IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-07-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.15721 TO 15726 OF 2015

M.Shaffi
... Petitioner in WP 15721/2015

P.Padma
... Petitioner in WP 15722/2015

C.Deva Jayaseelan
... Petitioner in WP 15723/2015

K.Nirvani
... Petitioner in WP 15724/2015

M.Muthuraman
... Petitioner in WP 15725/2015

M.M.Tajmal Hussain
... Petitioner in WP 15726/2015

vs.

Government of Tamil Nadu,
Represented by Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai-600 009.
... R-1 in WPs 15721,15723,15724, 15725 and 15726/2015

Government of Tamil Nadu,
Represented by Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.
... R-1 in WPs 15722/2015

The Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.
... R-2 in WPs 15721, 15723 to 15726/2015

The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
... R-2 in WP 15722/2015

The Commercial Tax Officer,
Tirunelveli Town,
Tirunelveli.

... R-3 in WP 15721/2015

The Municipal Commissioner,
Kuzhithurai Municipality,
Kuzhithurai,
Kanniyakumari District.

... R-3 in WP 15722/2015

The Commercial Tax Officer,
Tenkasi,
Tirunelveli District.

... R-3 in WP 15723/2015

The Deputy Commissioner of Commercial Taxes,
Zone-IV,
Chennai - 600 006.

... R-3 in WP 15724/2015

The Deputy Commissioner of Commercial Taxes,
Tirunelveli District,
Tirunelveli-2.

... R-3 in WP 15725/2015

The Commercial Tax Officer-I,
Kovilpatti,
Thoothukudi District.

... R-3 in WP 15726/2015

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

... R-4 in WP 15721/2015

The Director of Local Fund Audit,
Kuralagam,
Chennai - 600 108.

... R-4 in WP 15722/2015

The Principal Accountant General (A&E),
Tamil Nadu,
Chennai - 600 018.

... R-4 in WPs 15723, 15724,
15725 and 15726/2015

Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Mandamus, directing the respondents to apply the provisions of

Tamil Nadu Pension Rules, 1978 in the cases of the petitioners and desist from applying the Contributory Pension Scheme, which came into force on 01.04.2003.

For Petitioner in all WPs	:	Mr.B.Thennarasu for Mr.M.Ravi.
For Respondents-1 to 3 in all WPs	:	Ms.K.Vasanthamala, Government Advocate.
For Respondent-4 in all WPs	:	Mr.S.Mahesh for Mr.V.Vijayshankar.

COMMON ORDER

The writs on hand have been instituted to direct the respondents to apply the provisions of the Tamil Nadu Pension Rules, 1978 in the cases of the petitioners and desist them from applying the Contributory Pension Scheme, which came into force on 01.04.2003

2. The petitioners were appointed as Checkers through Employment Exchange in Census Department of Government of India and worked as such from 05.04.1991 to 30.06.1992. Thereafter, the petitioners were retrenched from service on completion of their Census Operations.

3. For the purpose of Census Work, personnel were recruited through Employment Exchange and after completion of the said work, their appointments would come to an end as their appointments were made on temporary basis for the completion of the Project of Census Work.

4. There was a ban for appointment by the Government of Tamil Nadu. The Census Commissioner and the Registrar-General requested the State Government on 26.12.1991 to absorb the temporary workers engaged in Census Operations at the State Level in its services and undertakings. The Government issued Government Order in G.O.Ms.No.341, P&AR Department, dated 13.10.1992 and G.O.Ms.No.444, P&AR Department, dated 23.12.1993, granting certain concessions. However, more stringent conditions were imposed for absorptions.

5. The retrenched employees approached the Tamil Nadu Administrative Tribunal, seeking directions to absorb them as regular employees and after several rounds of litigation before the Tamil Nadu Administrative Tribunal and the Hon'ble Supreme

Court of India, the Government of Tamil Nadu issued orders in G.O.Ms.No.246, P&AR Department, dated 29.08.2003 for absorption of 486 employees of Census 1991. The remaining retrenched employees, including these writ petitioners, filed WP Nos.28807 of 2005 etc., batch of cases before this Court and this Court, by a common order dated 03.03.2006, issued directions to the Authorities to complete the absorption of all Census 1991 employees within five months. The writ petitioners in WP Nos.15721, 15723, 15724, 15725 and 15726 of 2015 were appointed as Record Clerk in Commercial Taxes Department respectively on 07.09.2006, 08.09.2006, 05.04.2007, 18.09.2006 and 18.09.2006. The writ petitioner in WP 15722 of 2015 was appointed as Revenue Assistant in Municipal Administration and Water Supply Department during August 2006, and thereafter, all these writ petitioners were promoted to the post of Junior Assistant.

