IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.5220 of 2015

R.Govindaraj .... Petitioner

vs

1. The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-600 009.

2. The Commissioner of Revenue Administration,
Chepauk,
Chennai-600 005.

3. The District Collector,
Thiruvarur.

4. The Revenue Divisional Officer,
Mannargudi,
Thiruvarur District .... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in connection with G.O.(P)No.513, Revenue (Service 8(2)) Department dated 24.11.2014 and on the file of the 3rd respondent in connection with his proceedings Na.Ka.No.7205/ 2012/A3 dated 11.12.2014 and quash the same in as far as it leaves the past service from 06.11.1979-22.10.1981 and 18.09.1982-

31.12.2005 for the purpose of regularisation and consequently direct the respondent to regularise the service of the petitioner with effect from the date of completion of 5 years of service i.e., 05.11.1984 and grant all further consequential benefits.

For Petitioner	:	Mrs.T.Aananthi
For respondents	:	Mr.A.M.Ayyathurai Govt. Advocate

ORDER

This writ petition has been filed to quash the order of the 1st respondent passed in G.O.(P)No.513, Revenue (Service 8(2)) department dated 24.11.2014 and the order of the 3rd respondent in proceedings Na.Ka.No.7205/2012/A3 dated 11.12.2014 insofar as it leaves the past service of the petitioner from 06.11.1979 - 22.10.1981 and 18.09.1982 - 31.12.2005 for the purpose of regularisation and consequently, direct the respondent to regularise the service of the petitioner with effect from the date of completion of 5 years of service i.e., 5.11.1984 and grant all further consequential benefits.

2. The case of the petitioner is that he was appointed on 06.11.1979 as Masalsi at Taluk Office, Mannargudi and ousted from service for want of vacancy on 22.10.1981. Thereafter, he was appointed as Night watchman on 20.09.1982 and continued to work as Gardner with effect from 17.06.1986. The post of Gardner is a

sanctioned post as per G.O.No.812 Revenue Ddepartment dated 17.06.1986. Though the petitioner was appointed in regular vacancy, he was granted only daily wages. He was appointed through sponsorship by Employment Exchange. The petitioner was fully eligible to get absorbed in the regular post on regularisation of service with time scale of pay. Inspite of 33 years of service, the petitioner has not been regularised in service. Therefore, he filed W.P.No.6109 of 2014 to regularise his service w.e.f. the date of initial appointment with all consequential benefits. This Court, by order dated 28.02.2014, directed the respondents to consider the representation of the petitioner. But the 1st respondent passed G.O.(Pen)No.513 Revenue Department dated 24.11.2014 regularising his service only w.e.f 1.1.2006 leaving his service from 6.11.1979 to 21.10.1981 and 18.09.1982 to 31.12.2005, nearly 25 years of service. Hence, this writ petition with the aforesaid relief.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

4. Learned counsel for the petitioner would submit that the order of the 1st respondent dated 24.11.2014 and the consequential proceedings dated 11.12.2014 regularising the service of the petitioner from 01.01.2006 leaving his service from 06.11.1979 to

21.10.2018 and 18.09.1982 to 31.12.2005 i.e., nearly 25 years of service is unsustainable in law. Learned counsel would further submit that if the claim of the petitioner is considered based on G.O.Ms.No.107 P & A R Department dated 05.02.1987, the petitioner is entitled for regularisation from 05.11.1984 i.e., from the date of completion of 5 years of service. Learned counsel also relied on the decision reported in ***2014(2) CTC 777 (Union of India v. K.Punniyakoti)*** and would state that the right of Government servants to receive Pension is not a bounty, and it is a statutory right conferred under the Pension Rules applicable from the date when the Government servant was appointed, either on daily wage/ temporary/ permanent basis. Learned counsel would further submit that after extracting the work for more than 33 years, the respondents had made the petitioner to suffer without granting the monetary benefits, to which, he is legally entitled to as a government employee.

