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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22265 of 2021

(Through Video Conferencing)

E.Vasudevan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Animal Husbandry, Dairying and
Fisheries Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner for Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.

3.The Accountant General (A & E),
Chennai - 600 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus directing the respondents to grant minimum pension to the petitioner by treating his period of regular service in the Dairy Development Department from 02.07.1971 to 31.01.1981 (9 years 9 months 13 days) together with service rendered in contingency establishment from 30.12.1970 to 01.07.1971 along with arrears and interest on delayed payment of pension and all other consequential benefits.

For Petitioner : Mr.K.S.Viswanathan

For Respondents :

For R1 & R2 : Mr.L.S.M.Hasan Fizal
Government Advocate

For R3 : Mr.V.Vijay Shankar

ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the first and second respondents and Mr.V.Vijay Shankar, learned counsel takes notice on behalf of the third respondent.



2. This Writ Petition is disposed at the time of admission itself considering the fact that the petitioner's representations dated 09.09.2019 and 16.07.2021 have not evoked any positive response from the respondents.

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3. It is the case of the petitioner that the petitioner retired as early as 30.06.2005 and the services rendered by the petitioner in the Dairy Development Department from 02.07.1971 to 31.01.1981 i.e., for a period of ***9 years 6 months 29 days** has not been considered by the respondents for granting pension to the petitioner.

4. Appearing on behalf of the respondents, the learned Government Advocate for the first and second respondents submits that the writ petition is liable to be dismissed on account of latches inasmuch as the petitioner retired as early as 30.06.2005.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the first and second respondents and the learned counsel for the third respondent.

6. The objection of the respondents regarding latches cannot be countenanced as it is the duty of the respondents to consider the length of services of a Government employee while granting pension under the Pension Rules. ***The issue is to be examined in the light of the decision of Division Bench of this Court in W.A.No.2688 of 2018 vide order dated 30.11.2018, wherein the position of law was summarized as follows:-**

23. In **Secretary to Government vs. S.Kamachi** on 09.04.2015 in W.A. No.523 of 2015, a Hon'ble Division Bench of this court held as follows:

Rule 43(3) of the Tamil Nadu Pension Rules, 1978 clearly prescribes that if fraction of service is within three months, it should be treated as half year of service. In that event, after treating the half of the service spent as daily wages, the total service of the writ petitioner is computed to be more than 9 years and 6 months. Applying the provision of Rule 43(3) of the Tamil Nadu Pension Rules, the remaining period has to be treated as half year service. We do not find any infirmity or illegality in the order rendered by the learned Single Judge, **warranting interference.**



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8. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

24. In the case on hand, the first respondent herein/writ petitioner has completed 9 years, 9 months and 3 days. Thus in terms of Rule 43(3) of the Tamil Nadu Pension Rules, 1978, the first respondent herein/writ petitioner is eligible for computing the period as one full year and accordingly, it has to be construed that the petitioner had completed 10 years service, for the purpose of grant of pension under Tamil Nadu Pension Rules, 1978.

25. In view of the above decisions and discussions, we do not find any manifest error or illegality in the order of the writ court, directing the appellants herein to grant pension to the first respondent herein/writ petitioner by treating the period of qualifying services as 10 years under the provisions of the Tamil Nadu Pension Rules, as stated supra and accordingly calculate the pensionary benefits and disburse the same, with arrears as applicable as per rules.

26. There is no merit in the writ appeal and the same is dismissed at the threshold. Appellants herein are directed to comply with the order of the writ court, within a period of six weeks from the date of receipt of a copy of this judgment. However, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed."

7. In the light of the above, this Writ Petition is disposed by directing the first and second respondents to pass appropriate orders in accordance with law and on merits within a period of six weeks from the date of receipt of a copy of this order considering the fact that the petitioner is aged about 74 years. While passing such orders, the second respondent shall take note of the decision of the ***Division Bench** of this Court referred to supra and send an appropriate



recommendation to the first respondent for grant of ***minimum** pension to the petitioner if the petitioner is otherwise entitled for such ***pension** as has been sought for in this writ petition.

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8. In case the petitioner is indeed entitled for such ***minimum** pension, the third respondent shall implement the order of the first and second respondents thereafter without further delay. The entire exercise shall be carried out by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

*corrected as per order of
this Court dated 29.11.2021
and made in WP.No.22265/21

-s/d-

Assistant Registrar(CS V)

dt 17.12.21

//True Copy//

Sub Assistant Registrar

arb

To

1.The Secretary,
Government of Tamil Nadu,
Animal Husbandry, Dairying and
Fisheries Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner for Milk
Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.

3. The Accountant General (A & E),
Chennai - 600 018.

W.P.No.22265 of 2021

NMI (CO)

A.SK(20.12.2021) .