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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.11183 of 2021

N.Syed Mubarak ... Petitioner

Vs.

- 1 The Secretary
Government of Tamilnadu,
Rural Development and Panchayat Raj
Department, Secretariat,
Fort St. George, Chennai - 600 009.
- 2 The Director,
Local Fund and Audit,
O/o. Integrated Finance Department,
4th Floor, Nandanam, Chennai.
- 3 The District Collector (development),
Thiruvarur.
- 4 The Commissioner,
Panchayat Development,
Thiruvarur.

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to grant entire terminal benefits including all arrears of monetary benefits with interest at the rate of 12 percent within a short period of time in the circumstance of the case.

For Petitioner : Mrs.Aananthi

For Respondents : Mr.P.Balathandayutham,
Special Govt. Pleader RR1 to 3
Mr.C.Harsharaj, for R4

O R D E R

According to the petitioner, the writ petitioner join in the Government Service in the office of the fourth respondent



as Attender with effect from 20.12.1969 in the time scale of pay. Subsequently, the post of Attender was re-designated as Record Clerk. According to the petitioner, he attended Panchayat office from 20.12.1969 to 30.4.1987. On medical grounds, the petitioner went on leave from 11.5.1997 and could not join duty immediately due to ill health. The petitioner submitted a representation to the fourth respondent on 5.9.2005 stating that he was under leave due to ill health and requested permission to join duty. The petitioner further requested to sanction him atleast minimum pension considering his past service from 20.12.1969 to 30.4.1987. By letter dated 4.3.2009 the 4th respondent regularized the period of absence from 1.5.1987 to 31.3.2006 as leave on loss of pay. A proposal dated 2.7.2007 was forwarded by the fourth respondent to the third respondent. As per the orders of the Commissioner, Panchayat Union, Thiruvavarur, the petitioner was permitted to retire from service on 31.3.2006 vide proceedings, dated 24.6.2009. The petitioner made representation on 5.7.2006 and 23.11.2006 requesting the fourth respondent to sanction retiral and pensionary benefits to the petitioner. However, the request of the petitioner was rejected by letter, dated 15.12.2011. Hence, the petitioner preferred W.P.No.24598 of 2015 for sanction of terminal benefits on the basis of regularization order dated 24.6.2009. This Court by order dated 21.6.2018 set aside the third respondent's rejection order dated 4.7.2008 and the proceedings of the fourth respondent, dated 15.12.2011 and also directed the respondent to consider grant of pensionary and retiral benefits as admissible in accordance with Pension Rules. However, the said order was not complied with by the respondents.

2. Counter affidavit has been filed by the 4th respondent wherein it is not disputed the fact that writ petitioner attended office as a Record Clerk with effect from 20.12.1969 to 30.4.1987. Further, it is contended that the petitioner stayed away from duty with effect from 1.5.1987 and deserted from duty. He was continuously absent for more than 10 years. Admittedly, the respondent has not initiated any action for unauthorised absence of the petitioner. In the counter affidavit, it is stated that the order allowing the petitioner to retire from service on 31.3.2006 is a mistake committed by the then Commissioner, Panchayat Union, Thiruvavarur. It is further submitted that any unauthorised absence of the employee, the said period has to be regularized by the Government by granting relaxation for the aforesaid period. The petitioner preferred writ petition before this Court in W.P.No.24598 of 2015 and this Court by order dated 21.6.2018 set aside the order of the fourth respondent, dated 15.12.2011 and directed to



reopen the case and grant pension in accordance with pension rules. It was made clear that the petitioner is not entitled for interest for the belated sanction of pension. The petitioner made representation on 1.8.2018 to settle the arrears of pension, gratuity and the entire terminal benefits to the petitioner. The Director, localbody audit department sent a communication to the Director, Rural development and Panchayat department to take necessary action as per Rules and report compliance to the Director of Localbody Audit department.

3. According to the counsel appearing for the petitioner, order passed by this Court in W.P.No.24598 of 2015 dated 21.6.2018 has not been complied with, the petitioner has filed contempt petition before this Court and the same was closed. Therefore, the petitioner has filed the present writ petition before this Court.

4. A perusal of the record would show that the prayer as sought for in the present writ petition which was already granted by this Court in W.P.No.24598 of 2015 dated 21.6.2018. However, the respondent has taken a stand in the counter affidavit that the Commissioner of Panchayat has no power to regularize the unauthorised absent period, passed the erroneous order and allowed the writ petitioner to retire from service. It is brought to the notice of this Court that the respondents preferred an appeal before this court and the appeal is unnumbered stage. The order passed by this Court in W.P.No.24598 of 2015 dated 21.6.2018 to reconsider the case of the petitioner with reference to Pension rules and grant pensionery and retiral benefits, if it is otherwise eligible. The facts cited above clearly shows that the fourth respondent regularized the period of absence from 1.5.1987 to 31.3.2006 as leave on loss of pay and allowed the petitioner to retire from service without taking any disciplinary proceedings. At this stage, the respondent cannot take a stand that the respondent has passed an erroneous order and sofar no action was taken against the concerned official for passing such erroneous order. Even after final order passed by this Court in the aforesaid writ petition, the respondent has not settle the retiral and pensionery benefits to the petitioner. No substantial material has been placed before this Court to reject the relief already granted by this Court or to show that any disciplinary proceedings are pending against the petitioner. Therefore, there is no force in the contention of the respondents.

5. Chapter III Rule 24 of The Tamil Nadu Pension Rules reads as follows:



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''24. Effect on interruption in service:- (1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist.

6. In view of the above, the respondents are directed to settle the pensionary and retiral benefits to the petitioner as per the Pension Rules, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of the order. However, it is made clear that the petitioner is entitled for interest at the rate of 6% p.a. only from the date of order passed by this Court in W.P.No.24598 of 2015 dated 21.6.2018. The non compliance of the order passed by this Court within the specified period will be viewed very seriously.

7. The writ petition is disposed of with the above directions. No cost.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Vaan

To

- 1 The Secretary, Government of Tamilnadu,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2 The Director,
Local Fund and Audit,
O/o. Integrated Finance Department,
4th Floor, Nandanam, Chennai.
- 3 The District Collector (development),
Thiruvarur.



4 The Commissioner,
Panchayat Development,
Thiruvarur.

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+1cc to Mr.T.Ananthi, Advocate SR.No.8932
+1cc to the Government Pleader SR.No.9013

W.P.No.11183 of 2021

BR(CO)
GN(02/03/2022)