4. The learned Government Advocate appearing for the respondents, after reiterating the contentions raised in the counter affidavit would further contend that on the basis of the proposals sent to Government for regularisation of service of the petitioner, the Government has passed the order in G.O.Ms.No.513, Revenue Department, dated 24.11.2014, regularising the service of the

petitioner with effect from 01.10.2006 and thus, the Government has granted maximum benefits to the petitioner by considering his long tenure of temporary services.

5. Considering the facts and circumstances of the case and the submissions made on either side, this Court is of the view that the aforesaid G.O. Viz., and the judgment of the Division Bench of this Court relied on by the learned counsel for the petitioner, will squarely apply to the facts of the present case.

6. The relevant paragraphs of G.O.Ms.No.107 dated 05.02.1987, are extracted hereunder:

> *3. The One Man Committee has observed that there is abnormal delay in bringing the contingent staff to regular establishment on completion of five years service and has recommended that the powers for the creation of post in the time scale of pay for regularising the services of contingent staff be delegated to the heads of departments.*
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> *4. The Government after careful examination accept the recommendation of the One Man Committee and accordingly direct that the Heads of Departments are empowered to create posts to bring the contingent staff to regular establishment after a careful review of the need for the posts and to appoint a contingent staff in the post if no relaxation of rules is involved. In cases where relaxation is involved, necessary proposals both for a creation of post and appointments thereto shall be sent to Government. The work of bringing the contingent establishment to regular establishment should be completed before 31.3.87.*

> *5. The age rule prescribed in the special rules for Tamilnadu Basic Service shall not apply to the contingent staff when brought to regular establishment. It is enough if they are able to read and write in Tamil. Break in service upto 180 days may be allowed in reckoning five years of service. A contingent staff should be brought to regular establishment in the same post in which he is working.*

As per the above G.O., the contingent staff put in 5 years of service are directed to be brought into regular establishment and break in service upto 180 days may be allowed in reckoning five years of service. Here, in this case, the break in service for the petitioner is 11 months. From the impugned G.O.(P)No.513 dated 24.11.2014, it is clear that the District Collector vide letter dated 13.02.2009 recommended for regularization of the petitioner. The proposal of Revenue Divisional Officer was accepted by the District Collector and recommended for relaxing the rules in order to regularize the service of the petitioner from the date of completion of 5 years. Apart from that, though the post was sanctioned as per G.O.No.812, Revenue dated 17.06.1986 and it fell vacant with effect from 01.04.1995, the petitioner was regularised only with effect from 01.01.2006. Thus, the delay is on the part of the Government. In the light of the above G.O., the petitioner is entitled for regularisation on completion of 5 years of service from the date of appointment.

5. Further, in the decision reported in 2014(2) CTC 777 (Union of India v. K.Punniyakoti), the Division Bench of this Court has held in paragraph Nos.22 to 26, as follows:

> ***20.*** *Number of similar cases were considered in respect of the State Government employee under the Tamil Nadu Pension Rules, 1978, wherein also Rule 11(2) of the Tamil Nadu Pension Rules, 1978 provides counting of 50% of the contingency service on similar terms and conditions as enumerated under the above Rule 14(2) of CCS (Pension) Rules, 1972. In the said case Plot Watcher of Forest Department, appointed on daily wage basis from 1.9.1982, without interruption was absorbed in regular service from 24.8.2005 and he retired on 31.7.2011. Applying Rule 11(2) of Tamil Nadu Pension Rules, 1978, 50% of the service from 1.9.1982 till 23.8.2005 was ordered to be counted along with the regular service from 24.8.2005 till 31.7.2011 and ordered sanction of eligible pension and other benefits. In the said case also, regularisation was granted after the new Pension Scheme was introduced with effect from 1.4.2003 by the State Government. The said Order was made in W.P. No. 8205 of 2011 dated 19.4.2011, which was confirmed in W.A. No. 27 of 2012 dated 13.2.2012 as well as in S.L.P. No. 16119 of 2012 dated 10.5.2012 and in W.P. No. 14987 of 2012 dated 14.6.2012.*
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> ***21.*** *At this juncture it is relevant to point out that persons appointed similar to Respondents 1 to 16 on daily wage basis, who were given temporary status by virtue of the Scheme viz., Casual Labourers (Grant of Temporary Status and Regulation) Scheme, 1993, numbering 34, were given the*

benefit of counting 50% of their temporary status service while calculating Pensionary service and they are entitled to get higher pension by adding 50% of their service. 50 Casual Employees appointed by the Second Petitioner being a class, there cannot be any classification within the said 50 Casual Employees, subsequently made as temporary employees and absorbed as Group 'D' employees.

