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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.884 of 2015

and

W.M.P.(MD).No.1 of 2015

C.Kumaresan ... Petitioner

vs..

1.The Director,
Ex-servicemen Welfare Department,
22, Raja Muthaiah Road, Chennai – 600 003.

2.The Joint Director,
Ex-servicemen Welfare Department,
22, Raja Muthaiah Road,
Chennai – 600 003.

3.The Deputy Director,
Ex-servicemen Welfare Department,
Nagercoil – 2, Kanyakumari District.

4.The Secretary,
Finance (Pension) Department,
St.George Fort,
Chennai – 9. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the second respondent in Na.Ka.Na.32017/2011/Nir 3, dated 30.11.2012 and the consequential order passed by the first respondent on appeal vide his proceedings in Na.Ka.No.32776/2012/Nir 3, dated 14.07.2014, quash the same and consequently, directing the respondents to count and include the half of the period of daily wages service rendered by the petitioner during the periods from 01.04.1971 to 30.06.1972 and from 04.08.1972 to 26.01.1973 for the purpose of pension benefits as per G.O.Ms.No.408, Finance (Pension) Department dated 25.08.2009, with monetary and service benefits.

For Petitioner : Mr.T.Arul
For R-1 to R-3 : Mr.J.K.Jayaselan
Government Advocate
(Civil side)
For R-4 : No appearance

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O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the second respondent, dated 30.11.2012 and the consequential order passed by the first respondent on appeal vide his proceedings, dated 14.07.2014, quash the same and consequently, directing the respondents to count and include the half of the period of daily wages service rendered by the petitioner during the periods from 01.04.1971 to 30.06.1972 and from 04.08.1972 to 26.01.1973 for the purpose of pension benefits as per G.O.Ms.No.408, Finance (Pension) Department dated, 25.08.2009 with monetary and service benefits.

2. The petitioner has rendered service in various Departments of Tamil Nadu and the same is extracted hereunder:

S.No	Name of the post	Mode of payment	Period of service	Duration of service
1	Settlement Inspector, Office of the Assistant Settlement Officer, Nagercoil.	Time scale of pay	08.10.1970 to 31.03.1971	5 months 23 days
2	Section writer, Office of Assistant Settlement Officer, Nagercoil.	Daily wages	01.04.1971 to 30.06.1972	15 months
3	Section writer, Office of the Assistant Director of Survey and Land Records, Ngercoil.	Daily wages	04.08.1972 to 26.01.1973	5 months 23 days
4	Special Revenue Inspector, Taluk Supply Officer, Vilavankode	Time scale of pay	19.11.1973 to 21.01.1975	14 months 3 days

3. Thereafter, the petitioner was regularized in Ex-sevicemen welfare Department on 20.06.1980 as Junior Assistant and retired from service as Superintendent on 31.10.2006. The petitioner is receiving pension benefits and the petitioner is seeking to add the service rendered in the post of Section Writer, Office of Assistant Settlement Officer, Nagercoil and Section Writer, Office of the Assistant Director of Survey and Land Records, Nagercoil. The petitioner relied on certain order passed for the similarly placed persons. The petitioner also relied on Rule 11(4) of the Tamil Nadu Pension Rules.

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4. The respondents have filed a counter affidavit, where they have stated G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009,[Later on this G.O. is incorporated by way of amendment in the Tamil Nadu Pension Rules as Rule 11(4)] is applicable only to the persons, who were working on daily wages and subsequently, absorbed in time scale of pay of similar types of posts without recruitment by TNPSC. The respondents have also stated that it is applicable only to the persons who worked as Casual labour and subsequently absorbed. The respondents also stated that the petitioner ought to produce the originals for consideration.

5. Heard Mr.T.Arul, learned Counsel for the petitioner and Mr.J.K.Jayaselan, learned Government Advocate appering for the respondents 1 and 3.

6. The petitioner's claim is to include 50 percentage of the service that has been rendered in S.No 2 and 3 in the tabulation. The respondents have already considered his service rendered in S.No 1 and 4 and has granted a relief. Now the limited question which arises, whether the petitioner is eligible for the service rendered as Section Writier as stated in the S.No 2 and 3 of the tabulation.

7. Refering to Rule 11(4) of the Tamil Nadu Pension Rules and the relevant portion is Extracted hereunder:

> "*(4) Hall of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits long with regular service, subject to the following conditions, namely:*
>
> *(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis* ***shall be in a job involving whole time empolyment;***
>
> *(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.*
>
> *(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis* ***shall be followed by absorbtion in regular service before 1st April 2003 without a break.***
>
> *Provided that this sub-rule is applicable to all employees who rendered service under the State*

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Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regulr service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

8. The Government, vide memo, dated 09.02.2010 has granted a relief to count the surveys for granted retirement benefits in which certain conditions have been prescribed. The employees ought to be absorbed in regular service without any break. In the Rule also it has been stated that wherever break in service is there, it shall be condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not be counted for the purpose of pensionary benefits.

9. Since this case shows certain break in service, in order to meet the ends of justice, it would be sufficient, directing the first respondent to take the service of the petitioner as far as the S.No. 2 and 3 of the tabulation is concerned and considering the same in the light of provisions and then pass an order. Since, the petitioner is aged 70 and above, the same excise shall be completed within four weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

jbr

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.

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Kanyakumari District.

4.The Secretary,
Finance (Pension) Department,
St.George Fort,
Chennai - 9.

+1 CC to M/s.SPL GP (SR-36979[F] dated 02/12/2021)

+1 CC to M/s.T.ARUL, Advocate (SR-36888[F] dated 01/12/2021)

W.P.(MD)No.884 of 2015 and
W.M.P.(MD).No.1 of 2015
30.11.2021

RD(22/12/2021) 5P 7C

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