BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1660 of 2016
and
W.M.P.(MD).No.1416 of 2016

K.Kalimuthu ... Petitioner

Vs.

1.The Commissioner,
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 5.

2.The Joint Commissioner of Commercial Taxes,
Commercial Taxes Building,
Palayamkottai,
Tirunelveli.

3.The Deputy Commissioner (Commercial Taxes),
O/o. the Deputy Commissioner,
Saatchiapuram,
Sivakasi,
Virudhunagar District.

4.The Principal Accountant General,
O/o. the Accountant General, (Accounts and Entitlements),
No.361, Anna Salai,
Chennai,
Tamil Nadu. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in his proceedings in ந.க.எண்.அ1/2031/2015 dated 06.10.2015 and quash the same as illegal and consequentially to direct the respondents to revise the retirement benefits of the petitioner in the light of Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 taking into consideration of his past service rendered as Noon Mean Organizer for the period between 31.03.1983 and 20.07.1986 and disburse the same within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran,
For M/s.Ajmal Associates.

For R-1 to R-3 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

For R-4 : Mr.P.Gunasekaran.

ORDER

This Writ Petition is filed to quash the impugned order dated 06.10.2015 and consequentially to direct the respondents to revise the retirement benefits of the petitioner, rendered as Noon Mean Organizer for the period between 31.03.1983 and 20.07.1986 and disburse the same.

2. The petitioner was appointed as Noon Meal Organizer on 31.03.1983. After serving for certain period of time, the petitioner has resigned the said post on 20.07.1986. Thereafter, the petitioner participated in the Group IV examination and was selected and appointed in the Commercial Tax Department through TNPSC. Now, the petitioner is seeking to add his service rendered in the post of Noon Meal Organizer.

3. After perusal of the facts as stated in the affidavit, this Court has given its anxious consideration. The G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009 read with Rule 11(4) of the Tamil Nadu Pension Rules stipulates that the Government servant is entitled to claim 50% of the past service, if they are absorbed in the same service. The petitioner was not absorbed into the same service, but he had resigned the Noon Meal Organizer service, thereafter participate in the selection process conducted by the TNPSC and joined a new service. In such circumstances, the claim of the petitioner cannot be considered.

4. The issue is already considered by the Hon'ble Division Bench vide judgment dated 03.12.2014 in W.A.(MD)No. 587 of 2014 in the case of the *Principal Secretary Vs M. Palanikani* wherein, it has been held that Noon Meal

Organizer service cannot be counted, if the service is regularized after 01.04.2003. In the present case, the service of the petitioner was not regularized in the subsequent service, but it is a fresh recruitment process.

5. Moreover, the petitioner has participated in the subsequent recruitment process and was appointed in the Commercial Tax Department through TNPSC. The petitioner has resigned from the service rendered in Noon Meal Organizer and as per Rule 23 of the Tamil Nadu Pension Rules, which postulates that resignation from service or post entails forfeiture of past service. Hence, after resignation on the principle of "forfeiture of past service", the petitioner is not entitled to calculate the service rendered in Noon Meal Organizer. Therefore, on this ground also the petitioner is not entitled to count the service rendered in the Noon Meal Organizer.

6. The Learned Counsel attempted to convince this Court by referring to the proviso to Rule 23, wherein, it is stated that if prior permission is obtained from the Department, then the service can be added. But the Learned Counsel has not submitted any such evidence regarding prior permission that was obtained from the Department. Therefore, the plea of the petitioner cannot be entertained.

7. In view of the above, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

15.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr

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S.SRIMATHY, J.

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