IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No.10797 of 2023
and
W.M.P. Nos. 10738 and 10740 of 2023

T.M.Soundarrajan … Petitioner

-vs-

1 The Principal Secretary to Government
Public Works Department
Fort St.George, Chennai 600 009.

2 The Additional Director (NPS)
Commissionerate of Treasuries and Accounts
Guindy, Chennai 600 025.

3 The Deputy Commissioner (ST)
Commercial Tax Department
Tiruvannamalai.

4 The Treasury Officer
District Treasury, Thiruvannamalai.

5 The Accountant General of India
Tamil Nadu, Teynampet, Chennai 600 018. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 5th respondent in Pension 30/6/22- 23 52327 dated 23.02.2023 and the consequential proceedings of the 4th respondent in Na.Ka.No. 1168/ 2023/ oo1 dated 9.03.2023 and quash the same and consequently direct the respondents to continue the payment of pension to the petitioner under the Old Pension scheme by revising the qualifying service by adding 50 percent of the service prior to regularization ie. from 1.10.1981 till 31.12.1991 and grant the petitioner with pension and other benefits under the old pension scheme.

For Petitioner	: Mrs. Dakshayini Reddy, Senior Counsel for Ms. Sunitha
For Respondents	: Mr. N.Naveen Kumar Government Advocate (for R1,R2 & R4) Mrs. K.Vasanthamala (for R3) Mrs. Hema Muralikrishnan (for R5)

O R D E R

Heard Mrs. Dakshayini Reddy, Learned Senior Counsel appearing for the Petitioner, Mr. N.Naveen Kumar, Learned Government Advocate appearing for First, Second and Fourth Respondents, Mrs. K.Vasanthamala, Learned Counsel appearing for the Third Respondent, Mrs. Hema Muralikrishnan, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Junior Assistant in the Commercial Tax Department of the Government of Tamil Nadu, had retired from service on 31.05.2017 when he attained the age of superannuation, and had been paid his pensionary benefits by the concerned authority. However, the Fifth Respondent on reviewing the entire case of the Petitioner in Proceedings No. 30/6/ 22-23/52327 dated 23.02.2023 has observed as follows:-

> *" Thus, on reviewing the entire case it is observed that*
>
> *(i) Shri T M Soundararajan was appointed as Nominal Mustor Roll (NMR) employee in PW department (Sathanur Dam Sub Division) on 01.10.1981 and he served till 20.06.1991. Therefore, as he has not completed 10 years of NMR service in PW department, regularisation of service with effect from 01.01.1992 as per G O 334 is not applicable.*
>
> *(ii) As per G.O 246 (PAR) (P) Department dated 29.03.2003 & G.O 255 (PAR) (P) Department dated 24.09.2003, the retrenched employees of the Census Department were posted in Commercial Tax Department and Shri T M Soundararajan was appointed as Junior Assistant in*

Commercial Tax Department with effect from 06.02.2004 i.e. after 01.04.2003.

(iii) Also as there was break in service during the period from 01.01.1993 to 03/2001 and non-continuance in the Public Works Department, the earlier service in Public Works Department cannot be combined with regular service in Commercial Tax Department.

(iv) Therefore, he is eligible for the benefits under Contributory Pension Scheme only and not under Tamil Nadu Pension Rules.

(v) But as the pensionary benefits were authorised by this office, and he is in receipt of pension from 01.06.2017, the pension has to be stopped with immediate effect and the lump sum pensionary benefits (DCRG & CVP) have to be recovered."

The said decision was communicated by the Fourth Respondent to the Petitioner by Proceedings in Na. Ka. No.1168/2023/Oo1 dated 09.03.2023, which is impeached in this Writ Petition.

3. It is trite law that any administrative action which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken. The Government of Tamil Nadu in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 after referring to the principles laid down by the Hon'ble Supreme Court of India in ***State of Punjab -vs- Rafiq Masih (Whitewasher)*** [(2015) 4 SCC 334], has issued detailed instructions providing the manner in which any wrongful amount paid to Government Servants/Pensioners/Family Pensioners would have to be made.

4. There is nothing to show from the impugned orders that before the wrongful payment claimed to have been made was effected, any show cause notice had been issued to the Petitioner calling for an explanation from him with supporting materials relied in that regard. Such incurable flaw in decision making by the Respondents is in violation of the principles of natural justice and would vitiate the impugned orders.

5. Even if the concerned authority is of the view that the Petitioner would not be entitled to the benefit of pension under Rule 11(4) of the Pension Rules as he had not absorbed in regular service prior to 01.04.2003 as held by the Full Bench of this Court in ***Government of Tamil Nadu -vs- R.Kaliyamoorthy*** (Order dated 03.12.2019 in W.A. Nos. 158 of 2016 etc., batch), it is claimed that the services rendered by the Petitioner in other capacities to the State prior to 01.04.2003 would also have to be taken into account for the purpose of grant of pension under the Tamil Nadu Pension Rules, 1978.

6. In this regard, reference must be made to Rule 82 of the Rules, which reads as follows:-

> ***"82. Power to relax:--*** *Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.*

Provided that no such order shall be made except with the concurrence of the Finance Department."

While construing a similar provision contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in ***Union of India -vs- Gandiba Behera*** (Order dated 08.11.2019 in Civil Appeal No. 8497 of 2019) has observed as follows:-

"25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. ..."

This would obviously mean that though the Petitioner had been absorbed in regular service after 01.04.2003, there is nothing precluding him from seeking relaxation of the requirements of the Rules for granting pension in the prescribed manner before the concerned authority, who would have to examine whether the conditions for the same have been fulfilled in this case.

7. In view of the foregoing discussion, the following order is passed:-

(i) the impugned orders in Pension 30/6/22-23/52327 dated 23.02.2023 and Na. Ka. No. 1168/2023/Oo1 dated 09.03.2023 passed by the Fifth and Fourth Respondents respectively are set aside, leaving it open to the concerned authorities to appropriately deal with the matter afresh in accordance with the prescribed procedure laid down in the instructions in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 issued by the Government of Tamil Nadu;

(ii) the Petitioner, in reply to any such show cause notice that may be issued to him, is also not precluded from making necessary application along with supporting documents to the concerned authority under Rule 82 of the Pension Rules for relaxing the relevant rules so as to entitle him for grant of pension;

(iii) if such representation is made, the concerned authority shall immediately consider the claim made by the Petitioner for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by him in terms of Rule 82 of the Pension Rules;

(iv) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to him requiring the same to be furnished within a time frame of not less than 15 working days;

(v) in the event of the concerned authority not being satisfied with the compliance of the requirements thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard;

(vi) the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioners under written acknowledgment;

(vii) if the Petitioner is found entitled to the relaxation of the relevant rules for grant of pension as claimed, it shall be ensured that the eligible amount of pension is continued to be paid to him; and

(viii) in the event of the concerned authorities failing to initiate fresh proceedings within 31.08.2023, any amount so far recovered from the Petitioner pursuant to the impugned orders, which have been set aside, shall be refunded to him, apart from payment of monthly pension for future months on the due dates.

Though obvious, it is made clear that no view has been expressed by this Court on the merits of the controversy involved in the matter.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

06.04.2023

kst

Index: Yes/No
Neutral Citation: Yes/No

Note: Issue order copy by 31.07.2023.

To

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P.D. AUDIKESAVALU, J.

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