



W.P.(MD)No.11092 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.11092 of 2017

and

W.M.P(MD)No.8506 of 2017

S.Murugan

... Petitioner

vs.

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chennai – 5.
2. The Secretary and General Manager,
Tamil Nadu Water Supply and Drainage Board,
Head Office, Chennai – 5.
3. The Joint Chief Engineer (GI),
Tamil Nadu Water Supply and Drainage Board,
Head Office, Chennai -5.
4. The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Madurai Dindigul Theni Circle,
Madurai – 20.
5. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Madurai – 20.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of ***Certiorarified Mandamus***, calling for the records connected with the impugned order of recovery passed by the 3rd respondent in Lr.No.P3/21371/Pen/HO/2014-1 dated 27.5.2016, Lr .No. P3/21371/Pen/HO/2014-3, dated 27.5.2016 and Lr.No. P3/21371/Pen/HO/2014-4 dated 27.5.2016 which was received by the petitioner on 03.03.2017 and quash the same and consequently direct the respondents to count the 50% of the NMR service rendered by the petitioner for the period from 25.11.1974 to 20.01.1984 along with the regular service from 21.01.1984 to 30.06.2014 and revise the pensionary benefits of the petitioner for the entire period of 40 years of service.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.R.Satheesh
Standing Counsel

ORDER

This Writ Petition is filed seeking for issuance of ***Certiorarified Mandamus***, to quash the impugned order of recovery passed by the 3rd respondent in Lr.No.P3/21371/Pen/HO/2014-1 dated 27.05.2016, Lr.No. P3/21371/Pen/HO/ 2014-3, dated 27.05.2016 and Lr.No. P3/21371/Pen/HO/2014-4, dated 27.05.2016 which was received by the petitioner



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on 03.03.2017 and also sought for a consequential direction to count the 50% of NMR service rendered by the petitioner for a period from 25.11.1974 to 20.01.1984 along with regular service from 21.01.1984 to 30.06.2014 and revise the pensionary benefits of the petitioner for the entire period of 40 years of service.

2. The brief facts as stated in the affidavit is that the petitioner was appointed as Watchman in NMR basis on 25.11.1974, subsequently, he was transferred to Trichy in 1977. The petitioner's service was regularized, with effect from 23.01.1984 and retired from service on 30.06.2014.

3. The contention of the petitioner is that he has rendered service for more than 40 years, but the pensionary benefits were sanctioned only for a period from 23.01.1984 i.e., from the date of regularization. The respondents ought to have calculated 50% of NMR service for the period from 25.11.1974 till the date of regularization on 23.01.1984. But, the respondents had calculated only for a period from 1984 to 30.06.2014. The respondents, subsequently, passed the



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impugned order of revision and deduction of pensionary benefits, after three years of the petitioner's retirement, without any reason is a most arbitrary and illegal manner. The respondents without giving any notice, the petitioner's pensionary benefit was suddenly reduced from Rs.10,667/- to Rs.5,493/-, from the month of April 2017. The petitioner's Gratuity was reduced from Rs.3,32,400/- to Rs.1,81,153/-and the Commutation was also reduced from Rs.1,81,513 to Rs.1,48,279/-and as such of the terminal benefits were reduced, without any notice.

4. The further contention of the petitioner is that the impugned order, dated 27.05.2016 was passed for further deducting the 5 years of service and the respondents have taken service only for a period from 1984 to 2014. The respondents have also issued recovery proceedings. Aggrieved over the same the present petition is filed.

5. The respondents have filed counter affidavit and stated that the petitioner was initially appointed as on daily wage basis from 23.01.1984, as per



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entry made in service register page No.8. Subsequently, the Managing Director, vide proceedings No.D1/27650/B5, dated 26.08.1988 and the Executive Engineer Mechanical Division, Madurai issued order for posting him as regular employee in his Proc. No F. Watchman89/EA2, dated 13.02.1989 and the petitioner was absorbed in regular post as watchman and joined duty on 15.09.1989, as per the service book entry. In the meantime, settlement under Section 12(3) of the Industrial Disputes Act, 1947 was entered between the management and the Trade Unions on 08.08.1996, with regard to regularization of NMRs who were working during the period from 1987 to 1996. The employees who were working on NMR basis were regularized under Section 12(3) Settlement of the Industrial Disputes Act, 1947 and were entitled for monitory benefits, with effect from, 01.08.1996 and the settlement was implemented, vide Board proceedings B.P.264, dated 19.09.1996. In the year 1998, the then Executive Engineer, Mechanical Division, Madurai, inadvertently issued orders for regularizing the petitioner's service presuming that the petitioner is eligible to be regularized respectively, under 12(3) settlement on completion of 480 days from the date of joining as NMR i.e., with effect from 23.01.1984. Accordingly, orders were issued for cancellation of