22. *Similar issue regarding fixing of Pension by adding dearness pay by giving cut off date was held arbitrary and violative of Articles 14 & 16 of the Constitution of India by the Supreme Court in the decision reported in Kallakkurichi Taluk Retired Officials Association v. State of Tamil Nadu, 2013 (1) LLN 360 (SC) : (2013) 2 SCC 772. The discriminatory treatment meted out to retired persons while granting Pension was not approved by the Honourable Supreme Court in the decision reported in D.S. Nakara v.Union of India, AIR 1983 SC 130.*

23. *The right of Government servants to receive Pension is not a bounty, and it is a statutory right conferred under the Pension Rules applicable from the date when the Government servant was appointed, either on daily wage/ temporary/ permanent basis. Permanent absorption having been ordered considering the temporary service rendered earlier, under any stretch of imagination the persons who, were already in employment prior to 1.1.2004 cannot be treated as 'fresh appointees' for the purpose of applying new Pension Scheme, which came into force from 1.1.2004.*

24. *The Hon'ble Supreme Court in the decision reported in State of Jharkhand v. Jitendra Kumar Srivastava, 2013 (4) LLN 56 (SC) : AIR 2013 SC 3383, held that the right to receive Pension, Gratuity or Leave Encashment can be treated as right to property in terms of Article 300-A of the Constitution of*

India.

If a person eligible to get Pensionary benefit on retirement, if denied by giving narrow interpretation of Rules, it will definitely be in violation of Article 300-A of the Constitution of India.

25. *Considering the overall aspects in the matter as well as the undisputed fact that the Respondents 1 to 16 have been appointed as Casual Labourers and subsequently conferred temporary status from 31.12.1999, merely because they have been absorbed permanently in the year 2005 in Group 'D' service, they cannot be denied of their statutory right. The Tribunal has approached the issue in a proper perspective and we confirm the said findings of the Tribunal.*

26. *In the result, the Writ Petition is dismissed. No costs. Consequently, M.P. No. 1 of 2014 is closed.*

From the above decision, it is seen that the right of Government servants to receive Pension is not a bounty, and it is a statutory right conferred under the Pension Rules applicable from the date when the Government servant was appointed, either on daily wage/ temporary/ permanent basis. Persons who were already in employment prior to 1.1.2004 cannot be treated as 'fresh appointees' for the purpose of applying new Pension Scheme, which came into force from 1.1.2004. If a person eligible to get Pensionary benefit on retirement, if denied by giving narrow interpretation of Rules, it will definitely be in violation of Article 300-A of the Constitution of India. In the present case, the petitioner was put in more than 33 years of service and though proposal dated 31.07.1996 was sent by the RDO for regularisation of petitioner's service on completion of 5 years of service i.e., 06.11.1984, the same was forwarded only after the letter dated 20.02.1996 and the letter dated 14.03.1996 of the Chief Secretary cum Commissioner of Revenue Administration and the same was kept pending consideration till November 2014, for no fault of the petitioner, denying his entire service, by loss of regular pay for regular work and also after retirement, by loss of pension and retirement benefits. This Court is of the view that the petitioner is entitled for regularisation on completion of 5 years from the date of appointment and also as per the above decision, the petitioner is entitled for consequential benefits.

7. Therefore, in the light of the G.O. and the decision cited above, the impugned orders are hereby set aside and this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2022

Index:Yes/No
Speaking/Non-speaking order
vsi

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J.NISHA BANU,J.

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