



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.1069 of 2013 and

WMP(MD).No. 11055 of 2019

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K. Panthan

.. Petitioner

vs.

1.The Secretary cum Commissioner,
Tamil Nadu Government Agricultural Department,
Chepauk, Chennai.

2.Sugarcane Research Station,
Sirugamani,
rep. by its Professor cum head,
Sirugamani, Trichy District.

..Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus Certiorarified Mandamus calling for the records pertaining to its order by the 1st respondent in No.A.Oo.Pa.1/99141/11, dated 26.04.2011 and to quash the same and consequently, direct the respondents to sanction the benefits and to pay the arrears of increment period from 07.06.1965 to 31.08.1999 and to sanction the pension by taking into consideration of the petitioner's appointment dated 07.06.1965 by calculating the period of service rendered in the Agricultural Department as pe G.O.Ms.162, Finance (Pay cell) Department dated 13.04.1998.

For Petitioner : Mr.M. S.C. Herold Singh

For R1 : Mr. J. Gunaseelan Muthaiah
Additional Government Pleader

For R2 : Mr. A. Thirumurthy

ORDER

This Writ Petition has been filed by the petitioner seeking to quash the impugned order passed by the 1st respondent in No.A.Oo.Pa.1/99141/11, dated 26.04.2011 and to direct the respondents to sanction the benefits and to pay the arrears of increment from 07.06.1965 to 31.08.1999 and to sanction pension by taking into consideration of the petitioner's appointment dated 07.06.1965 by calculating the period of service rendered in the Agricultural Department as per G.O.Ms.162, Finance (Pay cell) Department dated 13.04.1998.

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2. The case of the petitioner is that he was appointed as Field Assistant under Sub Assistant, Soil Conservation Scheme Investigation, Theni on 07.06.1965 through employment exchange by the proceeding of the Assistant Agricultural Engineer, Soil Conservation Scheme Investigation, Aruppukottai in C.No.1826 of 1965 dated 30.04.1965 fixing the salary as Rs.50/-. Thereafter, increment was sanctioned for the year 1966 and salary was paid as Rs.51/-. Later, the petitioner was appointed at Agricultural College, Madurai as a Bus Cleaner from 02.03.1970 F.N. Since the break in service was not at the instances of the petitioner, the same has been condoned by the authorities concerned by G.O.Ms.No.1064 Finance (FRI) Department, dated 24.08.1973. He was posted in various places and on 05.05.1986 he was posted as Driver and elevated as a selection grade driver on 05.05.1996 F.N and subsequently, he was retired from service on 31.08.1999 on attaining the age of superannuation. However, by G.O.Ms.No.23, Agricultural Department, dated 04.02.2009 his break in services were condoned and treated as qualifying service. Since the Government condoned the break in service, the respondent has to pay the increment as per the Government Rules but the same was not paid to him. Taking into consideration of the repeated representation sent by the petitioner, his service period from 07.06.1965 to 01.03.1970 has been included for the purpose of pension by the Government. But, the increment was not granted by the Government as per the date of appointment that is from 07.06.1965. Further, the Government has not granted the increment from 02.03.1970 to 31.08.1999 in each promotion level and yearly increment. But, at the same time, the employee who was similarly placed like the petitioner by name K.Md. Farook, was extended the benefits and he is drawing more than the petitioner. As per G.O.Ms.No.162, dated 13.04.1998, the Government recommended on revision of scale of pay and allowances, wherein it is categorically stated to grant selection grade, special grade pays. In the similar circumstances, several writ petitions were filed and the same were allowed directing the Government to implement the said G.O.Ms.No.162. However, the same has not been extended to the petitioner. In such circumstances, the petitioner has filed the present writ petition before this Court.

3. The respondents filed a counter affidavit and submitted that based on the representation of the petitioner dated 12.06.2000, to count his temporary service period from 07.06.1965 to 01.03.1970 (with breaks in service for 7 times) rendered under the State Department of Agriculture duly condoning the 7 breaks in service only for pensionary benefits so as to get full pension, the first respondent considered the request of the petitioner and issued G.O.Ms.No. 23 Agriculture (AU) Department dated 04.02.2009 to treat the said period as qualifying service for pensionary



benefits only and hence, the petitioner is not entitled to get any other benefits. It is further stated that as the increment sought for by the petitioner for the service rendered in 1965 i.e., after a lapse of 45 years, the writ petition is not maintainable.

