



WP.No.776 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P No.776 of 2018

M.Subramaniam, Programme
Officer (Retd.), Tamil Nadu
Institute of Labour Studies,
Chennai-5.

...Petitioner

Vs

1.The Principal Secretary to
Government, Labour &
Employment Department,
Fort St.George, Chennai-9.

2.The Commissioner of Labour,
DMS Complex, Chennai-6.

3.The Director, Tamil Nadu
Institute of Labour Studies,
No.5, Kamarajar Salai,
Chennai-5.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order No.E/206/16 dated 26.7.2017 passed by the third respondent, quash the same and consequently direct the respondents to treat the services of the petitioner rendered in the Tamil Nadu



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Institute of Labour Studies, Chennai from 02.4.1983 to 31.8.2013 as pensionable service to calculate and pay pension and other terminal benefits to the petitioner as provided under the Tamil Nadu Pension Rules, 1978.

For Petitioner : Mr.N.K.Srinivasan
For R1 & R2 : Mr.M.S.Premkumar, GA
For R3 : Mr.V.Jayaprakash Narayanan

ORDER

This is a petition filed by the petitioner seeking to quash the order No.E/206/16 dated 26.7.2017 passed by the third respondent and to direct the respondents to treat the services of the petitioner rendered in the third respondent institute from 02.4.1983 to 31.8.2013 as pensionable service to calculate and pay pension and other terminal benefits to the petitioner as provided under the Tamil Nadu Pension Rules, 1978.

2. The facts leading to filing of this case are as follows :

(i) The petitioner joined in the third respondent institute as a Junior Assistant on 02.4.1983 and his services were regularized subsequently pursuant to G.O.No.996 Personnel and Administrative Reforms Department



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dated 22.9.1984. His probation was declared from 02.7.1986 AN vide proceedings of the third respondent dated 08.7.1987. The third respondent promoted him to the post of Assistant vide proceedings dated 07.8.1987 and it was also regularized vide proceedings dated 31.1.1992.

(ii) In the year 1987, the third respondent institute was brought under the control of the Tamil Nadu Institute of Labour Studies Society created by the Government of Tamil Nadu. When the representatives of the staff of the third respondent institute expressed their apprehension about their eligibility of pension in the event of the third respondent institute coming under the society, the first respondent assured that the service benefits of the staff would not be affected due to conversion of the Government institute into a society.

(iii) In 1990, the employees of the third respondent were directed to join the Employees' Provident Fund (EPF) Scheme. He was paying the EPF subscription from 01.4.1988 onwards. He was later promoted to the posts of Manager (Superintendent Cadre) and Manager (Accounts) vide proceedings of the third respondent dated 26.12.1997. He was also promoted to the post of Programme Officer vide proceedings dated 27.8.2013. He also attained



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the age of superannuation on 31.8.2013 and was relieved from the services pursuant to the orders passed by the third respondent.

(iv) Thereafter, expressing his grievances, the petitioner sent a representation dated 20.1.2016 to the respondents. Since nothing was forthcoming, the petitioner filed W.P.No.13906 of 2017 seeking to direct the respondents to consider his representation dated 20.1.2016 and it was disposed of by order dated 06.6.2017 directing the respondents to consider the said representation on merits.

(v) Pursuant to the directions of this Court, the third respondent, by the impugned order, rejected the claim of the petitioner on the ground that after conversion of the third respondent institute into a society, the petitioner became a member under the Act, 1952 and availed EPF benefits, that once he was covered and had remitted the EPF contribution, it was understood that he was a member of the EPF Scheme and that all along his service, he did not make any such representation to the third respondent regarding his wish to go back to the Government service. Challenging the same, the petitioner is before this Court.



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3. Learned counsel appearing for the petitioner submitted that the main grievance of the petitioner is that the third respondent ought to have given him all pensionary benefits under the Tamil Nadu Pension Rules, 1978. However, he was granted pension only under the Employees' Pension Scheme, 1995 as provided under the Tamil Nadu Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the Act, 1952). In a similar situation, one Mr.K.Jayaraman, who was a professor of the third respondent institute, filed W.P.No.5473 of 2009 before this Court, which ended in dismissal on 15.2.2009. Challenging the said order of this Court, the said Mr.K.Jayaraman filed W.A.No.259 of 2010 and it was allowed by a Division Bench of this Court by judgment dated 29.9.2011. The special leave petition filed by the respondents herein came to be dismissed as time barred by confirming the judgment in the said writ appeal. In order to avail the benefit of pensionary benefits, the petitioner made a representation to the 3rd respondent seeking Government pension applicable to the government servants, however, the same was rejected. Hence, he prayed for allowing the Writ Petition.



