BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.5571 of 2021

S.Sadasivam ... Petitioner

-vs-

The Principal Secretary/State Tax Commissioner,
Commercial Tax Department,
Ezhilagam, Chepauk, Chennai - 5. ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing respondent to include the petitioner name into old pension scheme and sanction monthly pension after attaining superannuation by dispose petitioner's representation dated 29.01.2021 within time limit stipulated by this Court

For Petitioner : Mr.D.Selvanayagam

For Respondent : Mr.M.Ramesh
Government Advocate

O R D E R

The relief sought for in the present writ petition is to direct the respondents to include the petitioner's name in the old pension scheme and sanction monthly pension under the Tamil Nadu Pension Rules. The petitioner was appointed in the post of Clerk in Chinthalavadi Handloom Weavers Cooperative Society, Kulithalai Taluk, Trichy District on 13.07.1987 and he was promoted to the post of Manager and thereafter, the society was dissolved due to financial loss. The petitioner was relieved from service on 26.05.2004, after completion of 16 years of service. The employment seniority of the petitioner was restored by the District Employment Exchange, as he was relieved from the Cooperative Society. Thereafter, he was appointed to the post of Typist by the District Collector, Karur under Rule 10A(1) of the State and Subordinate Service Rules. The petitioner appeared in the special recruitment test conducted by the Tamil Nadu Public Service Commission and was successful. Thus, his services were regularised in the post of Typist and thereafter, he was promoted to the post of Deputy Tax Officer with effect from 17.10.2017.

2. The grievance of the petitioner is that the services rendered by him in the Cooperative Society are to be taken into consideration for the purpose of calculating the qualifying service for grant of pension.

3. The learned counsel for the petitioner made a submission that since Cooperative Society is also a registered society, the period of service rendered by the petitioner is to be reckoned for the purpose of calculating the qualifying services for settling the retirement benefits. In this regard, the learned counsel relied on the judgment of the Hon'ble Supreme Court in ***Prem Singh vs. State of Uttar Pradesh*** reported in ***(2019) 10 SCC 516.*** **para 36 and 37**

4. As far as the case cited supra is concerned, the project is a Government project and the petitioner before the Hon'ble Supreme Court was employed in work-charged service. However, the said judgment cannot have any direct implication, as counting of the services in Tamil Nadu Government Service is to be done with reference to the Tamil Nadu Pension Rules.

5. The application of the Tamil Nadu Pension Rules, 1978 has been enumerated in Rule 2. Rule 2 categorically states that "save as otherwise provided in these rules, these rules shall apply to all Government Servants appointed to services and posts in connection with the affairs of the State which are borne on pensionable establishments whether temporary or permanent, but shall not apply to – (a) persons in casual and daily rated employment; (b) persons paid from contingencies; (c) persons employed on contract except when the contract provides otherwise; (d) members of the All-India Services; (e) persons entitled to the benefit of a Contributory Provident Fund; and (f) persons who are entitled to the benefits under the Factories Act, 1948 and the Employees' Provident Fund Act, 1952, excluding those who are governed by Statutory Service Rules and belong to pensionable service.

6. Rule 2 of the Tamil Nadu Pension Rules categorically enumerates that private services rendered in any organisation, which is not a State cannot be counted for grant of pensionary benefits under the Tamil Nadu Pension Rules.

7. Cooperative Society is registered under the provisions of the Tamil Nadu Cooperative Societies Act. The petitioner was appointed in a Cooperative Society, which is not a 'State' within the meaning of Article 12 of the Constitution of India. When the Cooperative Society is not a State within the meaning of Article 12 of the Constitution, then the Tamil Pension Rules, 1978 is not applicable in respect of services rendered in a registered Cooperative Society, which is not a State.

8. This Court is of the considered opinion that the private services rendered in a registered society which is not a State cannot be reckoned for the purpose of counting qualifying service to grant pensionary benefits.

9. In the present case, the petitioner admittedly was employed in a Cooperative Society registered under the Tamil Nadu Cooperative Societies Act, which is not a State within the meaning of Article 12 of the Constitution of India. Therefore, his services in the Cooperative Society cannot be counted for the purpose of calculating the qualifying service. Thus, the petitioner has not established any acceptable ground for the purpose of granting the relief as such sought for in the present writ petition and the writ petition is liable to be dismissed.

10. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Principal Secretary/State Tax Commissioner,
Commercial Tax Department,
Ezhilagam, Chepauk, Chennai - 5.

+1 CC to M/s.SPL.GP (SR-16709[F] dated 05/04/2022)

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-16461[F] dated 04/04/2022)

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