



W.P.No.16113 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.16113 of 2013

S.M.Kaliannan

...Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Highways Department,
Secretariat, Chennai – 600 009.
2. The Chief Engineer (General),
Highways, Chennai.
3. The Superintending Engineer,
Highways, Salem Circle,
Salem.
4. The Divisional Engineer (Highways C& M),
Namakkal Division,
Namakkal.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, Calling for the records on the file of the fourth respondent relating to Na.Ka.No. 1487/2011/A3 dated 15.04.2013, quash the same to the limited extent of denial of benefits of G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009 (Last two paras of impugned order dated 15.04.2013)



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and issue consequential directions to take into account half of Petitioner service from 01.09.1974 to 29.02.1988 along with his regular service from 20.12.1988 to 30.06.2006 to arrive at the total qualifying service for pension and to revise his pensionary benefits and to disburse the consequential monetary benefits with interest for delayed payment.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed to challenging the order dated 15.4.2013 passed by the fourth respondent in Na.Ka.No. 1487/2011/A3, thereby rejecting the request of the petitioner to take into account half of petitioner service from 01.09.1974 to 29.02.1988 along with his regular service from 20.12.1988 to 30.06.2006 to arrive at the total qualifying service for pension and to revise his pensionary benefits.

2. The petitioner initially appointed as NMR worker on daily wages basis from 01.09.1974 to 29.02.1988 in Thiruchengode Sub Division of Highways Department, Namakkal Division. Thereafter, he became eligible for regularization of service and absorbed in regular establishment, as per G.O.Ms.No.702, Transport Department dated



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18.06.1981. Accordingly he was appointed into regular service by an order dated 15.12.1988 in the office of the Assistant Divisional Engineer, National Rural Employment Scheme, Assistant Divisional Engineer, National Rural Employment Scheme, Sankagiri, Namakkal District.

3. After serving for 18 years, the petitioner had attained the age of superannuation and retired from service on 30.06.2006. However, his pensionary benefits were calculated by taking into account of his service of 17 years, 6 months and 12 days. The earlier period of service was not taken into consideration in order to calculate his pensionary benefits. As per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, his service on daily wages basis should have been taken into account to the extent of 50% to arrive at the total qualifying service for pension.

4. Therefore, the petitioner made representation before the fourth respondent and the same was rejected on the ground that there was break in service form the period of 01.09.1988 to 19.12.1988. Therefore, the petitioner is not entitled half of the service period from 01.09.1974 to



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29.02.1988 to calculate his pensionary benefits. Aggrieved by the said order the petitioner filed this present petition with the above said prayer.

5. The learned counsel appearing for the petitioner submitted that as per the government order in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, the service on daily wages basis should have been taken into account to an extent of 50% to arrive at the total qualifying service for pensionary benefits. Admittedly, the petitioner was working as NMR worker on daily wage basis from 01.09.1974 to 29.02.1988. Though there was a break in service from 01.09.1988 to 19.12.1988, the same was condoned by the fourth respondent. When the fourth respondent condoned the break in service period, as per the government order in G.O.Ms.No.408, dated 25.08.2009, the petitioner's service as daily wages basis from 01.09.1974 to 29.02.1988 has to be taken into for calculating his pensionary benefits. Hence, he prayed to allow this writ petition.

6. On perusal of the counter filed by the fourth respondent



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revealed that the petitioner's service cannot be taken into account and the petitioner is not entitled to claim any regularization of service from 01.09.1974 to 29.02.1988. During the said period, when the petitioner was working as daily wage earner on the role of NMR and there was break in service from 01.03.1988 to 19.12.1988. Hence, the fourth respondent rightly rejected the claim of the petitioner.

7. Heard the learned counsel appearing on either side and perused the material placed on record.

8. It is seen from the impugned order, the period of break in service of the petitioner viz., 01.03.1988 to 19.12.1988 was condoned by the fourth respondent. Therefore, as per the government Order in G.O.Ms.No.408, dated 25.08.2009, the earlier half of the petitioner's service period as NMR on daily basis viz., 01.09.1974 to 29.02.1988, has to be taken into account to calculate the pensionary benefits as qualified service for pension.

9. Accordingly, the impugned order dated 15.4.2013 passed by



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the fourth respondent in Na.Ka.No. 1487/2011/A3, is hereby quashed.

The fourth respondent is directed to revise the petitioner's pensionary benefits by taking into account half of the petitioner's service period from 01.09.1974 to 29.02.1988, and disburse the consequential monetary benefits within a period of twelve weeks from the date of receipt of a copy of this Order.

10. With the above directions, the Writ Petition stands allowed.

There shall be no order as to cost.

31.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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WEB COPY To

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Highways Department,
Secretariat, Chennai – 600 009.
2. The Chief Engineer (General),
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3. The Superintending Engineer,
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G.K.ILANTHIRAIYAN. J.

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