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4. It is further stated in the counter affidavit that the petitioner was transferred to the Tamil Nadu Agricultural University, when the university has been established under the Tamil Nadu Agricultural University Act, 1971 (Act No.8 of 1971). The petitioner had worked as a bus cleaner and thereafter, he was granted Selection Grade scale of pay in the post of driver till his date of retirement i.e., on 31.08.1999. Since he worked at Sugarcane Research Station, Tamil Nadu Agricultural University, Sirugamani, Trichy District, the Secretary - Cum - Commissioner of Agriculture in consultation with the Registrar, Tamil Nadu Agricultural University has informed that the Accountant General, Chennai has accorded service verification report only for the last continuous period of service put forth by the individual as Bus Cleaner i.e., from 01.03.1970 to 31.05.1971 in the Agricultural College, Madurai and thus, his services for the period from 02.03.1970 to 31.08.1999 (date of retirement) only have been taken as qualifying service by the University for pensionary benefits i.e., 29 years and 6 months. The employees with qualifying service of 30 years and above are eligible for full pension and the DCRG calculation is based on every completed six months period of qualifying service subject to a maximum of 66 monthly periods i.e., 33 years. The petitioner has requested to calculate his temporary service including the break in service i.e., from 07.06.1965 to 01.03.1970 as qualifying service for the purpose of pensionary benefits duly condoning the break in service during the above period. The Government has considered the said request stating that the break period need not be taken into account for the purpose of sanction of increment under ruling in FR 26(a) - Note - 1. The individual, in this case, has served as Driver, Field Assistant and cleaner for the period from 07.06.1965 to 01.03.1970. Therefore, the question of regulating the temporary period does not arise in this case and also stated that as per Rule 24 of TNPR 1978, the services rendered in temporary or permanent, Department or in substantive Office shall count for pension even if interruption exists. Further, in Rule 25, pre-interruption between two spells of civil service rendered by a Government Servant shall be treated as automatically condoned and the pre-interruption service treated as qualifying service. Further, in Sub Rule 3 in Rule 25, the period of interruption referred to in sub-rule (1) shall not count as qualifying service. As per rule 25 the individual should satisfy the following conditions:



(i) The break period is beyond the control of Government Servant.

(ii) Total service (excluding one or more interruption) should be 5 years; and

(iii) Two or more than two break periods including two or more interruption any should not be more than a year

5. Accordingly, the break in service period i.e., from 07.06.1965 to 01.03.1970 has been condoned and the Commissioner of Agriculture has also passed an order stating that the said period has to be calculated for pensionary benefits. Accordingly, the petitioner's benefits have been calculated by the Tamil Nadu Agricultural University by proceeding No.P(2)/1171/2010, dated 21.05.2010. As per the same, the revised concurrence received from the Deputy Director of Local Fund Audit, Tamil Nadu Agricultural University, Coimbatore in the reference (6) cited, in order to include the service rendered by the individual in the Government Department for the period from 07.06.1965 to 01.03.1970 excluding break in service and ELWA of 4 years 7 months and 25 days along with the university service of 29 years and 6 months (totally 34 years 1 month and 25 days) and sanction was accorded for granting the following revised pensionary benefits to the petitioner, with effect from 01.09.1999, who retired on 31.08.1999:

S.N o	Details	Now Sanctioned	Already sanctioned	Difference
1	Pension * Monetary benefit from 01.01.2007 arrears may be paid as per G.O.Ms.No.235	Rs.2255/- from 01.09.1999 to 31.12.2005 Rs.5097/- from 01.01.2006*	Rs.2218/- From 01.09.99 to 31.12.2005 Rs.5014 from 01.01.2006	Rs.37/- Rs.83/-
2	DCRG	Rs.1,01,954/- -	Rs.91140/-	Rs.10814/-
3.	Family Pension in the event of his death	Rs.2255/- upto 08.08.2006 and thereafter Rs.1,852/-		
4.	Commutation of pension	Rs.902/-	Rs.887/-	Rs.15/-
5.	Commutation value	Rs.113219/-	Rs.111337/-	Rs.1882/-
6.	Reduced pension	Rs.1353/- w.e.f. 01.09.1999 Rs.4195/- w.e.f 01.01.2006		

