



W.P.No.5193 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5193 of 2019

P.Subramani

...Petitioner

Vs.

- 1.The State Rep. by
The Secretary,
Higher Education (2) Department,
Secretariat,
Fort St. George, Chennai – 600009.
- 2.The Commissioner of Technical Education,
Directorate of Technical Education (Engineering)
Guindy, Chennai – 600 025.
- 3.The Principal,
Government Engineering College,
Salem -11.

Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to count 50% of service rendered by the petitioner before regularisation along with the



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service rendered after regularisation upon his retirement.

For Petitioner : Mr.M.Elango
For Respondents : Mr.C.Jayaprakash
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the 1st respondent to count 50% of the services rendered by the writ petitioner for the purpose of granting of pensionary benefits.

2.The petitioner was appointed as a Sanitary Worker in the 3rd respondent College on a daily wage basis vide proceedings dated 20.11.1990. The petitioner was working as a daily wage employee for more than 10 years and thereafter, he filed a writ petition in W.P.No.6463 of 2005. This Court directed the respondents to consider the representation submitted by the writ petitioner for regularization of services. Pursuant to the directions issued, the case of the writ petitioner was considered favourably and the Government issued order in G.O.Ms.No.113, Higher



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Education Department, dated 30.03.2016, granting the pensionary benefits of regularization and permanent absorption in favour of the writ petitioner as follows:

3. In the wake of the judgment passed by the High Court, Madras in W.P.No.6463 of 2005, dated 28.02.2005, the Government examined the proposals of the Commissioner of Technical Education. Taking also into consideration the orders issued in the Government Order third read above, the Government direct that

i. the services of 19 casual labourers working in the Government Engineering Colleges and Polytechnics annexed to this order be brought into regular establishment from the date of issue of orders and allowed pay and allowances in the time scale of pay with effect from the date of absorption.

ii. they be brought under contributory pension scheme and



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iii. *their services be regularized in relaxation of rules, if any, after obtaining necessary details from the Commissioner of Technical Education.*

3.The Government Order granting the benefit of regularization unambiguously states that the petitioner was brought into regular establishment from the date of the order and allowed pay and allowances in the time scale of pay with effect from the date of absorption. Para 3(2), further stipulates that the petitioner is brought under the Contributory Pension Scheme.

4.When the Government Order itself states that the petitioner is falling under the Contributory Pension Scheme (New Pension Scheme), he cannot seek benefit under the Old Pension Scheme i.e., Tamil Nadu Pension Rules, 1978.

5.The service of the writ petitioner was regularized after the cut off date ie., 01.04.2003. The benefit of regularization and permanent absorption



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was granted in G.O.Ms.No.113, dated 30.03.2016 from the date of the Government Order and the order itself stipulates that the petitioner is eligible for Contributory Pension Scheme which is a New Pension Scheme. While so, the relief as such sought for counting 50% of the services under the Tamil Nadu Pension Rules, 1978, would not arise at all. This being the factum the petitioner is not entitled to avail the benefit of the Tamil Nadu Pension Rules, 1978 or counting of 50% of services under the said Pension Rules.

6.Accordingly, this writ petition stands disposed of. No Costs.

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Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No
SSR

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S.M.SUBRAMANIAM, J.

SSR

To

- 1.The Secretary,
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