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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

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THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 1391 of 2012

S.Thangarajan

..Petitioner

Vs

1.The Deputy Secretary,
Tamil Nadu Public Service Commission,
Anna Salai, Chennai.

2.The Commissioner of Labour,
Teynampet, Chennai

..Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of Certiorarified mandamus, calling for the records relating to the Letter No.4197/P.D-A1/2011 dated 09.08.2011 passed by the first respondent herein and the consequential order passed by the second respondent in Memorandum No. G3/20138/2010 dated 30.09.2011 and quash the same and further direct the respondents to count the service rendered by the petitioner in the 1st respondent's department along with regular service for the purpose of pension and other benefits.

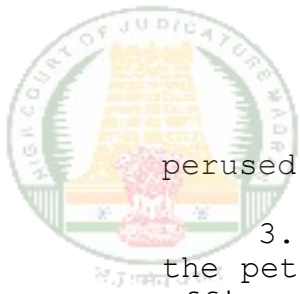
For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.Karthik Rajan - R1
Mr.T.Arun Kumar, GA - R2

O R D E R

The prayer in the writ petition is to quash the order passed by the second respondent in Memorandum No. G3/20138/2010 dated 20.09.2011 and direct the respondents to count the service rendered by the petitioner in the 1st respondent's department along with regular service for the purpose of pension and other benefits.

2. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the 1st respondent and the learned Government Advocate appearing for the 2nd respondent and



perused the documents available on record.

3. The learned counsel for the petitioner submitted that the petitioner was initially appointed on temporary basis in the office of the Director of Technical Education on 16.06.1989 and subsequently in various departments. The petitioner was appointed as Junior Assistant on 08.06.2009 by the 2nd respondent and declared probation by proceedings dated 12.07.2011. Hence, the petitioner has made representation on 16.04.2010 to the 2nd respondent requesting to count his previous service rendered in various departments on temporary basis only for the purpose of pension and other benefits. The 2nd respondent without considering the same, has rejected the request made by the petitioner. Hence the present writ petition.

4. On the other hand, the learned Government Advocate appearing for the 2nd respondent, citing the judgment of the Hon'ble Full Bench of this Court in W.A.Nos. 158 of 2016 etc., batch dated 03.12.2019, has submitted that the issue on hand has already been considered by the Hon'ble Full Bench elaborately and passed orders, therefore the rejection of the petitioner's request by the 2nd respondent is valid and the writ petition is liable to be dismissed.

The relevant portion is extracted below;

"41. Thus, a government servant who may have been appointed before the cut-off date of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularisation is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10 (a) (i) alone will be entitled to get pension.

46.....(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."

5. A perusal of records reveal that the petitioner was originally appointed on temporary basis in the year 1989 and his probation was declared only on 08.06.2009. In view of Clause (v) Paragraph 46 of the aforesaid judgment of the Hon'ble Full Bench of this Court, the writ petitioner's service cannot be counted for the purpose of determining the qualifying service for pension and therefore he is not entitled for the same.

6. In the result, the Writ Petition stands dismissed. No Costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Secretary,
Tamil Nadu Public Service Commission,
Anna Salai, Chennai.

2.The Commissioner of Labour,
Teynampet,
Chennai.

+1cc to Mr.K.M.Ramesh, Advocate SR. No.58546
+1cc to the Government Pleader SR. No.58496

W.P.No. 1391 of 2012

PMK (CO)
PR (02/12/2021)