



W.P(MD)No.24032 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24032 of 2018

P.Balasundaram

... Petitioner

Vs

- 1.The Director,
Panchayat Union (Pension),
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai.
- 2.The Director,
Rural Development & Panchayat Raj,
Saidapet,
Chennai – 600 015.
- 3.The Assistant Director,
Panchayat Union (Pension),
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai.
- 4.The Assistant Director,
Local Fund Audit Department,
Tirunelveli,
Tirunelveli District.
- 5.The District Collector,
Tirunelveli District,
Tirunelveli.



W.P(MD)No.24032 of 2018

6. The Commissioner,
Nanguneri Panchayat Union,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to disburse the monthly pension payable to the petitioner for his services rendered at sixth Respondent Panchayat Union with effect from 01.02.2015 @ 12% interest.

For Petitioner : Mr.J.David Ganesan

For Respondents : Mr.A.K.Manikkam
Special Government Pleader
for R.1 to R.5

M/s.K.Priyanka for R.6

ORDER

The writ petitioner herein was appointed as Night Watchman in Nanguneri Panchayat Union on 14.08.1986. The then Commissioner of the Panchayat Union had appointed him in the said post. Thereafter, he was promoted as Office Assistant on 28.10.1987. He had been working in the said capacity till he attained the age of superannuation on 31.01.2015. The petitioner was also allowed to retire. His grievance is that for the last almost eight years he had not been disbursed with the pensionary and retirement benefits. Seeking disbursement of the monthly pension payable to him, the present writ petition has been filed.



W.P(MD)No.24032 of 2018

2. The respondents filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. The primary impediment is that when the writ petitioner was appointed as Night Watchman by the sixth respondent on 14.08.1986, there was a ban on such appointment. Therefore, the initial appointment of the writ petitioner itself was illegal. The said post of Night Watchman was feeder grade for the post of Office Assistant. Since the initial appointment itself was illegal, the petitioner ought not have been promoted as Office Assistant. In any event, taking note of the fact that he had put in service ever since, following the retirement, proposal was sent for rectification and regularization. This proposal has been pending on the file of the second respondent all these years. The stand of the respondents is that as and when rectification order is received from the Government, appropriate action will be taken for sanction of the writ petitioner's pension and other benefits.

3. I carefully considered the rival contentions and went through the materials on record. The dispute is essentially concerning the initial appointment of the writ petitioner. The petitioner had worked as Night Watchman from 25.08.1986 to 28.10.1987. I called upon the writ petitioner's counsel to obtain instructions as to whether this period of service can be given up. The learned counsel after getting instructions stated that he would be



W.P(MD)No.24032 of 2018

satisfied if his service is counted with effect from 28.10.1987 onwards. I called upon the learned Special Government Pleader to verify if the Panchayat Union concerned had the sanctioned post of Office Assistant. The learned Special Government Pleader answered in the affirmative. It may be that the promotion of the writ petitioner to the said post was not entirely in order but the fact remains that the writ petitioner had put in service in a sanctioned post for over 28 years. He had received his monthly salary also. Thereafter, he was also formally allowed to retire from service. Therefore, such a person cannot be denied the pensionary and other retirement benefits.

4. In this view of the matter, I direct the second respondent to forthwith pass appropriate orders sanctioning disbursement of the writ petitioner's pensionary and retirement benefits by counting his service as Office Assistant from 28.10.1987 till 31.01.2015. It appears that the proposal sent by the fifth respondent has been returned. The fifth respondent is directed to re-submit the proposal to the second respondent within a period of two weeks from the date of receipt of a copy of this order. If other departments are also involved, there shall be proper cooperation with them and it shall be ensured that the benefits payable to the petitioner are paid within a period of twelve weeks from thereafter.



W.P(MD)No.24032 of 2018

5. This writ petition is allowed on these terms. No costs.

WEB COPY

28.10.2022

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.24032 of 2018

G.R.SWAMINATHAN, J.

mga

W.P(MD)No.24032 of 2018

28.10.2022