



WEB COPY



WP No.25026 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

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V.Jeevarathinam

... Petitioner

versus

1.Union of India

Represented by the Government of Puducherry
through the Secretary to
Government for Public Works,
Chief Secretariat, Puducherry.

2.The Chief Engineer,
Public Works Department,
Puducherry.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records of the third respondent regarding the order in OA No.217 of 2019 dated 06.03.2019 and to pass orders.

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For the Petitioner :Mr.G.Shanmugam

For the Respondents :Mr.R.Syed Mustafa
Special Government Pleader
for respondents 1 and 2
Standing Counsel
third respondent -Tribunal

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

Challenging the order passed by the Central Administrative Tribunal in OA No.217 of 2019, dated 06.03.2019, the petitioner has filed the present writ petition.

2.Brief facts of the case:

2.1. The petitioner was originally appointed as an Over Head Tank Operator, on 16.04.1984 in the Outlgaret Municipality on temporary basis at a fixed salary of Rs.165/- per month. Subsequently, the Lieutenant Governor of Puducherry has passed an order on 28.03.1987, by which 11 numbers of the water supply system of Oulgaret Commune Panchayat, along with the Operators, were transferred to the Public Works Department with



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effect from 01.04.1988. In the said order, the name of the petitioner was placed at Serial No.5 and his date of appointment was shown as 31.03.1984.

Along with the petitioner, ten more such employees were transferred to the P.W.D., including one Devarasu, who joined service on 05.07.1983.

2.2. Subsequently, the P.W.D. has issued a seniority list on 23.10.1989 and the said seniority list specifically provided that the issue of seniority of the Water Tank Operators who have transferred from local bodies have been referred to the Government and as per the orders of the Government, it has been decided that water tank operators transferred from local bodies in the P.W.D. will be included in the seniority list at the appropriate place according to their date of initial engagement in the local bodies. As such, a modification of the seniority list was published and the petitioner has been placed at Seniority No.164 (a) with effect from 31.03.1984 and similarly, one Devarasu who was also transferred along with the petitioner has been placed at Seniority No.108 (a) with effect from 05.07.1983, as per his date of initial engagement.



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2.3. On 11.05.1992, the respondents have issued an order through which the casual labourers were absorbed and posted as Mazdoor in the pay scale of Rs.750-940/-. Subsequently, the petitioner was posted as a Mechanic on regular basis on 06.08.2001 in the pay scale of Rs.3,050-590. