



W.P.No.32189 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.01.2023
Pronounced on	16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32189 of 2016
and
W.M.P.Nos.27918 of 2016 & 599 of 2020

K.Bojan

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Agriculture Production
Commissioner and Secretary to Government,
Agriculture (Veni-1) Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Horticulture,
Chepauk, Chennai - 5.

3.The Joint Director of Horticulture,
Udagamandalam, Nilgiris District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, to call for the records connected in G.O.(Ms).No.276, Agriculture (Veni 1) Department, dated 30.11.2015 of the first respondent and quash the same insofar as paragraph 6 is concerned and direct the respondents to pay pension of the petitioner as per the Rule



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33(2) of the Tamil Nadu Pension Rules and grant arrears of pension with interest.

For Petitioner : Mr.A.R.Suresh
for Mr.K.Sannjay

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

Heard Mr.A.R.Suresh, learned counsel for the petitioner and Mr.K.H.Ravikumar,, learned Government Advocate for the respondents.

2. The petitioner herein had joined the State Horticultural Farm under the Assistant Directorate of Horticulture, Government of Tamil Nadu, as a Casual Labourer on 05.06.1989. Through the orders passed in G.O.Ms.No.494, Agriculture Department, dated 29.11.2007, he, along with 1083 Casual Labourers, who have worked continuously for 10 years as on 01.01.2006 at various State Horticulture Farms, were brought under the control of Tamil Nadu Horticulture Development Agency (TANHODA) and their services were regularized, with effect from 29.11.2007 in the time scale of pay of Rs.1300-20-1500-25-2000. The petitioner had retired from service on 31.07.2009. His request for counting of his past services under the



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Commissionerate of Horticulture, has been rejected through the impugned order in G.O.Ms.No.276, dated 30.11.2015 and by taking into account of his completion of 10 years of service in the Commissionerate of Horticulture, he was granted special pension, as being granted to the noon meal scheme employees. The petitioner now seeks for regular pension under Rule 11 of the Tamil Nadu Pension Rules, 1978.

3. Some of the relevant facts relating to the claim of the petitioner are that, after he had joined the services of the Commissionerate of Horticulture on 05.06.1989, he had been consistently seeking for regularization of his service, after completion of 10 years of service therein. When the Government had passed orders in G.O.Ms.No.494, dated 29.11.2007, regularizing the petitioner's services, with effect from 29.11.2007, he had filed a writ petition before this Court in Writ Petition No.23992 of 2008, seeking for regularization from the date of completion of 10 years of service. This Court, in its order dated 19.08.2009, had directed the respondents to take into consideration the period of service rendered by the petitioner, after completion of 10 years of service from the date of his initial appointment as daily wager, as qualifying service for the purpose of grant of pension. The



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appeal filed by the Government against the said order in Writ Appeal No.1438 of 2010 was dismissed on 29.11.2012. So also, the further appeal before the Hon'ble Supreme Court in Special Leave Petition (C).No.5559 of 2014 was dismissed on 05.01.2015. As such, the order of the learned single Judge, directing the respondents to calculate the service of the petitioner in the Commissionerate of Horticulture, on completion of 10 years of service as pensionable service, had become final.

4. Since the respondents did not comply with the orders of this Court, the petitioner had filed Contempt Petition No.1031 of 2015, in which, notice came to be issued to the Government. At this juncture, the first respondent had passed the impugned Government Order in G.O.Ms.No.276, Agricultural Department, dated 30.11.2015, by taking into account the petitioner's past services after completion of 10 years of service and restricted his pension as special pension, as being granted to the employees under the noon meal scheme of the Government.

5. The claim of the petitioner to include the past services on completion of 10 years of service requires to be allowed, in view of the order



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passed in W.P.No.23992 of 2008, dated 19.08.2009. The relevant portion of the order reads as follows:-

"7. In view of all the above, the writ petition is disposed of with a direction to the respondents to take the period of service rendered by the petitioner, after completing 10 years of service from his date of appointment as daily wager, as qualifying service for the purpose of pension and if he fulfills the other requirements to grant pension to the petitioner in accordance with law. In any view of the matter, final order shall be passed by the first respondent within a period of three months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed. No costs."

6. When the aforesaid direction was to the specific effect that the pensionable service of the petitioner requires to be counted, on completion of 10 years as a daily wager, the first respondent was not justified in taking that period into account for the purpose of granting "special pension". When the Government had challenged the order of the learned single Judge in an intra Court appeal in W.A.No.1438 of 2010, a reference was made to the decisions, relied upon by the learned single Judge, of the Hon'ble Supreme



Court, as well as an Hon'ble Division Bench of this Court, for directing the respondents to grant regular pension to the petitioner, by calculating his pensionable services from the date of completion of 10 years of service. The judgement of the Hon'ble Division Bench reads as follows:-

