



W.P.No.28996 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.28996 of 2014
and
W.M.P.No.10237 of 2017

A.Duraisamy

.... Petitioner

vs

1. The State of Tamil Nadu,
rep. by its Secretary,
Finance (Pension) Department,
Fort St.George,
Chennai – 600 009.
2. The Director of Municipal Administration,
Vi Floor, Ezhilagam,
Chennai – 600 005.
3. The Director of Local fund Audit,
Kuralagam, IV Floor,
Chennai – 600 108.
4. The Commissioner,
Chidambaram Municipality,
Chidambaram.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a
Writ of Certiorarified Mandamus to call for the records relating to the Order



W.P.No.28996 of 2014

passed by the 4th Respondent in Na.Ka.No.2173/2005/C1 dated 26.08.2014 and quash the same thereby consequently direct the 1st respondent to include the omitted service period from 01.11.1966 to 20.07.1972 as duty period and consequently pay all benefits to the petitioner.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.U.M.Ravidhandran,
Special Government Pleader
for R1 to R3
Mr.M.E.Raniselvam for R4

ORDER

This writ petition has been filed by the petitioner challenging the order dated 26.08.2014 passed by the 4th respondent and to direct the 1st respondent to include the omitted service period from 01.11.1966 to 20.07.1972 as duty period and consequently, pay all benefits to the petitioner.

2. i) The case of the petitioner is that the petitioner was appointed in the respondent Department as Gang Mazdor from 07.12.1960 and retired from service on attaining superannuation on 31.07.1998. The 3rd respondent has calculated the pension for the entire service as 26 years and 11 days



W.P.No.28996 of 2014

instead of 38 years 5 months and 24 days, omitting to calculate 7 years 6 months and 22 days of service.

ii) While the petitioner was working as Bill Collector, he was placed under suspension on 01.11.1966 alleging misappropriation. The suspension period was from 01.11.1966 to 20.07.1972 and the petitioner was permitted to join duty on 20.07.1972. During suspension period, no subsistence allowance was paid. The petitioner learnt that the suspension period has been treated as leave on loss of pay. The petitioner also filed an appeal to the Director of Municipal Administration. Immediately after filing appeal, the order of suspension has been withdrawn through proceedings dated 17.09.1970 and once again, the petitioner was suspended from service vide proceedings dated 18.09.1970 with a direction to the Commissioner to take fresh proceedings. Thereafter, no department proceedings was initiated by the respondents following the suspension. The petitioner was allowed to join duty on 12.07.1972 and permitted to retire from service on 31.07.1998. The 2nd respondent sent pension proposal to 3rd respondent without mentioning the period of suspension from 01.11.1966 to 21.07.1972 as duty period. Since the respondent failed to include the period in the Service register, the petitioner is put into trouble. All the respondents are



W.P.No.28996 of 2014

questioning each other. The 4th respondent also questioned the non-inclusion of leave period between 01.11.1966 to 20.07.1972. Therefore, the petitioner filed W.P.No.20572 of 2013 before this Court directing the respondents to include the suspension period from 01.11.1996 to 20.07.1972 to treat the period of 7 years 6 months and 22 days as duty period and consequently pay all benefits. On 29.07.2013, the writ petition was disposed of as follows:

"In the said circumstances, the writ petition is disposed of directing the second respondent to pass orders on the proposals dated 14.03.2008 and 14.05.2008 within a period of six weeks from the date of receipt of a copy of this order and thereafter, to forward the same to the first respondent to pass appropriate orders thereon and the first respondent is directed to pass orders on the recommendations of the second respondent within a period of eight weeks thereafter. No costs."

iii) Since the respondents failed to obey the order, the petitioner was force to file Contempt Application No.2095/2014 before this Court. During the process of contempt petition, the 4th respondent passed the impugned order dated 26.08.2014, rejecting to include the period of suspension as duty period. Hence, the writ petition with the aforesaid relief.



W.P.No.28996 of 2014

WEB COPY

3. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for respondents 1 to 3 and the learned counsel appearing for the 4th respondents.

4. Learned counsel for the petitioner would submit the 2nd respondent has admitted in his order dated 02.04.2008 that the promotion order is not mentioned in the service register of the petitioner and there is no reason for removal of petitioner on 11.06.1966 is mentioned in the service register and no reason is stated as to why the petitioner was reinstated in service on 18.09.1970 and suspended on the same date. It is also not indicated about the disciplinary action taken against the petitioner and the result of its report and also the reason for non-regularisation is not mentioned in the service register. Learned counsel for the petitioner would further state that no notice was given to the petitioner, no charges were framed and no enquiry was conducted. Only some entry has been made in the service register as leave on loss pay which is also not brought to the notice of the petitioner.

