



W.P.(MD).No.26682 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.26682 of 2019

P.Maheswari

... Petitioner

Vs.

1.The Commissioner,
Dairy Development Department,
Tamil Nadu State Government,
Madhavaram,
Chennai.

2.The Deputy Registrar, (Dairy Development),
Tamil Nadu State Government,
Anna Nagar,
Madurai.

3.The General Manager,
The Madurai District Co-operative Milk Producers Union,
Madurai.

4. The State of Tamil Nadu,
Represented by its Secretary,
Department of Animal Husbandry,
Chennai.

... Respondents

*(R-4 is suo motu impleaded vide Court Order dated 09.12.2022 in
W.P.(MD).No.26682 of 2019).*



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka.No.1163/A1/2019 dated 07.06.2019 passed by the second respondent and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondents to sanction and pay the family pension along with other benefits to the petitioner which arises on the death of the petitioner's husband, who was an employee under the respondents.

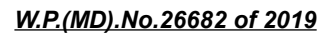
For Petitioner : Mr.K.Pandiarajan

For R-1, R-2
and R-4 : Mr.M.Ramesh,
Government Advocate.

For R-3 : Mr.J.Devasenana

ORDER

This Writ Petition is filed to quash the impugned order dated 07.06.2019 with a consequential relief to pay the family pension along with the other benefits.



3. The contention of the petitioner is that based on the past service, the petitioner's husband has put in total service of 13 years, 7 months and 7 days in aggregate. However, as per the applicable pension Rule, the total service period for pension calculation aggregate to 10 years, 7 months and 1 day as per the abstract of G.O.Ms.No.437 dated 23.06.1988 and also confirmed for effective implementation as per G.O.Ms.No.408 Finance (Pension) dated 25.08.2009, applicable from 01.01.1961. As per G.O.Ms.No.24, Finance



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(Pension) dated 13.01.1986, a fraction of a year equal to 3 months and above shall be treated as one completed half year and reckoned as qualifying service for determining pension. The claim of the petitioner was not considered. Therefore, the petitioner had filed W.P.(MD).No.5491 of 2019 and this Court vide order dated 08.03.2019 directing the respondents to consider and pass orders. Since the same was not considered, the petitioner had filed Cont.P. (MD).No.1104 of 2019. Thereafter, the impugned proceedings dated 07.06.2019 was passed declining family pension for the reasons that the service record of the deceased husband was not available. Moreover, the petitioner has come up with this petition belatedly. Aggrieved over the said impugned order, the petitioner has filed this Writ Petition.

4. The respondents have filed a counter stating that the Dairy Development Department was closed, since the Milk project was handed over to Madurai District Co-operative Milk Producers Union Limited on 01.02.1981. The petitioner's deceased husband was working in the said Union from 01.02.1981 to 14.03.2002. In the Milk Producers Union, the employees are entitled to get benefits under the EPF Act. After the demise of the petitioner's husband, family pension was granted under the Employees Pension Scheme



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1995 and now the petitioner is regularly getting pension for the service rendered by her deceased husband from 01.02.1981 to 14.03.2002. The third respondent further submits that as per G.O.Ms.No.186 of Animal Husbandry Department, the petitioner is eligible for the Ex-gratia pension and so the petitioner is getting the Ex-gratia family pension. The petitioner's husband is eligible for Ex-gratia pension for the service rendered in the third respondent Union and the petitioner is getting the same without any default. The petitioner is claiming pension for the period rendered prior to the service rendered in the Government Sector. However, the petitioner deceased husband was not continuously rendered for the period of ten years and hence the petitioner is not entitled to any family pension for the service rendered prior to 1981 in the Department.

5. Heard Mr.K.Pandiarajan, learned counsel for the petitioner and Mr.M.Ramesh, learned Government Advocate, appearing for the respondents 1, 2 and 4 and Mr.J.Devasenan, learned counsel appearing for the third respondent.



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6. The claim of the petitioner is that the petitioner's husband has rendered service in the Animal Husbandry Department, which is a Government service in the post as Casual Labour, Junior Mazdoor and Lab Mazdoor from 10.07.1967 to 03.07.1973. Thereafter, the petitioner's deceased husband was absorbed into regular service from 04.07.1973 to 31.01.1981. Subsequently, from 01.02.1981, the petitioner's husband was deputed to Madurai District Milk Producers Cooperative Union and served as Society employee. The petitioner is not claiming any benefits for the service rendered under the Society, since the petitioner is receiving pension from the Employees Pension Scheme and has also received Ex-gratia payment for the service rendered in Milk Producers Society. But the claim of the petitioner is that since the petitioner's husband rendered service in the Animal Husbandry Department, she is claiming pension for that service which was rendered as a Government service. The respondents submitted that the petitioner is not entitled to Government pension, since the employee has not completed 10 years of service in the Government Department and he had only 7 years 6 months for the period from 04.07.1973 to 31.01.1981. However, the petitioner is claiming to add the Casual Labour, Junior Mazdoor and Lab Mazdoor service by invoking G.O.Ms.No.408 and



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Rule 11(A) of the Tamil Nadu Pension Rules and grant 50% of the service, so that 10 years can be taken and pension can be granted. The petitioner's husband had served as Casual Labour, Junior Mazdoor and Lab Mazdoor from 10.07.1967 to 03.07.1973 i.e. for 6 years. If 50% of the service is taken from this Casual service, then the petitioner's husband would be entitled to 10 years of service.

7. The petitioner's husband is entitled to such benefits granted under Rule 11 A, since he was serving as a Lab Mazdoor, thereafter, absorbed in the same Department in the permanent vacancy. Moreover, the petitioner's husband was absorbed prior to 01.04.2003. Therefore, by invoking Hon'ble Full Bench judgement rendered in Kaliyamoorthy's case, the regularization was also prior to 01.04.2003, by taking the service from 10.07.1967 to 31.01.1981, the petitioner's husband is entitled to pension. Consequently, the petitioner is entitled to family pension. However, the period from 10.07.1967 to 03.07.1973, 50% of the service shall be included to the regular permanent service from 04.07.1973 to 31.01.1981.



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8. The petitioner has not impleaded the Government as a party.

Therefore, this Court *suo moto* impleaded the State of Tamil Nadu represented by its Secretary, Department of Animal Husbandry, Chennai as the proposed respondent. The Secretary / proposed respondent shall consider the petitioner's claim in the light of the above observations and grant family pension to the petitioner. The respondents shall not decline the family pension by stating that there is no documents available or there is no service records available of the deceased employee. With the available records and the records that are submitted before the EPF authority as well as the Government orders and without demanding for the service records, the respondents shall grant pension to the petitioner. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

09.12.2022

Index : Yes / No
Internet : Yes/ No
Nsr



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Madhavaram,
Chennai.
2. The Deputy Registrar, (Dairy Development),
Tamil Nadu State Government,
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Madurai.
4. The Secretary,
The State of Tamil Nadu,
Department of Animal Husbandry,
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S.SRIMATHY, J.

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