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W.P.No.16693 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.16693 of 2018

K.Ayyanar

.... Petitioner

-Vs-

1.The Principal Secretary to Government
Department of Municipal and Water Supply
Department, Fort St.George, Chennai 600 009.

2.The Commissioner of Municipal Administration
Chepauk, Chennai 600 005.

3.The Commissioner
Aruppukkottai Municipality
Aruppukkottai, Virudhunagar District.

4.The Assistant Director (Municipal Pension)
Local Fund Audit Directorate
Nandanam, Chennai 600 035.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st and 4th respondent herein to confer DCRG and pension to the petitioner by counting the 50% of services rendered from 5.1.1990 to 13.2.2001(consolidate pay service) and the regular time scale to pay service from 14.2.2001 to 30.6.2016 (totally 20 years and 11 months and 5 days of service) as qualifying service and confer all the retirement and pensionary benefits by considering the petitioner representation dated



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13.12.2017 and in the light of the order passed in W.P.Nos. 8910 and 8911 of 2018 dated 12.4.2018 by the Madras High Court.

For Petitioner : Mr.R.S.Anandan
For Respondents : Mr.J.C.Durairaj
Additional Government Pleader
- for RR 1, 2 and 4
Mr.K.J.Shivakumar
Standing Counsel for R3

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the 1st and 4th respondent herein to confer DCRG and pension to the petitioner by counting the 50% of services rendered from 5.1.1990 to 13.2.2001(consolidate pay service) and the regular time scale to pay service from 14.2.2001 to 30.6.2016 (totally 20 years and 11 months and 5 days of service) as qualifying service and confer all the retirement and pensionary benefits by considering the petitioner representation dated 13.12.2017 and in the light of the order passed in W.P.Nos. 8910 and 8911 of 2018 dated 12.4.2018 by the Madras High Court.

2. The petitioner was initially engaged as a substitute sanitary worker at the third respondent municipality with effect from 05.09.1990. Though it is the case of the petitioner that, he had been continuously working in that capacity as substitute sanitary worker, there is no proof as no muster roll has been produced



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before this Court. In this context, the stand of the learned counsel for the respondents is that, he was engaged as substitute sanitary worker and in that capacity whenever there is a leave vacancy only during that period the services of the petitioner had been engaged as daily wage worker and then and there salary was paid to him.

3. Thereafter, from 01.07.1999 admittedly the petitioner had been engaged as temporary sanitary worker with consolidated pay. With effect from 14.02.2001, the petitioner was brought under regular time scale of pay and his services were regularized by the third respondent municipality. The petitioner worked in that capacity till he attained superannuation on 30.06.2016 and retired from service on that date.

4. Thereafter, when the pension proposal of the petitioner was sent by the third respondent to the second and fourth respondents, the same seems to have been returned by them to the third respondent municipality. Only at that juncture the petitioner had made a representation on 13.12.2017 to the fourth respondent to re-consider the proposal of pension of the petitioner submitted by the third respondent once again and decide the pensionary benefits payable to the petitioner by taking his services from 1990 to 2001 ie., 50% of services from 05.09.1990 to 14.02.2001 and thereafter the regular service till superannuation



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and accordingly pensionary benefits shall be calculated and be paid to the petitioner.

5. Though such representation has been made on 30.12.2017, the respondents did not come forward to consider the same and since the issue was pending for some time and nothing was forthcoming from the respondents, it triggered the petitioner to approach this Court by filing this writ petition.

6. Heard Mr.R.S.Anandan, learned counsel for the petitioner, who having reiterated the aforesaid facts would submit that, the petitioner would be entitled for 50% of the services with effect from 05.09.1990 to 14.02.2001 and thereafter full services till superannuation and accordingly pensionary benefits payable to the petitioner shall be calculated and be paid to the petitioner. Hence he seeks the indulgence of this Court to direct the respondents to that effect especially the fourth respondent to pass necessary orders on the representation of the petitioner dated 13.12.2017 by considering the pension proposal already been submitted by the third respondent municipality.

7. Per contra, Mr.J.C.Durairaj, learned Additional Government Pleader appearing for respondents 1, 2 and 4, relied upon the following averments made in the counter affidavit.



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“ 8) I submit that the writ petitioner had worked as Substitute Sanitary Worker under the 3rd respondent. When the regular employee was absent / leave, the petitioner was engaged for work daily wage only. The petitioner was not a regular employee of the 3rd respondent. Therefore, he is not entitled for pensionary benefits from 05.01.1990 to 01.07.1999. The petitioner is entitled for pensionary benefits only 15 years, 04 Months and 17 Days. The petitioner retired from service on 30.06.2016 and he made application for pensionary benefits by calculation service period 15 years 04 Months and 17 days. The said application was forwarded by the 3rd respondent to the 4th respondent. The 4th respondent returned the said recommendation through letter dated 03.08.2017 to the 3rd respondent by stating that in order to get clarification of letter cited in the government order G.O.No.101 dated 30.04.1997, G.O.No.71 dated 05.05.1998, G.O.No.125 dated 27.05.1999 and G.O.No.21 dated 23.02.2006 from the 2nd respondent/ In this regard, orders are awaited from the department ie., The Commissioner of Municipal Administration, Chennai the 2nd respondent herein.

