



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.22209 of 2019

R. Kesavan

.. Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai – 09.

2.The Director of Municipal Administration,
Urban Administration Buildings,
M.R.C Nagar, Chennai – 600 028.

3.The Director of Local Fund Audit,
Integrated Complex For Finance Department,
Animal Husbandry Hospital Campus,
Nandanam, Chennai – 600 035.

4.The Commissioner,
Kumbakonam Municipality,
Kumbakonam,
Thanjavur District.

.. Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to



grant pension and other pensionary benefits to the petitioner under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme) by counting half of the services rendered by him from 01.11.1987 to 12.06.2007 as N.M.R on daily wages on full time basis along with his regular service from 13.06.2007 to 31.03.2019 as qualifying service.

For Petitioner	.. Mr. R. Prem Narayan
For R1 to R3	.. Mr. R. Neethi Perumal, Govt. Advocate
For R4	.. No appearance

ORDER

This writ petition has been filed in the nature of Mandamus, seeking a direction to the respondents to grant pension and other pensionary benefits to the petitioner under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme) by counting half of the services rendered by the petitioner between 01.11.1987 to 12.06.2007 as NMR on daily wages as full time basis along with the regular service between 13.06.2007 to 31.03.2019 also as qualifying service.

2.In the affidavit filed in support of the writ petitioner, the petitioner had stated that he was working as Sanitary Worker in Kumbakonam



Municipality and had retired from service on attaining the age of superannuation on 31.03.2019. He had been initially appointed as NMR on daily wages in Kumbakonam Municipality on 01.11.1987. The petitioner placed reliance on G.O.Ms.No.21 Municipal Administration & Water Supply Department dated 23.02.2006, wherein, service of the Consolidated Pay Employees and NMRs working on daily wage basis had been regularized for those who work in Municipalities and Corporations. There is also further Government order in G.O.Ms.No.19 Municipal Administration & Water Supply Department dated 18.01.2007.

3.It is claimed that the petitioner's name was recommended for permanent absorption in the vacant post of Sanitary Worker in the Nagapattinam Municipality, as there was no vacancy in the Kumbakonam Municipality. Necessary orders in this regard were also issued and the petitioner jointed as Sanitary Worker on 13.06.2007 at Nagapattinam Municipality. The petitioner thereafter was transferred to Kumbakonam Municipality and retired on attaining the age of superannuation on 31.03.2019.



4.The petitioner claims benefit of taking into consideration his services rendered as NMR on daily wages between 01.11.1987 and 12.06.2007.

5.In this connection, several such writ petitions have been filed and the matters had finally travelled upto the Full Bench of this Court. The judgment of the Full Bench had reported in ***2019 (6) CTC 705, Government of Tamil Nadu Represented by Secretary to Government, Public Works Department and others Vs. R. Kaliamurthy***. The specific issue, which was referred to the Full Bench was as follows:

"Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O. Ms. No.259, Finance (Pension) Department dated 06.08.2003 and G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010."



6. After detailed discussion, the reference was answered as follows:

“45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed



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into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

7.The learned counsel for the respondents contended that the petitioner who had been appointed in the aforesaid four categories, which also included NMR on daily wages before 01.04.2003, but had been absorbed in regular service after 01.04.2003 would not be entitled to count half of his past service for the purposes of determination of qualifying service for pension.

8.It is also contended on behalf of the respondents that the petitioner had been appointed on 01.11.1987, which is prior to 01.04.2003 and the services were regularized on 12.06.2007, after 01.04.2003. Therefore, Sub-Clause 5 of the above would apply to the petitioner herein. It is therefore



contended on behalf of the respondents that the petitioner cannot seek benefit as claimed.

9.The learned counsel for the petitioner also affirms that the judgment of the Full Court is binding.

10.In the view of the same, the relief sought by the petitioner cannot be granted. Accordingly, this Writ Petition stands dismissed. No costs.

31.08.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order: Yes/No
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