from the date of initial appointment to date of retirement and accordingly, the period of unemployment for 14 years of the appellant in that case was ordered to be taken into account for pension benefits alone.

2.3. Therefore, the petitioner gave representation to the 2nd respondent. But, vide reply dated 14.07.2015, the 2nd respondent stated that as per the Tamil Nadu Pension Rules, unemployment period cannot be taken into account for calculating pension. The petitioner has also given representation 3rd respondent on 11.08.2015 and finally on 28.09.2015 to regularise his service from the date of his initial appointment. However, he got no fruitful remedy. Hence this writ petition.

3. The 2nd respondent filed written statement, wherein, it is stated as follows.

i) The petitioner was appointed as Junior Assistant in the 2nd respondent office on 22.07.1972 on leave vacancy and he joined duty on 01.08.1972 and then he was ousted from service on 20.10.1972 for want of vacancy. The G.O.Ms.No.2149 (Public Service-A) Department was issued only on 11.08.1973, but the petitioner was appointed as Junior Assistant temporarily on 01.08.1972 and was ousted on 20.10.1972. Therefore, the petitioner was not supported by the above said government order.

ii) The judgment delivered by the High Court in W.A.No.989 of 2009 dated 21.01.2011 is based on the G.O.Ms.No.1223 dated 25.06.1965 and G.O.Ms.No.2149 dated 11.08.1973. But the issue involved in the present petitioner's case is before the issuance of G.O.2149 dated 11.08.1973, since the petitioner was appointed temporarily on 01.08.1972 and ousted on 20.08.1972. More over, the petitioner had also not approached the Department to get relief as per G.O.Ms.No.2149 dated 11.08.1973, at the time of termination of his service. He made representation only on 11.08.2015 to various department of Government of Tamilnadu enclosing the copies of government order. The petitioner has not chosen to come and approach the government for his re-employment in the same department in time and as an afterthought that too after 45 years, the petitioner cannot take any shelter on the priviligues given and extended by subsequent order of the High Court. Hence, the writ petition is liable to be dismissed.

4. Heard the learned counsel appearing for the petitioner as well as the counsel for the respondents. I have perused the materials on record.

5. It is an admitted fact that the petitioner was appointed as Junior Assistant on temporary basis and he joined duty in the 2nd respondent office on 01.08.1972 and he was ousted from service on 20.10.1972. Subsequently, he was appointed as Typist in the 3rd respondent office on 01.10.1981 and retired from service on 31.08.2004. Now the petitioner seeks regularisation of his service for the unemployment period from 21.10.1972 to 30.09.1981 i.e. nearly 9 years for pension benefits, based on the G.O.Ms.No.2149 dated 11.08.1973 and consequently, seeks pensionary benefits from the date of his initial appointment, i.e. on 01.08.1972 till 31.08.2004.

6. At this juncture, it is pertinent to extract the relevant portion of the G.O.Ms.No.2149 dated 11.08.1973, which reads thus.

The Government ordered in the G.O. cited first above that the repatriates from Burma, who are employed in Government Service should be allowed

to continue in long standing vacancies. The Government directed that they should not be just discharged from service. In case, however, any repatriates were to be discharged for want of vacancy, the appointing authority should explore the possibility of giving some other job in the same department. The appointing authorities, who are subordinate to the Head of Departments should consult the Head of Departments, if a repatriate was likely to be discharged for want of vacancy in a particular unit. This was enable the repatriate to be absorbed in another unit under the control of the Head of the Department. In the reference cited second above, the Director of Rehabilitation, Madras, has requested the Government to extend the orders issued in the Government order cited as first above to the repatriates from Sri Lanka also.

The Government have considered the question carefully. The Government direct that the procedure adopted in the case of repatriates from Burma as envisaged in the Government order cited as first above should be followed by all appointing authorities in the case of repatriates from Sri Lanka also, for employment in Government Department."

7. The above said government order was issued on 11.08.1973. But the petitioner was appointed temporarily on 01.08.1972 and ousted on 20.08.1972, i.e. before the date of issuance of the above government order. Therefore, the 2nd respondent contended that the petitioner cannot take any shelter on the base of this government order.

8. The another contention of the petitioner is that this court in its decision in W.A.No.989 of 2009, dated 21.01.2011 has regularised the service for the unemployment period of 14 years of the appellant therein and therefore, the petitioner is also entitled for regularisation of his service from the date of his initial appointment.

9. On perusal of the decision rendered by this court in W.A.No.989 of 2009, it reveals that the appellant therein was appointed on 18.02.1974 and terminated from service on 11.01.1984, on the ground of want of vacancy, to accommodate the candidates selected by the Tamil Nadu Public Service Commission. Thereafter, as per the government order in G.O.D.No.134, Planning and Development Department dated 19.08.1998, the appellant therein was appointed as Assistant Statistical Investigator, by relaxing the Rule 4(2) of the Tamil Nadu Ministerial Service, in respect of age. In the appeal stated above, the appellant had made several representation seeking reappointment. Moreover, his date of

termination was on 11.01.1984, i.e. after the date of issuance of the Government Order in G.O. Ms.No.2149 dated 11.08.1973. Therefore, his unemployment period of 14 years was regularised from the date of his initial appointment, based on the above government order.

10. Here in this case, the petitioner was ousted from service on 20.10.1972. Therefore, the G.O.No.2149 dated 11.08.1973 was not existed on the date of ousting the petitioner from service. Further, it is seen from the counter affidavit filed by the 2nd respondent that the petitioner had not made any representation for his re-employment in the same Department at the time of ousting. Therefore, the petitioner all along kept quiet for nearly 45 years and now he came with a claim for regularizing his service from the date of his initial appointment is liable to be rejected, as there is no merits in the writ petition.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

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Planning & Development Department,
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