6. The grievances of the writ petitioners are that the Census employees engaged in the year 1991, were absorbed by the Government of Tamil Nadu pursuant to the orders issued in G.O.Ms.No.246, P&AR Department, dated 29.08.2003. In view of the fact that the Hon'ble Supreme Court of India passed an order in the contempt application on 28.09.1999, the petitioners must be granted with the benefit of Old Pension Scheme under the Tamil Nadu Pension Rules, 1978. In other words, the petitioners seek their appointments should be given with retrospective effect and consequently, they must be granted with the benefit of the Old Pension Scheme under the provisions of the Tamil Nadu Pension Rules, 1978.

7. The learned counsel for the petitioners referred certain orders of the learned Single Judge of this Court, granting directions to consider the cases. However, the facts of the present cases are to be considered with reference to the orders of the Court and the Government Orders.

8. In the present cases, no doubt, the Apex Court of India passed an order on 28.09.1999 in C.A.No.810 of 1998. The order of the Supreme Court of India, reads as under:-

> "However, it is brought to our notice that the condition in clause (i) above would impose hardship on the respondents if they are to be placed in Group III and they had to be placed in Group IV, condition in clause (ii) cannot be worked out at all because even if the period of three years stated therein is excluded the appellants will not get any benefit because their services had been put to an end in the year 1992 and over seven years have elapsed since

> then and, therefore, they cannot fulfil that condition at all. In the circumstances, we direct the State Government to modify the scheme in respect of these two conditions. It would be appropriate for the State Government to delete these two conditions and all that may be insisted upon is that the retrenched employees of the Census Department should be placed in Group IV and the condition relating to the exclusion of three years from their age shall be deleted. Subject to this modification, the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Government or in any of the Local Authority or Government undertakings as may be feasible as expeditiously as possible. This appeal stands disposed of accordingly.
>
> Before parting with the case, we must put on record our appreciation for a very reasonable stand taken on behalf of the appellants and the learned counsel appearing in the case."

9. The Hon'ble Supreme Court considered the fact that these petitioners have worked only for one year as census employees during the years 1991 and 1992. Thereafter, they were not in service. A lenient view was taken by the Courts during the relevant point of time for permanent absorption of these employees and the Hon'ble Supreme Court of India also in the order dated 28.09.1999 directed the State Government to modify the Scheme in respect of the conditions and accordingly workout the absorption of the employees in the services of the State Government or in any of the Local Authority or the Government of India Undertakings as may be feasible as expeditiously as possible.

10. The Hon'ble Supreme Court has not issued any direction to absorb the petitioners within a stipulated period or issued a direction to appoint them with retrospective effect. The absorption itself was granted by way of concession and the Supreme Court directed the State Government to frame a scheme and absorb these employees, who served for about one year as census workers in any of the Local Authority or Government undertakings or in State Government Departments. Therefore, general directions were issued by the Supreme Court for absorption. Pursuant to the directions, the Government issued G.O.Ms.No.246, P&AR Department, dated 29.08.2003 and the petitioners were not a party to the proceedings before the

Supreme Court. However, the petitioners subsequently filed WP No.28807 of 2005 etc. batch of cases before this Court. This Court passed a common order on 03.03.2006 and thereafter, the writ petitioners in WP Nos.15721, 15723, 15724, 15725 and 15726 of 2015 were appointed as Record Clerk in Commercial Taxes Department respectively on 07.09.2006, 08.09.2006, 05.04.2007, 18.09.2006 and 18.09.2006. The writ petitioner in WP 15722 of 2015 was appointed as Revenue Assistant in Municipal Administration and Water Supply Department during August 2006.