"4. The learned Judge found that casual employees/daily rated employees/substituted employees are temporary employees and for the purpose of computation of pension, the period of service rendered by them in the Department should be taken into account, on completion of ten years of service, for calculating the qualifying service for the purpose of pension. For arriving at such a finding, the learned Judge had placed reliance on the decision of the Hon'ble Supreme Court of India in the case reported in A.P.Srivatsava vs. Union of India and others [1996-1-L.L.J.-241] and also the decision of a Division Bench of this Court in the case reported in 2005 WLR 308. Learned counsel appearing for the respondent submitted that in similar circumstances, a Division Bench of this Court passed an order dated 03.08.2009 in W.A.No.230 of 2009, which was challenged before the Hon'ble Supreme Court of India by the Department in S.L.P.(CC)No.19972 of 2009 and the same was dismissed on 01.02.2010. Therefore, it



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is clear that the order passed by this Court directing the authorities to regularise the services of the respondent in W.A.No.230 of 2009 on completion of ten years of service with time scale of pay, has been upheld by the Hon'ble Supreme Court of India in S.L.P.(CC).No.19972 of 2009 filed by the State. Following the said decision of the Hon'ble Supreme Court of India, we find no ground to interfere with the order passed by the learned Single Judge. Consequently, the writ appeal fails and it is dismissed. No costs. Connected miscellaneous petition is closed."

7. The aforesaid judgement made by this Court has been confirmed by the Hon'ble Supreme Court in S.L.P.(C).No.5559 of 2014, dated 05.01.2015. This Court also does not find any justification on the part of the first respondent herein in calculating the earlier services of the petitioner in the Commissionerate of Horticulture for the purpose of granting "special pension" alone, while the order of this Court was to take such a service for the purpose of regular pension, as provided under Rule 11 of the Tamil Nadu Pension Rules, 1978.



8. The learned Government Advocate appearing for the respondents placed reliance on the averments in the counter affidavit and attempted to submit that since the petitioner was relieved from the services of TANHODA on 31.07.2009 and he had put in only 1 year 8 months and 2 days under TANHODA, which is a non-pensionable service, he is not eligible for regular pension under the provisions of the Tamil Nadu Pension Rules.

9. Such a submission made by the learned Government Advocate is totally misconceived for two reasons. First of all, when this Court had earlier directed the Government to count the 10 years of his service from the date of his initial appointment as daily wager, as the pensionable service for grant of regular pension, taking into account the services of the petitioner from the date of his initial absorption in TANHODA is misconceived. Secondly, when the petitioner was serving in the Horticultural Farms of the Directorate of Horticulture, he along with other aggrieved casual labourers have been repeatedly requesting the Government to regularize their services. The Government, in G.O.Ms.No.494, dated 29.11.2007, had regularized the services of the petitioner, along with 1082 casual labourers, with effect from 29.11.2007. While passing such orders of regularization, the past service of



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the petitioner, as a casual labourer under the Commissionerate of Horticulture, was duly taken into account and they were brought under the regular time scale of pay.

10. When the past services of the petitioner and others under the Commissionerate of Horticulture were given due consideration for regularization in G.O.Ms.No.494, dated 29.11.2007, I am unable to comprehend as to how such past services under the Commissionerate of Horticulture could be totally ignored and such a stand that he had put in less than 2 years of service under TANHODA could be made. This apart, the petitioner's right for regularization had accrued the day on which he had completed 10 years of service in the Commissionerate of Horticulture, in view of various orders passed by this Court, as well as the orders of the Government, regularizing the services of the casual labourers, who had completed 10 years of service.

11. At the time when the petitioner had completed 10 years of service under the Commissionerate of Horticulture, TANHODA was not in existence. Thus, when the Government, in G.O.Ms.No.494, dated 29.11.2007



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had thought it fit to regularize the services of the petitioner, with effect from the date of completion of 10 years of service as on 01.01.2006, he is deemed to have been regularized when he was under the services of the Government and not under TANHODA. If that be so, his pensionable service requires to be counted, in accordance with Rule 11 of the Tamil Nadu Pension Rules, which provides that the qualifying service of a Government servant would commence from the date he takes charge of the post to which he is first appointed, either substantively or in a officiating or temporary capacity. Thus, in line with the orders passed by this Court, as well as the regularization order passed by the respondents themselves in G.O.Ms.No.494 dated 29.11.2007, at the time when the petitioner was in the service of the Commissionerate of Horticulture, his pensionable service requires to be calculated in accordance with Rule 11 of the Tamil Nadu Pension Rules and not otherwise. Thus, the impugned order, extending special pension to the petitioner, is totally opposed to the direction of this Court issued in W.P.No.23992 of 2008, dated 19.08.2009.

12. For all the foregoing reasons, the impugned order passed by the first respondent dated 30.11.2015, insofar as it grants special pension to the



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petitioner, is quashed. Consequently, there shall be a direction to the first respondent herein to forthwith pass orders, calculating the service of the petitioner from 05.06.1999 till 31.07.2009, which is his date of superannuation, as pensionable service and thereby revise and disburse his pensionary benefits. Such orders shall be passed by the first respondent, atleast within a period of six weeks from the date of receipt of a copy of this order.

13. The writ petition stands thus allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.02.2023

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
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To



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M.S.RAMESH,J.

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- 1.The Agriculture Production Commissioner
and Secretary to Government,
Agriculture (Veni-1) Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Horticulture,
Chepauk, Chennai - 5.
- 3.The Joint Director of Horticulture,
Udagamandalam, Nilgiris District.

PRE-DELIVERY ORDER MADE IN

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