5. Per contra, learned counsel for the respondents 1 to 3 would submit that on scrutiny of the pension proposal sent by the 4th respondent for



W.P.No.28996 of 2014

sanctioning pensionary benefits to the petitioner, it was found that the petitioner was removed from service on 01.11.1966 and then rejoined service on 20.07.1972. Thus, the period of suspension was not regularised by the concerned administrative authorities as qualifying service for calculating pension. He would further submit that only based on the proposal sent by the 4th respondent, the pensionary benefits were sanctioned to the petitioner at the time of retirement.

6. Learned counsel appearing for the 4th respondent would submit that the petitioner was placed under suspension during the relevant period and therefore, the said period was not taken into consideration for the purpose of granting pension.

7. This Court considered the submissions made on either side and perused the materials available on record.

8. In the present case, the petitioner was placed under suspension from 01.01.1966 to 20.07.1972 and the petitioner was permitted to join duty on 20.07.1972. During suspension period, no subsistence allowance was



W.P.No.28996 of 2014

paid. The Municipal Engineer and Commissioner of Municipality (in-charge) Chidambaram sent a recommendation to the 2nd respondent in Na.Ka.No.2173/2005/E1 dated 14.03.2008 for regularising the suspension period of the petitioner. The Municipal Commissioner of Chidambaram Municipality sent another recommendation dated 14.05.2008 on the same line. Thereafter, observing the same, an order was also by this Court in W.P.No.20572/2013 directing the second respondent to pass orders on the proposals dated 14.03.2008 and 14.05.2008 within a period of six weeks from the date of receipt of a copy of this order and thereafter, to forward the same to the first respondent to pass appropriate orders thereon and the first respondent is directed to pass orders on the recommendations of the second respondent within a period of eight weeks thereafter.

9. Subsequently, the 4th respondent vide proceedings dated 24.09.22013 sent to the 2nd respondent, it is stated that the suspension period has to be treated as leave without salary and grant pension to the petitioner. However, the impugned order was passed, without considering the order passed by this Court in W.P.No.20572/2013 directing the second respondent to pass orders on the proposals dated 14.03.2008 and 14.05.2008



W.P.No.28996 of 2014

and without considering the proposals to treat the suspension period as leave period. The 4th respondent has passed the impugned order, rejecting to include the suspension period as duty period.

10. It is pertinent to note that the 2nd respondent has admitted in his order dated 02.04.2008 that the promotion order is not mentioned in the service register of the petitioner and there is no reason for removal of petitioner on 11.06.1966 is mentioned in the service register and no reason was stated as to why the petitioner was reinstated in service on 18.09.1970 and suspended on the same date. It is further admitted that there is no indication about the disciplinary action taken against the petitioner and the result of its report and the reason for non-regularisation is not mentioned in the service register. The Municipal Engineer and Commissioner of Municipality (in-charge) Chidambaram also sent a recommendation to the 2nd respondent in proceedings dated 14.03.2008 for regularising the suspension period of the petitioner. Further, no department proceedings was initiated by the respondents following the suspension. The petitioner was allowed to join duty on 12.07.1972 and also permitted to retire from service on 31.07.1998. Therefore, the impugned order cannot be sustained and the



W.P.No.28996 of 2014

same is liable to be set aside.

WEB COPY

11. For the aforesaid reasons, this Court is of the opinion that the impugned order is liable to be set aside. Accordingly, the impugned order dated 26.08.2014, is set aside. The 1st respondent is directed to pass orders by treating the period of suspension of the petitioner from 01.11.1966 to 20.07.1972 as duty period for the limited purpose of calculating pension and to sanction pension to the petitioner accordingly. The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

12. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2023

Index:Yes/No
Speaking/Non-speaking order
vsi



W.P.No.28996 of 2014

To
WEB COPY

1. The State of Tamil Nadu,
rep. by its Secretary,
Finance (Pension) Department,
Fort St.George,
Chennai – 600 009.
2. The Director of Municipal Administration,
Vi Floor, Ezhilagam,
Chennai – 600 005.
3. The Director of Local fund Audit,
Kuralagam, IV Floor,
Chennai – 600 108.
4. The Commissioner,
Chidambaram Municipality,
Chidambaram.



WEB COPY



W.P.No.28996 of 2014

J.NISHA BANU,J.

vsi

W.P.No.28996 of 2014

13.03.2023