11. Thus, the admitted facts are that the writ petitioners served as the Census employees for one year on temporary basis. They were ousted from service. Thereafter, the petitioners were not provided with an opportunity to work as Census workers. Several other Census workers approached the Courts and the Supreme Court in the year 1999 issued a direction to the State Government to formulate a Scheme for the absorption of these employees. Accordingly, the Government implemented the Scheme and issued G.O.Ms.No.246, dated 29.08.2003. Thereafter, the writ petitioners filed writ petitions in the year 2005 and obtained an order in the year 2006 and accordingly, the petitioners in WP Nos.15721, 15723, 15724, 15725 and 15726 of 2015 were appointed as Record Clerk in Commercial Taxes Department respectively on 07.09.2006, 08.09.2006, 05.04.2007, 18.09.2006 and 18.09.2006. The writ petitioner in WP 15722 of 2015 was appointed as Revenue Assistant in Municipal Administration and Water Supply Department during August 2006. Thus, after one year of service, the petitioners have pursued the matter in the year 2005, after a lapse of about 14 years from the date of termination and pursuant to the orders of this Court, the petitioners in WP Nos.15721, 15723, 15724, 15725 and 15726 of 2015 were appointed as Record Clerk in Commercial Taxes Department respectively on 07.09.2006, 08.09.2006, 05.04.2007, 18.09.2006 and 18.09.2006. The writ petitioner in WP 15722 of 2015 was appointed as Revenue Assistant in Municipal Administration and Water Supply Department during August 2006. Therefore, at the time of filing of the writ petitions, the New Pension Scheme was implemented. The writ petitioners filed the writ petitions in the year 2005 and the New Pension Scheme came into effect on 01.04.2003. Thus, the petitioners were not in service prior to 01.04.2003. The petitioners were served hardly for one year as temporary Census employees in the year 1991 and 1992 and based on such services, the benefit of Old Pension Scheme cannot be granted.

12. It was a temporary service rendered in a Project of Census work and the petitioners were regularly appointed pursuant to the Scheme framed by the State Government in the year 2006. When the appointment of the writ petitioners in the sanctioned post in the time scale of pay was made in the year

2006, they are not eligible to avail the benefit of the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978.

13. The question of considering the temporary services of one year rendered in the year 1991-1992 does not arise at all in these cases as the petitioners were not continued even in temporry services beyond the period of one year i.e., in the year 1991-1992. In any angle, the petitioners have not served continuously and more specifically from the year 1992 to 2006, the petitioners were not served either on temporary basis or otherwise. Thus, such period of their services cannot be taken into consideration for grant of any benefit under the Tamil Nadu Pension Rules and therefore, for all purposes, their date of regular appointments made pursuant to the orders of the Supreme Court and based on the orders passed by the Government of Tamil Nadu, are to be considered for the purpose of application of pensionary benefits.

14. The employees appointed on or after 01.04.2003, are eligible for the benefit of Contributory Pension Scheme and the said benefit to be granted to the writ petitioners in accordance with the Government policy. Thus, the petitioners are eligible for Contributory Pension Scheme, as their appointments were made by the Government only during the year 2006 and therefore, the petitioners are not eligible for the benefit under the Old Pension Scheme.

15. In the present cases, the State Government itself has issued orders for absorption of these employees only after 01.04.2003 and therefore, in any angle, the cases of the writ petitioners cannot be considered.

16. Accordingly, all the writ petitions stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Secretary to Government,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Chennai-600 009.

2. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.

3. The Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

4. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

5. The Deputy Commissioner of Commercial Taxes,
Zone-IV, Chennai – 600 006.

6. The Commercial Tax Officer-I,
Kovilpatti,
Thoothukudi District.

7. The Deputy Commissioner of Commercial Taxes,
Tirunelveli District,
Tirunelveli-2.

8. The Municipal Commissioner,
Kuzhithurai Municipality,
Kuzhithurai,
Kanniyakumari District.

9. The Director of Local Fund Audit,
Kuralagam, Chennai – 600 108.

10. The Commercial Tax Officer,
Tirunelveli Town,
Tirunelveli.

11. The Commercial Tax Officer,
Tenkasi, Tirunelveli District.

12. The Principal Accountant General (A&E),
Tamil Nadu, Chennai – 600 018.

13. The Accountant General (A&E),
Tamil Nadu, Chennai – 600 018.

+1cc to the Special Government Pleader(Taxes), High Court,
Madras, S.R.Nos.45080 to 45085

WPs 15721 to 15726 of 2015

CA(CO)
RLP(27/07/2022)