IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.17043 of 2017

(Through Video Conferencing)

S.Krishnappa Naidu ... Petitioner

Vs.

1. The Government of Tamil Nadu,
   Rep. by the Principal Secretary,
   Health and Family Welfare Department,
   Fort St. George, Chennai – 1.

2. The Joint Secretary to Government,
   Finance (Pension) Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai – 1.

3. The Deputy Director of Medical,
   Rural Health Services and Family Welfare,
   District Family Welfare Beaureau,
   Dharmapuri.

4. The Principal Accountant General (A & E),
   No.361, Anna Salai,
   Chennai – 600 018.

5. The Medical Officer,
   GPHC, Palayampudur. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to add petitioner's military service with his civil service under the fifth respondent for pension and DCRG and for other pensionary benefits with grant of arrears of pension and other benefits with interest.

For Petitioner : M/s.S.Meenakshi
For R1 to R3 & R5 : Mr.L.S.M.Hasan Fizal, G.A.
For R4 : Mr.S.Balaji

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, to direct the respondents to add petitioner's military service with his civil service under the fifth respondent for pension and DCRG, and for other pensionary benefits, and for grant of arrears of pension and other benefits with interest.

2. The petitioner served as a military employee from 20.06.1963 to 17.06.1969. Thereafter, the petitioner started working with the fifth respondent as a Driver from 05.02.1972 after a gap of three years. The petitioner has retired from service on 31.05.1998 on attaining the age of superannuation.

3. It is case of the petitioner that 5 years 11 months and 27 days of service of the petitioner between 20.06.1963 to 17.06.1969 in the military has not been considered for granting pension and other benefits to the petitioner. The learned counsel for the petitioner submits that the respondents have failed to consider the representation of the petitioner and in the counter affidavit, they have merely stated that the petitioner failed to exercise the option under Rule 16(1)(a) & (b) of the Tamil Nadu Pension Rules, 1978.

4. The learned counsel for the petitioner submits that an identical issue has been considered by the Division Bench of this Court in the case of The Chennai Port Trust Vs. V.Adimulam, in W.A.No.958 of 2011 vide its Judgment dated 18.03.2013 in favour of the pensioner. In this connection, the learned counsel for the petitioner refers to the following paragraphs:-

> 7. The learned counsel appearing on behalf of the appellant had stated, inter alia, that the military service rendered by the petitioner for the period, from 3.9.1960 to 14.3.1967, was non-pensionable service, as clarified by the military authorities concerned. Therefore, the direction issued by the learned single Judge, directing the respondent Port Trust to take into consideration the military service rendered by the petitioner, cannot be held to be valid in the eye of law. The learned single Judge ought to have seen that as per the clarification issued by the Central Government, with regard to Rule 19 (1) of the Central Civil Services (Pension) Rules, 1972, the respondent should have exercised his option, within one year from the date of re-employment, to get the benefit. However, he had failed to do so. While so, it

> was not open to the learned single Judge to direct the respondent Port Trust to pay the civil pension to the petitioner taking into account the military service rendered by him for the period, from 3.9.1960 to 14.3.1967.
>
> 8. From the records available, it is noted that the military authority concerned, by a letter, dated 10.4.2002, had requested the respondent Port Trust to count the military service of the petitioner, rendered for a period of 6 years, 6 six months and 11 days, towards the payment of civil pension. It is also noted from the communication issued by the Ministry of Shipping, Ports Wing, Government of India, dated 7.8.2002, that the Ministry of Defence had clarified that the discharge at own request, in the case of Personnel Below Officer Rank, is not treated as equal to resignation in civil service and hence, the military service in the case of Personnel Below Officer Rank can be counted for civil pension even in the case of discharge at own request. In such circumstances, this Court is not convinced with the contentions raised on behalf of the appellant that the respondent in the present writ appeal is not entitled for the payment of civil pension, taking into account the military service rendered by him for the period, from 3.9.1960 to 14.3.1967.

