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WP(MD).No.14092 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.07.2020

DELIVERED ON : 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).Nos.14092 of 2011

A. Anguthayee : Petitioner

Vs.

1.The Senior Accounts Officer,
Office of the Principal Accountant General (A&E),
Chennai -18.

2.The District Social Welfare Officer,
Karur,
Karur District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in PEN27/4/12704361/11-12, dated 11.07.2011 and quash the same and directing the first respondent to grant regular pension to the petitioner in accordance with Tamil Nadu Pension Rules.

For petitioner : Mr. N. Tamilmani,

For R1 : Mr. P. Gunasekaran,
Standing Counsel

For R2 : Mr.J. Gunaseelan Muthaiah
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent in PEN27/4/12704361/11-12, dated 11.07.2011 and to direct the first respondent to grant regular pension to the petitioner in accordance with Tamil Nadu Pension Rules.



2. The service matrix of the petitioner that necessary for determination is under:

(i) The petitioner was appointed as a Child Welfare Organiser on 07.02.1980 at Padainilai Child Welfare Home, Jeyankondam Panchayat Union on contingent basis. But, the fact remains she was appointed as Rural Welfare Officer (Women) by proceeding in Na.Ka.No.17205/No.3-2/2007, dated 15.05.2007 by the Commissioner and Director of Social Welfare, Chennai and posted at Aravakurichi Panchayat Union, Karur District. The petitioner did not say about her work condition after 01.01.1996 in her affidavit. The pension proposal of the petitioner was rejected by the first respondent stating that the petitioner's service was regularized after 01.04.2003 and hence, she is not eligible for regular pension. But, on the other hand, she is come under the contributory pensionable service. Hence, the Writ Petition.

(ii) The cause for petitioner has referred the G.O.Ms.No.408 Finance (Pension) Department, dated 25.08.2009 and also G.O.Ms.NO.6, Social Welfare and Nutrition Food Scheme Department, dated 06.01.2010, which were passed to count the service rendered on daily wage, consolidated pay, Honorarium pay and non-provincialised service and contended that on combined reading of those Government Orders it is very clear that a person who had worked on consolidated pay, honorarium, daily wages and non-provincialised service and subsequently, brought under regular time scale of pay on or before 01.04.2003, 50% of service rendered in any of the aforesaid category shall be count with pensionable service for the purpose of pension alone.

3. Per contra, the learned Additional Government Pleader based on counter would contend that the petitioner's service was regularised on 15.05.2007 with effect from 16.05.2007. Therefore, the above said Government Order is not applicable to the petitioner's case and the benefit given under the government cannot be extended to the petitioner. Further, recently the Government has issued an order vide G.O.Ms.No.34, dated 14.03.2013 Social Welfare and Nutrition Department clarifying the earlier Government order in G.O.Ms.NO.6, stating that 50% of service rendered as daily wage, consolidated pay, honorarium or non provincialised service into account along with pensionable service provided such employees service should be regularised on or before 01.04.2003.

4. The service matrix of the petitioner are as follows:

The service records of the petitioner shows that the petitioner had worked from 01.03.1980 to 15.05.2007 on contingent basis and on 16.05.2007 onwards she worked on regular basis and retired on 31.10.2010.



5. In this connection the learned Additional Government Pleader appearing for the first respondent produced the Full Bench Judgment of this Court, dated 03.12.2019 made in W.A.Nos.70 of 2018 etc., batch, wherein at paragraph No.45 it has been held as follows:

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i) Those who are freshly appointed on order 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-provincilalised 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 factual position, this Court has directed the writ petitioner to file a copy of the service register and the same has been filed by the petitioner as additional typed set of papers.

7. On perusal of the xerox copy of the service records filed in the typed set of papers, it is seen that the petitioner has resigned from the existing post and subsequently, she was appointed to the post of Rural Welfare Officer on 16.05.2007 and in view of the service records, I find that the case of the petitioner falls under Clause (v) in paragraph No.45 of the above said Full Bench



8. In view of the ratio laid down by the above said Full Bench Judgment of this Court, this petitioner is not entitled to the relief and accordingly, this writ petition is dismissed. No costs.

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Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Senior Accounts Officer,
Office of the Principal Accountant General (A&E),
Chennai -18.

2.The District Social Welfare Officer,
Karur,
Karur District.

+1 CC to M/s.Special Govt.Pleader (SR-14116[F] dated 14/08/2020)

+1 CC to M/s.N. TAMILMANI, Advocate (SR-14049[F] dated 14/08/2020)

ORDER MADE IN
WP(MD).Nos.14092 of 2011
13.08.2020

trp
SDS (21.08.2020) 4P-5C