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CONT P(MD)No.1203 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.09.2022

PRONOUNCED ON : 01.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

CONT P(MD)No.1203 of 2019

Nallakaruppa Thevar

... Petitioner

VS.

Dhanalakshmi,
The Tahsildar,
Office of Tahsildar,
Thirumangalam,
Madurai District.

... Contemnor

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for wilfully disobeying and not complying with the order of this Court, dated 07.11.2016, in W.P.(MD)No.21283 of 2016.

For Petitioner : Mr.K.Abiya

For Respondent : Mr.Veera Kathiravan
Additional Advocate General
assisted by M/s.D.Farjana Ghoushia
Special Government Pleader



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ORDER

This contempt petition is filed alleging non compliance of the order passed by this Court in writ petition W.P.(MD)No.21283 of 2016, dated 07.11.2016.

2.The prayer in the writ petition was to issue a writ of Certiorarified Mandamus, to quash the impugned proceedings of the 4th respondent, dated 27.09.2016 and consequentially, to direct the respondents to issue pension to the petitioner by way of counting 50% of petitioner's prior service of regularization along with regular service for grant of pension on the basis of his total service revised pension DCRG arrears and all other monetary benefits accrued thereon to the petitioner from the date of his retirement.

3.The brief facts as stated in the affidavit of writ petition are that the petitioner is a retired Village Assistant, having been appointed to the post of Village Assistant on 09.09.1974, his service was regularized on 01.06.1995 in the very same post. He retired from service on 31.01.2000. The petitioner's regular



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service period from 01.06.1995 to 31.01.2000 alone was counted by the fourth respondent and the service rendered by the petitioner for the period from 09.09.1974 to 01.06.1995 was not taken into account and therefore, the fourth respondent denied the pension to the petitioner. This was put to challenge before this Court. This Court, vide order, dated 07.11.2016, quashed the impugned proceedings and directed to count 50% of the service rendered by the petitioner prior to the regularization and grant pension within a period of six weeks.

4. This contempt petition was filed on 22.08.2019. This Court has issued statutory notice to the contemnor and the contemnor was present on the next hearing, i.e., on 30.09.2022. The contemnor submitted before this Court that the respondents in the writ petition have preferred writ appeal in W.A.(MD)No.1319 of 2017 and the same was dismissed. Against, which the respondents have preferred review application in Rev.App.SR(MD)No.16874 of 2021. The order of this Court will be complied which will be subject to the review application. The contemnor has also filed an affidavit to this effect.



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5. In the meanwhile, the Government has directed to file a SLP against the order passed by this Court and are taking steps to number the case and this Court has recorded the said submission.

6. The learned Additional Advocate General appearing for the contemnor submitted that the issue of granting pension by calculating 50% of the past service to the post of Village Assistant was considered by the Hon'ble Division Bench, wherein it has been held that the Village Assistants are not entitled, as per their service rules itself. The said employment is a part time job. Subsequently, the post Village Assistant was abolished and they were regularized as a full time employment from 1995 onwards. Therefore, the petitioner was granted special pension for the period of their service. Hence, the petitioner is not entitled to any pension. Since the Courts ought to follow some uniformity, the subsequent decision ought to be taken into account and prayed to close the contempt petition.

7. On perusal of the service rules, it is seen that the post of Village Assistant is a part time job. The provisions of the Act also states that the Village Assistants



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are at liberty to carry on any other work apart from serving as Village Assistants. In such circumstances, when the employment itself is a part time job, claiming 50% from such service is incorrect and that is not contemplated in pension rules. Therefore, there is no willful contempt by the contemnor. Moreover the issue is a larger issue which is prejudicing the government financially. Therefore, this contempt petition is closed. No costs.

Index : Yes / No
Internet : Yes

01.11.2022

Tmg

To

The Tahsildar,
Office of Tahsildar,
Thirumangalam,
Madurai District.



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S.SRIMATHY, J

Tmg

Order made in
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