



W.P.No. 837 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.837 of 2019

S. Thiyagarajan

.. Petitioner

Vs.

1. The Secretary to Government,
Municipality Administration and Water
Supply Department,
Fort St. George,
Chennai 15

2. The Commissioner of Municipality Administration,
Chepauk, Ezhilagam, Chennai 600 005.

3. The Commissioner
Pollachi Municipality,
Pollachi, Coimbatore District

.....Respondents

Prayer: This writ petition is filed under Article 226 of the constitution to issue a writ of Certiorarified Mandamus after calling for the records pertaining to order in G.O.Ms.No.390 Municipality Administration and Water Supply Department dated 01.10.2018 of the first respondent, quash the same and consequently direct the second respondent to include half the service rendered by the petitioner in the post of temporary basis is continuous as per the award of the Labour Court in I.D.No.168 of 1998 dated 08.08.2000 and as per G.O.Ms.No.437 Finance (Pension) Department dated 23.06.1988 and sanction pension and other terminal



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benefits from 01.05.2018 with 12% interest.

For Petitioner : Mr. S. Makesh
For Respondents 1 and 2 : Mr.V. Veluchamy
Additional Government Pleader

For Respondent 3 : Mr.B. Anand for
Mr.A.S. Thambuswamy

ORDER

This writ petition is filed to issue a writ of certiorarified Mandamus calling for records pertaining to order in G.O.Ms.No.390 Municipality Administration and Water Supply Department, dated 01.10.2018 of the first respondent, quash the same and consequently direct the second respondent to include half of the services rendered by the petitioner in the post of temporary basis is continuous as per the award of the Labour Court in I.D.No.168 of 1998 dated 08.08.2000 and as per G.O.Ms.No.437 Finance (Pension) Department dated 23.06.1988 and sanction pension and other terminal benefits from 01.05.2018 with 12% interest.

2.The case of the petitioner is that he was appointed as a daily



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wage worker under the 3rd Respondent vide proceedings Na.Ka.E/1/14987/89 dated 29.01.1990 and he was promoted as Office Assistant vide proceedings of Na.Ka.No.C5/11951/91 dated 22.02.1991. Thereafter, the petitioner was transferred to Anna Central Bus stand Toilet to collect money from the users vide proceedings Na.Ka.No.17386/90 dated 26.03.1991. It was to the shock and surprise to the petitioner that the 3rd respondent terminated the services of the petitioner on 31.10.1995 orally due to the reasons well known to them. Hence, the petitioner filed I.D.No.168 of 1998 before the Labour Court, Coimbatore and the Labour Court vide order dated 08.08.2000 directed the 3rd respondent to re-instate the petitioner in services with all other attendant benefits.

3. Aggrieved over the award passed by the Labour Court, the 3rd respondent filed W.P.No.9430 of 2003 and the same was dismissed by this Court on 20.03.2002. Challenging the same, the 3rd respondent filed a Writ Appeal in W.A.No.3282 of 2004 and the same was dismissed by the Division Bench of this Court on 01.09.2004.



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4. Thereafter, the first respondent issued an order vide G.O.Ms.No.249 dated 11.07.2011 and appointed the petitioner as Record Clerk in Kangeyam Municipality. The petitioner on attaining the age of superannuation retired from the services on 30.04.2018. As there was some break in service due to the oral termination made by the third respondent, the petitioner gave a written representation on 12.01.2017 requesting to include 50% of his services rendered from 29.01.1990 to 11.07.2011 and to pay pension to the petitioner and other terminal benefits as per G.O.Ms.No.437 Finance (Pension) Department dated 23.06.1988. However, the representation made by the petitioner was not considered. Hence the petitioner filed W.P.No.1888 of 2017 to include the temporary service of the petitioner for the purpose of computation of pension and this Court vide order dated 27.01.2017 directed the first respondent to consider the petitioner's representation within a period of six months from the date of receipt of a copy of this order. But the same was not considered. Thereafter, the 3rd respondent herein sent a letter to the first respondent herein vide proceedings Na.Ka.5631/2017/K3 dated 27.08.2017 to consider the services of the petitioner rendered from 01.02.1990 to 01.08.2011 as per the order of G.O.Ms.No.437 dated



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23.06.1988 towards getting pensionary benefits. The first respondent has not complied the orders passed by this Court as well as the proceedings of the 3rd respondent and passed the impugned order rejecting the request of the petitioner. Hence the petitioner has filed this petition.

5. The learned counsel for the petitioner would contend that the petitioner has rendered his unblemished services for more than 15 years and he is entitled for pension. In spite of the orders passed by this Court and the orders passed by the Court below, the first respondent has not turned up. He further submits that the petitioner has now become senior citizen and to get his terminal benefits, he has been driven from pillar to post. Hence he prays this Court to allow this petition.

6. The learned counsel for the respondents submits that the G.O.Ms.No.437 Finance (Pension) Department dated 23.06.1988 is not applicable to the service of the petitioner. He further submitted that the petitioners service was regularized only after 01.04.2013 and the



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petitioner service as daily wager cannot be taken into account for pensionary benefits. Hence he prays to dismiss this petition.

7. Heard both sides and perused the materials available on record.

8. On perusal of the records, it is seen that the petitioner has joined the 3rd Respondent as a daily wage worker. Thereafter, the third respondent has terminated the services of the petitioner orally, the third respondent ought to have issued a notice followed by an domestic enquiry which was not done in this case. Hence, non employment of the petitioner is illegal and the said act of the third respondent favours the case of the petitioner.

9. This Court has already dealt with the grievance of the petitioner in W.P.No.9430 of 2003 filed by the third respondent and the same was dismissed by this Court on 20.03.2002. Challenging the same, the 3rd respondent filed a Writ Appeal in W.A.No.3282 of 2004 and the same was dismissed by the Division Bench of this Court on 01.09.2004. Hence this Court is inclined to accept the submission of the petitioner that he



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has already obtained two favorable orders from this Court.

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10. Furthermore, there is no merit in the submission of the respondents. Accordingly the third respondent is directed to include the half of the services of the petitioner as per the award of the Labour Court in I.D.No.168 of 1998 dated 08.08.2000 within a period of four months from the date of receipt of a copy of this order.

11. With the above observations, this writ petition is disposed of.

No order as to costs.

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Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
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V.BHAVANI SUBBAROYAN, J.

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