



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.22282 of 2019

WEB COPY

S.Alagar

... Petitioner

Vs.

Tamil Nadu Tourism Development Corporation Ltd.,
Rep. by its Managing Director,
13, 15th Street First Lane,
Periyar Nagar, Chennai -82.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to provide pensionary benefits to the petitioner taking into account the entire period of his service from 05.03.1981 to 30.06.2003 in the respondent Corporation with arrears of pension and the interest for the belated payment of the same.

For Petitioner : Mr.V.Kannan

For Respondent : Mr.C.Lakshmanan

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Sweeper in the Hotel Tamilnadu run by the respondent Corporation vide proceedings dated 05.03.1981. He appears to have become a confirmed employee on 16.11.1995. He went on voluntary retirement in the year 30.06.2003. He was getting only minimum pension. The petitioner now wants the entire service from 05.03.1981 to be taken into account for the purpose of computing his pensionary benefits. He submitted a representation in this regard. Since it was not considered, the present writ petition has been filed.

3. The learned Standing counsel appearing for the respondent Corporation strongly contended that the writ petition is liable to be dismissed on the ground of laches as well as on merits. He pointed out that stale claims cannot be allowed to be agitated. The petitioner retired on 30.06.2003. The question of raking up the issue of pension after 16 years cannot be allowed. He would also state that G.O.No.41 Finance (Pension) Department dated 09.02.2010 is not applicable to the petitioner because it has not been made retrospective. He pressed for dismissal of the writ petition.



4. I carefully considered the rival contentions through the materials on record.

5. I am not persuaded by the objections anchored on the ground of laches. It is true that the writ petitioner had literally slept and woke up after a gap of 16 years. It is well settled that the doctrine of laches is only a rule of discretion and it does not have any bearing on the Court's discretion. The Court will definitely invoke the said doctrine, if third party rights have intervened in the meanwhile and if third parties will be put to prejudice by considering the writ petitioner's claim. That apart, the issue relates to grant of pensionary benefits. Therefore, this Court has to adopt an indulgent approach. I reject the objection raised on the ground of laches.

6. Coming to the applicability of G.O.No.41 Finance (Pension) Department dated 09.02.2010, I have to necessarily hold that it will apply to the petitioner's case also. It is true that by the aforesaid Government Order, amendment to Rule 11 of Tamil Nadu Pension Rules 1978 came into force. This in the very nature of things will also apply to retired employees. It is particularly made clear by the First Proviso to Rule 11(4)(iii) which states that the said Rule is applicable to all employees who were absorbed in Government service before 01.04.2003. The petitioner was absorbed in regular service in the year 1995 itself. Therefore, the aforesaid Government Order will apply to the petitioner's case. The aforesaid Government Order States that half of the temporary service shall be counted for pensionary benefits. The petitioner was appointed as Sweeper temporarily with effect from 05.03.1981 He was confirmed on 16.11.1995. Thus the half of the period will have to be taken into account for refixing the petitioner's pensionary benefits. **(*)It would come to 7 years 4 months and 5 days.** Therefore, the petitioner's pensionary benefits shall be re-fixed. Such refixed pensionary benefits shall be paid to the petitioner from the date of filing of the writ petition. This writ petition stands partly allowed on these terms. No costs.

Sd/-

Assistant Registrar (CS I)

(*)Amended as per the order of this Court dated 30.11.2022 in W.P. (MD)No.22282 of 2019

Sd/-

Assistant Registrar (CS I)

// True Copy //

/12/2022

Sub Assistant Registrar(CS)



To:

(*) To be substituted to the order already despatched on 11/11/2022

The Managing Director,
Tamil Nadu Tourism Development Corporation Ltd.,
13, 15th Street First Lane,
Periyar Nagar, Chennai -82.

+1 CC to M/s.C.LAKSHMANAN, Advocate (SR-50744[F] dated 20/10/2022)

+1 CC to M/s.V.KANNAN, Advocate (SR-50877[F] dated 26/10/2022)

W.P.(MD)No.22282 of 2019
19.10.2022

ED(09.11.2022) 3P 4C

RD(09/12/2022) 3P 4C