



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.19051 of 2020

S.Raju

... Petitioner

vs.

1.The Secretary to the Government of Tamilnadu,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai-600 009.

2.The Director of Town Panchayat,
Kuralagam,
Chennai-600 028.

3.The District Collector,
Dindigul District,
Dindigul.

4.The Assistant Director of Town Panchayat,
Collectorate Campus,
Dindigul District.

5.The Executive Officer,
Palayam Town Panchayat,
Dindigul District.

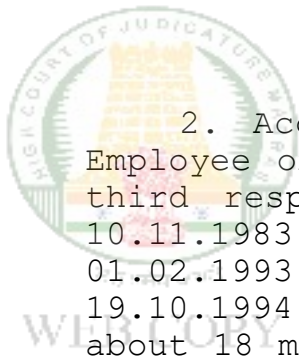
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned order passed by the second respondent in Na.Ka.No.12314/2019-E2, dated 19.11.2020 quash the same as illegal and consequently direct the respondents to regularize the service of the petitioner with effect from 03.06.2009 and give Notional Promotion to the post of Assistant/Executive Officer with all Monetary benefits to the petitioner.

For Petitioner : Mr.N.Marimuthu
For R1 to R4 : Mr.P.Subbaraj
Government Advocate

ORDER

This Writ Petition is filed to quash the Impugned order passed by the second respondent, dated 19.11.2020 made in Na.Ka.No.12314/2019-E2 and consequently, direct the respondents to regularize the service of the petitioner with effect from 03.06.2009 and to give Notional Promotion to the post of Assistant/Executive Officer with all Monetary benefits to the petitioner.



2. According to the petitioner, he was working as Temporary Employee on daily wages in the sanctioned post by the order of the third respondent on various dates and worked for a period from 10.11.1983 to 30.11.1983 for about 21 days and for a period from 01.02.1993 to 31.01.1994 for about 12 months and for a period from 19.10.1994 to 31.03.1995 for about 5 months 13 days, totally for about 18 months. Subsequently, he was appointed as Junior Assistant by the proceedings dated 14.07.2003 and the petitioner joined duty on 16.07.2003. The third respondent vide his proceedings dated 27.05.2009 brought the petitioner under the time scale of pay in the post of Junior Assistant in the fourth respondent Town Panchayat and the petitioner's service was regularised in the post of Junior Assistant by the order of the fourth respondent, dated 28.11.2009. The petitioner attained the age of superannuation on 31.01.2013. According to the petitioner, he is a physically disabled person with 50% disability. In the Government Order in G.O.(Ms)No.184, Personnel and Administrative Reforms Department, dated 15.10.1999, it is stated that for the persons appointed after the age of 53 years exempted from the special training for regularization of the service. Further, as per G.O.(Ms)No.151, Social Welfare Department, dated 16.10.2008, if physically challenged persons appointed in any Government post, their service will be regularized after completion of two years. But, the second respondent has not considered the said Government Orders in G.O.(Ms)No.184, Personnel and Administrative Reforms Department, dated 15.10.1999 and G.O.(Ms)No.151, Social Welfare Department, dated 16.10.2008 and rejected the claim of the petitioner. The petitioner gave representation for taking into account his earlier service. The second respondent, by the impugned order, dated 19.11.2020 rejected the same and hence, the petitioner has come out with the present writ petition challenging the impugned order.

3. The learned counsel appearing for the petitioner submitted that the petitioner is entitled for pensionary benefits as per the old pension scheme as he was working from 1983. This Court and the Hon'ble Apex Court passed various orders granting pension from the date of retirement of the employees from service and the petitioner is also entitled for the same and prayed for allowing the writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire materials available on record.

5. From the averments in the affidavit and the impugned order, it is seen that the petitioner was working on daily wage basis from 10.11.1983 to 30.11.1983, for 21 days. After 1983, for 10 years, he was not engaged even as daily wage worker. Subsequently, he was engaged in the year 1993, and he worked from 01.02.1993 to 31.01.1994 for 12 months. Again, he was not engaged till 2003. On



14.07.2003 he was appointed as Junior Assistant by the third respondent on consolidated pay of Rs.4,000/- and transferred to the fifth respondent Office, by the proceedings, dated 27.05.2009 and the fourth respondent brought the petitioner on time scale of pay. He attained the age of superannuation on 31.01.2013. From the dates furnished above, it is clear that the petitioner was not engaged for 25 years and not continuously worked from 1983. He was appointed on consolidated pay only on 14.07.2003 and brought on time scale of pay on 27.05.2009. A Full Bench of this Court in the **Government of Tamil Nadu, rep. by the Secretary to Government, Public Works Department and others vs. R.Kaliyamoorthy** reported in **2019(6) CTC 705; 2020(2) MLJ 369** held that only persons, who are regularised on or before 31.03.2003, are entitled to pension as per the old pension scheme. The persons, who are regularised after 01.04.2003, are entitled to pension only under the Contribution Pension Scheme. The petitioner has joined on consolidated pay only on 16.07.2003. After the cut of date i.e., on 31.03.2003 and he was brought on time scale of pay on 03.06.2009, hence, the petitioner is not entitled for pension under the old pension scheme. Further, in the impugned order, the second respondent has stated that the petitioner's retirement benefits were calculated for his service period as Rs.1,82,078/- and the same was paid through Treasury Office on 05.06.2018. The petitioner has not denied the same. The second respondent has given cogent and valid reason for rejecting the request of the petitioner.

6. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Secretary, Government of Tamilnadu
The Municipal Administration & Water Supply Department,
Fort St. George,
Chennai-600 009.

2.The Director of Town Panchayat,
Kuralagam,
Chennai-600 028.

3.The District Collector,
Dindigul District,
Dindigul.

4.The Assistant Director of Town Panchayat,
Collectorate Campus,
Dindigul District.

+1 CC to M/s.N.MARIMUTHU, Advocate (SR-22846[F] dated 16/07/2021)

+1 CC to M/s.SPL GP (SR-22915[F] dated 16/07/2021)

W.P (MD) No.19051 of 2020
15.07.2021

SGS (CO)

KB(26.07.2021) 4P 7C