5. Appearing on behalf of the first to third and fifth respondents, the learned Government Advocate submits that admittedly, the petitioner was not entitled to pension from the Defence Ministry, Central Government as the petitioner had not rendered service for being eligible for the pension from the Central Government. It is therefore submitted that the petitioner should have exercised the option under Rule 16(1)(a) & (b) of the Tamil Nadu Pension Rules, 1978.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate appearing for the first to third and fifth respondents.

7. Rule 16(1)(a) & (b) of the Tamil Nadu Pension Rules, 1978 reads as under:-

> 16. Counting of military service rendered before civil employment. - (1) A Government servant who is re-employed in a civil service or post before

attaining the age of superannuation and who, before such re-employment, had rendered military service after attaining the age of eighteen years, may opt either -

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military service shall not count as qualifying service; or

(b) to cease to draw his pension and refund -

i. the pension already drawn, and
ii. the value received for the commutation of a part of military pension, and
iii. the amount of death-cum-retirement gratuity including service gratuity, if any along with interest at the rate of six per cent from the date of rejoining by such Government Servant in the Civil Service or post], and count previous military service as qualifying service, in which case the service as allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere, which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government:

Provided that -

i. the pension drawn prior to the date or re-employment shall not be required to be refunded;
ii. the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded by him;
iii. the element of pension equivalent of gratuity including the element of commuted pay of pension if any, which was taken into account for fixation of pay shall be set off against the amount of death-cum-retirement gratuity and the commuted value of pension and the

balance, if any, shall be refunded by him.

Explanation - In this clause, the expression 'which was taken into account' means the amount of pension including pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment and the expression "which was not taken into account shall be construed accordingly."

8. The issue arising out of the identical situation has been considered by the Division Bench of this Court which has been referred to supra and therefore, the case of the petitioner requires to be considered and disposed with the aforesaid reasoning of the Division Bench of this Court. That apart, Rule 16(1)(a) & (b) of the Tamil Nadu Pension Rules, 1978 requires an option to continue to draw the military pension or retain gratuity received on discharge from the military service, in which case, his/her former military service shall not be counted as qualifying service.

9. Admittedly, in this case, the petitioner had not drawn any pension from the Defence Ministry for the services rendered by him between 20.06.1963 to 17.06.1969. The petitioner had received only a meager amount of Rs.193.90 as additional gratuity and Rs.365.05 as service gratuity.

10. Considering the same, the question of opting the petitioner under Rule 16(1)(a) & (b) of the Tamil Nadu Pension Rules, 1978 did not arise and apply. The respondents ought to have included the service of the petitioner in the military for the computation of his pension.

11. This Writ Petition is therefore allowed by directing the respondent to carry out the necessary corrections in the pension book and records of the petitioner including the service of the petitioner rendered in the military and pay the arrears of pension, DCRG and other pensionary benefits together with interest at 4% per annum from date of his superannuation till the date of payment, within a period of twelve weeks from the date of receipt of a copy of this order. No cost.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jen

To

1. The Principal Secretary,
   Health and Family Welfare Department,
   The Government of Tamil Nadu,
   Fort St. George,
   Chennai - 1.

2. The Joint Secretary to Government,
   Finance (Pension) Department,
   Government of Tamil Nadu,
   Fort St. George,
   Chennai - 1.

3. The Deputy Director of Medical,
   Rural Health Services and Family Welfare,
   District Family Welfare Beaureau,
   Dharmapuri.

4. The Principal Accountant General (A & E),
   No.361, Anna Salai,
   Chennai - 600 018.

5. The Medical Officer,
   GPHC, Palayampudur.

+1CC to M/s.S.Meenakshi, Advocate, Sr.No.48721
+1CC to Mr.Government Pleader, Sr.No.49073

W.P.No.17043 of 2017

NRJK (CO)
K.RK. (27.10.2021)