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pay fixation already made and the pay fixation was revised. Regularization is not a right of an employee and moreover, the petitioner was not selected through employment exchange. Even though, the petitioner was engaged as NMR basis, from 1984, his service was regularized in the post of Watchman with time scale of pay and joined duty on 15.09.1989, i.e., well before the day of 12(3) settlement and as such he is not eligible for the benefits under Section 12(3) settlement and further regularization and revision of pay, selection grade, special grade, super grade from 23.01.1984. Hence, the respondents prayed to dismiss the Writ Petition.

6. Heard Mr.S.Govindan, learned counsel appearing for the petitioner and Mr.R.Satheesh, learned Standing Counsel appearing for the respondents. Perused the material documents available on record.

7. It is seen from the records that initially, the petitioner was appointed as Watchman on NMR basis on 25.11.1974. Thereafter, the Government has issued G.O.Ms.No.380, Municipal Administration and Water



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Supply Department, dated 08.04.1987. The purpose of issuance of the said G.O., is for regularizing the persons who were an employee prior to 31.12.1979. Infact, there was a direction to send the list for considering the NMR employees for regularization. The Department has sent another list containing 204 persons have been appointed on or after 01.01.1980. Along with the said G.O., there is an annexure stating the number of persons who were regularized in the annexure. The petitioner's name finds in serial No.18, wherein, the date of first appointment was noted as 25.11.1974. Therefore, the petitioner was coming in the list of candidates, who were appointed prior to 1975. Since the petitioner is coming within the conditions prescribed in G.O.Ms.No.380, the petitioner is entitled to regularize his service from the date of completion of 10 years. The petitioner has completed 10 years of period on 25.11.1984. In fact, the respondents have fixed the date of regularization as 21.03.1984, has granted Selection Grade on 21.03.1994 and Special Grade on 15.04.2004. Thereafter, the petitioner has retired from service on 30.06.2014.



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8. The claim of the petitioner is that the petitioner is entitled to 40 years of service calculating the NMR service and also the petitioner claims that 50% of service worked under NMR is effected for pensionary benefits. The said claim is absolutely wrong since the petitioner was appointed as NMR on 25.11.1974 and the petitioner has served 10 years of service as NMR. Based on the 10 years of NMR service the petitioner has come within the zone of consideration to regular his service. Therefore, the petitioner is not entitled to take the prior period for conferring pensionary benefits. It is the qualification i.e., prescribed for regularization. Hence, the petitioner is incorrect in claiming 50% of the period, which he was served as NMR.

9. The next contention raised by the petitioner is that the respondents have entered 12(3) settlement and implemented the 12(3) settlement to the petitioner and calculated the period of service as 25 years. On perusal of the counter affidavit filed by the respondents, it is seen that there was 12(3) settlement was entered in the year 08.08.1996 to regularize the NMR service who were working for a period from 1987 to 1996.



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10. The petitioner was identified through G.O.Ms.No.380 dated 08.04.1987 as an appointee without recruiting through employment exchange and relaxation was granted through this G.O. The Managing Director, vide proceedings No.D1/27650/B5, dated 26.08.1988 and the Executive Engineer Mechanical Division, Madurai issued order for posting him as regular employee in his Proc. No F. Watchman89/EA2, dated 13.02.1989 and the petitioner was absorbed in regular post as watchman and joined duty on 15.09.1989. The petitioner was absorbed in service on 21.01.1984 based on proceedings dated 09.02.1998. But the contention of the respondents that the higher authority was under a wrong impression that the said 12(3) settlement is applicable to the petitioner and granted the benefits. This plea cannot be accepted since having conferred with the benefits, the benefits cannot be withdrawn after the retirement. That too after three years of the retirement.

11. Accordingly, the impugned order is quashed. The petitioner is entitled to calculate his service from 23.01.1984 and also entitled to selection grade, special grade and other consequential benefits. The respondents are



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directed to disburse the Gratuity, Commutation and any other monetary benefits to the petitioner by taking 23.01.1984 as the date of appointment. If any amount is recovered, the same shall be returned to the petitioner. This order shall be implemented within a period of 12 weeks from the date of receipt of a copy of the order.

12. With the above directions, this Writ Petition is partly allowed.

No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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