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4. The third respondent filed a counter affidavit stating as follows:

(i) The third respondent institute was functioning as an autonomous body with effect from 01.4.1988. The employees, who were working till 31.3.1988, were deemed to have been absorbed from 01.4.1988. At the time when the petitioner joined in the services of the third respondent, it was a government institute and thereafter, it was converted into a society with effect from 01.4.1988. This was notified to all the employees so as to exercise their option of getting relieved from the government institute for absorption as the employees of the society under the terms and conditions of the relevant Regulations. The petitioner also exercised his option and in accordance with the same, the petitioner would be entitled to get retirement benefits under the Act, 1952.

(ii) The petitioner also gave a consent letter on 12.6.1990 to the Provident Fund Commissioner for covering under the Act, 1952. Pursuant to that, he was allotted a number. On retirement, the petitioner was paid a sum of Rs.10,32,928/- towards gratuity and earned leave encashment as per the



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provisions of the Payment of Gratuity Act, 1972 and it was received without any murmur. The petitioner is also receiving pension under the EPF Scheme.

(iii) The facts in W.P.No.5473 of 2009 filed by the said Mr.K. Jayaraman are entirely different to the facts of this case and hence the petitioner cannot avail the benefit of said order. Though the petitioner retired on 31.8.2013, however, after a lapse of two years, he sent a representation dated 20.1.2016 to the respondents claiming pensionary benefits applicable to the government servants which was rejected by the impugned order. Ultimately, he sought to dismiss the writ petition.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, the petitioner joined in the 3rd respondent institute as Junior Assistant in the year 1983 and thereafter his services were regularized. Subsequently, in the year 1987, the third respondent institute was brought under the control of the Tamil Nadu Institute of Labour Studies Society created by the Government of Tamil Nadu pursuant to which, the 3rd



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respondent institute was converted into a society in the name of Tamil Nadu institute of Labour Society which was registered under the Tamil Nadu Societies Registration Act, 1975 which started functioning with effect from 01.04.1998. Subsequently, the employees of the erstwhile institute were absorbed the said society.

7. It is the claim of the petitioner is that he was not given pensionary benefits under the Tamil Nadu Pension Rules, 1978, however, he was granted pension only under the Employees' Pension Scheme, 1995 as provided under the Tamil Nadu Employees' Provident Fund and Miscellaneous Provisions Act, 1952. However, it is seen from the records that admittedly, the petitioner has given a consent letter on 12.6.1990 to the Provident Fund Commissioner for availing retirement benefits under the Act, 1952 only based on which, he was brought under the purview of EPF Scheme and accordingly, after attaining superannuation on 31.8.2013, he is receiving pensionary benefits under the Act,1952. While the petitioner has already received a final settlement on account of his retirement, is already receiving pension under the EPF Scheme he cannot claim for Government



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8. Learned counsel appearing for the petitioner further relied upon the decision of the Division Bench of this Court vide order dated 29.09.2011 in W.A.No.259 of 2010 wherein, a similarly situated person namely one K.Jayaraman was granted Government pension and claimed that a similar relief may be extended to the petitioner herein as well. A perusal of the said order reveals that the facts put in issue in case of Jayaraman is entirely different from that of the petitioner's case as the said Jayaraman entered into service in the year 1975 and retired in the year 2021. Even prior to the formation of the society in the year 1988, he has rendered the qualifying service of more than 10 years for availing Government pension, however, in the present case, the petitioner has not rendered the qualifying service of 10 years, as he entered into the service only in the year 1983 and the society was formed in the year 1988. Therefore, the petitioner is not eligible for availing Government Pension and other pensionary benefits in terms of Tamil Nadu Pension Rules, 1978 and this Writ Petition deserves to be dismissed.



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9. For the reasons aforesaid, this Writ Petition stands dismissed. There shall be no order as to costs.

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To

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Fort St.George, Chennai-9.
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- 3.The Director, Tamil Nadu
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