9) It is submitted that the petitioner has filed this present writ petition with a prayer to direction, directing the 1st and 4th respondent to confer DCRG and pension by counting the 50% of services rendered from 05.01.1990 to 13.02.2001 (consolidated pay service) and the regular time scale of pay service from 14.02.2001 to 30.06.2016 (Totally 20 years and 11 months and 5 days of service) as qualifying service and all the retirement and benefits by considering the petitioner representation dated 13.12.2017 and in the light of the order passed in W.P.No.8910 and 8911 of 2018 dated 12.04.2018 by



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the Madras High Court. It is submitted that on receipt of instructions (or) directions from the respondents 2 and 4, the request of the petitioner would be considered accordingly.”

8. Relying upon these averments, the learned Additional Government Pleader would contend that, from 05.09.1990 though initially the petitioner was engaged as substitute sanitary worker, there was no continuous engagement and the engagement was only sporadic in nature; whenever the regular incumbent was on leave, then the persons like petitioner would be engaged and it cannot be stated that the petitioner had been continuously engaged as a daily wage sanitary worker with effect from 05.01.1990 to 13.02.2001.

9. He would also submit that, from 01.07.1999 the petitioner was temporarily engaged as sanitary worker and has been continuously engaged till 13.02.2001 and from 14.02.2001 he was brought under regular time scale of pay and his services had also been regularized. Therefore, if at all the petitioner seeks for any pensionary benefits, that should be only from 14.02.2001 till the date of his superannuation and even for getting clarification to that effect since the proposal had already been sent to the Government, from whom orders are awaited, the said factor since has been stated in the counter, without awaiting the orders to be passed by the Government and followed by the same the orders are to be passed by the third respondent and fourth respondent, the petitioner



10. I have heard the learned counsel for both sides and have perused the materials placed on record.

11. It is not in dispute that the petitioner's services has been regularized by bringing him under the time scale of pay with effect from 14.02.2001 and he retired on superannuation on 30.06.2016. Therefore, that period itself is more than 10 years minimum qualifying service for getting pension.

12. That apart, though it is the plea of the petitioner that from 05.01.1990, 50% of his services should be calculated, the stand of the petitioner is that on 05.01.1990 the petitioner was initially engaged as only substitute sanitary worker and that was not continuous as stated supra and it was only sporadic engagement. Therefore, it cannot be treated as continuous engagement even on daily wage basis. The said submission made by the learned Additional Government Pleader is to be accepted as otherwise nominal roll has to be verified and if there is no continuous engagement, the question of calculating even 50% of service from 05.01.1990 does not arise.



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13. However, since it is an admitted case that from 01.07.1999 the petitioner had been temporarily engaged as sanitary worker and in that capacity he had been continuously working, even though subsequently he has been regularized with effect from 14.02.2001 as per the import of the Full Bench order of this Court in **"The Government of Tamil Nadu and Others -Vs- R.Kaliyamoorthy and Others"** in W.A.No.158 of 2016 etc., batch dated 03.12.2019, especially under Para 46(iii), the petitioner would be entitled to get the pensionary benefits by calculating 50% of the services rendered by the petitioner from 01.07.1999 till 14.02.2001. The relevant portion of the Full Bench order reads thus,

" 46(iii) In case, the government employee / servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of service rendered shall be counted for the purpose of conferment of pensionary benefits."

14. The Government Employee / Servant it had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of service rendered shall be counted for the purpose of conferment of pensionary



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benefits. If this is the import of the Full Bench decision, certainly the petitioner's services from 01.07.1999 to 14.02.2001 shall be taken into account for the purpose of pensionary benefits ie., 50% of the services rendered till 14.02.2001 and from 14.02.2001 till his superannuation, full services put together shall be the entitlement of the petitioner to get the retirement and pensionary benefits and that shall be paid to him.

15. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the respondents especially the fourth respondent to consider the request of the petitioner dated 13.12.2017 along with the pension proposal already been submitted by the third respondent through the proper channel and pass orders thereon by taking into account 50% of the services rendered by the petitioner as sanitary worker at the third respondent municipality with effect from 01.07.1999 till 14.02.2001 and further full services rendered by the petitioner from 14.02.2001 till the date of superannuation ie., 30.06.2016 and both these services put together what shall be the total service that can be taken into account for the purpose of calculating the pensionary benefits payable to the



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petitioner and the same shall be calculated and paid to the petitioner.

- It is needless to mention that the arrears of pension shall also be calculated and be paid to the petitioner.
- The needful as indicated above shall be undertaken by the respondents especially the fourth and fifth respondents within a period of 8 weeks from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
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R. SURESH KUMAR, J.

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