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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.25763 of 2014

and

MP.Nos.1 & 2 of 2014

N.Suseela

... Petitioner

Vs

1. The Secretary to Government,
Rural Development and Panchayat Raj,
Government of Tamilnadu,
Fort St.George, Chennai.

2. The Director,
Rural Development Department,
Saidapet, Chennai - 115.

3. The Collector,
Coimbatore District,
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the 3rd respondent in its Na.Ka.No.1176/2014/K2 dated 02.09.2014 and quash the same and consequently direct the respondents to count the petitioner's past service in the town panchayat administration for pension and other terminal benefits and also permit the petitioner to contribute to the General Provident Fund (GPF) account.

For Petitioner : Mr.K.Vijayashankar

For R1 to R3 : Mr.J.Ramesh, AGP

ORDER

The prayer made in this writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent in Na.Ka.No.1176/2014/K2 dated 02.09.2014 and quash the same and consequently direct the respondents to count the petitioner's past service in the town panchayat administration for pension and other terminal benefits



and also permit her to contribute to the General Provident Fund (GPF) account.

2. It is the case of the petitioner that originally, she joined service on NMR basis in the Kuruchi Town Panchayat in 1994. Subsequently, vide order dated 02.06.2001, her services were regularised and she was posted as Office Assistant and by order dated 24.08.2001, she was appointed on regular basis as Public Health Supervisor and she continued to work as such till July 2010. Later, she was appointed as Junior Draughting Officer in the Rural Development Department on 30.07.2010. Thereafter, she made repeated representations to the respondents to count her past services rendered in the Town Panchayat Department and also permit her to contribute to the GPF account. Without considering her claim in a proper perspective, the third respondent by order dated 02.09.2014, directed the petitioner to compulsorily contribute to the CPS account. Feeling aggrieved, she has come up with this writ petition for the aforesaid relief.

3. Upon notice, the respondents filed a detailed counter affidavit, wherein it is inter alia stated that the petitioner was appointed as Sanitary Inspector and joined on 31.08.2001 under consolidated pay of Rs.2,000/- and she was brought under time scale of pay on 31.08.2002 and regular increment was also sanctioned, however, she had not enrolled in General Provident Fund and hence, she is not eligible for GPF and other benefits. It is further stated therein that as per G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003, those who are all appointed after 01.04.2003 should be brought under CPS; since the petitioner was appointed as Junior Draughting Officer, as per the proceedings of the Collector, dated 30.07.2010, as a fresh entrant and it could not be treated as appointment by transfer and therefore, her service should be brought under CPS. It is also stated therein that the service register of the petitioner reveals that her service was not regularised and probation has not been declared, but she had been recruited in Rural Development Department as Junior Draughting Officer through Employment Exchange and hence, the claim of the petitioner need not be considered.

4. The learned counsel for the petitioner submitted that initially, the petitioner was appointed as NMR in the Town Panchayat Department in 1994 and her services were later, regularised in 2001 and therefore, her appointment as Junior Draughting Officer in 2010 is continuous in service and she is not a new entrant to be considered under CPS. In support of his contention, he placed reliance on the judgment of a Division Bench of this Court in Union of India v. K.Punniyakoti and others [2014 (2) CTC 777]. Therefore, the learned counsel sought to quash the order impugned herein and issue appropriate



direction to the respondents to count her past services rendered in the town panchayat department and permit her to contribute to the GPF account.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents reiterated the averments made in the counter affidavit and submitted that her appointment as Junior Draughting Officer in the year 2010, is a new entrant to the Government service and hence, she is covered by the Contributory Pension Scheme alone and her past services as NMR in the Town Panchayat department could not be counted, for the purpose of GPF account. Thus, according to him, the order impugned herein does not require any interference by this Court.

6. Heard both sides and perused the materials placed before this Court.

7. Concededly, the petitioner previously worked in the Town Panchayat Department as NMR and was subsequently, appointed as Sanitary Inspector in the time scale of Rs.2650-65-3300-70-4000 with effect from 31.08.2002 and promoted as Record Clerk on 25.08.2008 in the time scale of Rs.2610-60-3150-65-3540. Thereafter, she was appointed as Junior Draughting Officer through Employment Exchange with effect from 30.07.2010 and she joined duty on the said day itself.

8. The petitioner claimed that she has been continuously working from her initial appointment, to till date and there is break in service and hence, she requested the respondents to count her past services as NMR in the Town Panchayat Department and permit her to contribute to the GPF Account. The said request was rejected by the third respondent, stating that her service rendered as NMR could not be considered as it is not a regular appointment; and her appointment as Junior Draughting Officer is a fresh recruitment, which could not be treated as an appointment by transfer and hence, her service should be brought under CPS.

9. Now, this Court is inclined to appreciate the rival submissions, in the light of the decision in Union of India (cited supra), referred to on the side of the petitioner, wherein, the Division Bench of this Court has categorically held as follows:

"The word "new entrant" has got a definite meaning, "a person, who enters recently". A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004, cannot be termed



as "new entrant" into service. The new Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004".

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Thus, it is clear from the above decision that the persons appointed as contingent staff either on temporary basis or on daily wage basis, who served not as a part timer and received salary every month, are entitled to count 50% of their service for pension on their regularisation / absorption in regular establishment and they cannot be treated as 'fresh appointees' for the purpose of applying new Pension Scheme, which came into force from 1.1.2004.

10. Therefore, having regard to the admitted fact that the petitioner has been continuously working without any break in service as regular employee from 2001 onwards and in the light of the principles laid down in the aforesaid decision, as per which, the petitioner is not a 'new entrant' to the Government service, this Court is inclined to set aside the order dated 02.09.2014 passed by the third respondent and accordingly, the same is set aside. The matter is remanded back to the respondent authorities for fresh consideration on merits and also in the light of the Division Bench decision (cited supra). The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. This writ petition stands disposed of, in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Secretary to Government,
Rural Development and Panchayat Raj,
Government of Tamilnadu,
Fort St. George, Chennai.



2. The Director,
Rural Development Department,
Saidapet, Chennai - 115.

3. The Collector,
Coimbatore District,
Coimbatore.

+1cc to Mr.V.Vijayashankar, Advocate, S.R.No.14058
+1cc to the Government Pleader, S.R.No.14430

W.P.No.25763 of 2014

PCH(CO)
HS(20/07/2021)