



W.P.(MD)No.8662 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8662 of 2016

M.Marimuthu

... Petitioner

vs.

- 1.The Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner,
Commissioner of Municipal Administration,
Ezhilagam, Chennai – 600 005.
- 3.The Commissioner,
Municipal Corporation of Thiruchirappalli,
Thiruchirappalli.
- 4.The Assistant Commissioner,
Ariyamangalam Division,
Municipal Corporation of Thiruchirappalli,
Thiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to compute the entire



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period of service from 21.09.1983 to 28.12.2015 (22 years and 11 months), rendered by the petitioner on temporary basis for the purpose of counting as qualified service for the computation of pension and future retirement benefits.

For Petitioner : Mr.N.Sekar
for M/s.S.Arunachalam Associates
For R3 and R4 : Mr.N.S.Karthikeyan

ORDER

This writ petition is filed for issuance of a writ of Mandamus, to direct the respondents to compute the entire period of service from 21.09.1983 to 28.12.2015 (22 years and 11 months), rendered by the petitioner on temporary basis for the purpose of counting as qualified service for the computation of pension and future retirement benefits.

2.The brief facts of the case are that the petitioner was appointed as Overhead Tank Television and Street light Operator on 21.09.1983 under the control of Commissioner Panchayat Union, Thiruverumbur. Subsequently, the petitioner's service was regularized on 01.09.2006 in the post of Electrician Helper in the time scale of pay of Rs.2550-55-2660-60-3200.



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3.The contention of the petitioner is that he was continuously in service without any break and he has continuously worked in the 4th respondent municipal service and has attained superannuation on completion of 60 years from 28.02.2015. The petitioner was permitted to retire from service and was relieved as per the proceedings of the 3rd respondent, dated 27.02.2015. However the petitioner was not paid any retirement benefits, but the respondent paid only a sum of Rs.45,000/- equivalent to encashment of earned leave and savings and thrift Societies amount of Rs.39,000/- and Rs.10,000/- of other deposits. The further contention of the petitioner is that initially he joined as unskilled daily wage worker without routing through employment exchange. However, the petitioner was otherwise qualified. The nature of work is perennial and it is a full time job as done by the permanent workers. The petitioner was regularized as per the G.O.No.21, Municipal Administration Department, dated 23.02.2006. Even as per the order, the petitioner was entitled to be regularized from the date of issuance of the order, i.e., 23.02.2006. The respondents have not taken the original date of appointment, i.e., 21.09.1983. Therefore, the petitioner has come up with this writ petition claiming to add the temporary service and grant pension.



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4. It is an admitted fact that the petitioner was not recruited through employment exchange and he had joined the service in a temporary post as a daily wage employee on 21.09.1983. Thereafter, the petitioner was regularized as per G.O.No.21, Municipal Administration Department, dated 23.02.2006 and the regularization is from 23.02.2006 onwards. The issue of adding fifty percent of the temporary service was considered by the Honourable Full Bench in the case of the Government of Tamil Nadu and others Vs R. Kaliyamoorthy reported in 2019 (6) CTC 705 case, wherein it has been stated that if any person is employed as a daily wage employee and regularized after 2003, then the employee is not entitled to add the temporary service. The relevant portion of the order is extracted hereunder:

45. In the light of the above, we answer the reference as follows:-

“i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of W.A.No.158 of 2016 etc., batch proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.



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(iii) In case, a government employee/servant had also rendered service in non-provincialized service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of W.A.No.158 of 2016 etc., batch their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

5. In the light of the judgment rendered in the Hon'ble Full Bench, under clause (v) the petitioner is not eligible for any pension. Therefore, this Court is of the considered opinion that the claim of the petitioner is not as per the law. Hence, the Mandamus cannot be granted and the writ petition is dismissed. No costs.

Index : Yes / No
Internet : Yes

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S.SRIMATHY, J

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