6. It is also a case of the respondents that the pension and pensionary benefits arrears upto 31.12.2005 will be paid in
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one lumpsum and the arrears for the period from 01.01.2006 to 31.05.2009 monetary benefits w.e.f. 01.01.2007 will be paid as per G.O.Ms.No. Fin. (PC) Department, dated 01.06.2009 to the petitioner. They have also submitted that the amount will be paid as per the financial condition and also 1/3rd portion of pensionary benefits will be given 2009-10, 2010-11 and 2011-12. The above pensionary benefits are payable in the Comptroller's office, Tamil Nadu Agricultural University, from pension account. The above revised pensionary benefits are sanctioned subject to the condition that if the above benefits now sanctioned be afterwards found to be incorrect / excess made good, the amount to which the pensioner is entitled to under the rules, he shall be called upon to refund excess amount. Thus, they prayed to dismiss the Writ Petition.

7. Heard the learned counsel appearing for the petitioner as well as the respondents and perused the records available.

8. It is seen that the petitioner has sent a representation dated 12.06.2000 to count his service from 07.06.1965 to 01.03.1970 with break in service for seven times for sanction of full pension. However, as per G.O.Ms.No.23 dated 04.02.2009 passed by the first respondent, the period of break in service i.e., from 07.06.1965 to 01.03.1970 has been condoned and treated as qualifying service only for the purpose of pensionary benefits. Further, the first respondent has not sanctioned the increment stating that if the Government servant is relieved from a particular post for want of vacancy and again appointed in the same post, the break need not be taken in to account for the purpose of sanction of increment under ruling in FR 26(a) - Note -1. Further, the petitioner had served as Driver, Field Assistant and Cleaner for the period from 07.06.1965 to 01.03.1970 and therefore, the question of regulating the temporary period does not arise in this case. It is also made clear that after examining his proposals the break in service has been condoned and the said period has been taken into consideration for the purpose of pensionary benefits subject to the condition that the Commisisoner of Agriculture is requested to contribute pensionary liabilities for the period from 07.06.1965 to 01.03.1970 for the services rendered by the individual in the Department of Agriculture to the Tamil Nadu Agricultural University since the individual had taken up appointment in Tamil Nadu Agricultural University and retired on 31.08.1999 and the said order was issued with the concurrence of the Finance Department vide its U.O.No.77500/Pension/2008, dated 27.01.2009. The said order has been passed by condoning the break in service for calculating the pensionary benefits. Regarding the increment and others, the same has been rejected, as it has been counted only for pension



9. A perusal of record shows that the petitioner has made a request only to count his temporary service period from 07.06.1965 to 01.03.1970 by condoning the period of break in service to get full pensionary benefits. Accordingly, the Government has also considered and issued G.O.Ms.No.23, Agriculture Department by calculating the breaks in service for 7 times rendered by the State Government, for calculation of pensionary of benefits and the same has been paid to him. Further, the petitioner has filed the present Writ Petition seeking for increment after a lapse of 14 years of his retirement and 45 years after the break in service being counted. Hence, this Court is inclined to dismiss the Writ petition on merits and on the ground of laches also in filing the Writ Petition.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

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Sub Assistant Registrar (CS)

trp
To

1.The Secretary cum Commissioner,
Tamil Nadu Government Agricultural Department,
Chepauk, Chennai.

2.Sugarcane Research Station,
Sirugamani,
rep. by its Professor cum head,
Sirugamani, Trichy District.

+1 CC to MR.A.THIRUMURTHY, Advocate (SR-11146[F] dated 11/03/2020)

+1 CC to MR.S.C.HEROLD SINGH, Advocate (SR-11119[F] dated 11/03/2020)

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11.03.2020

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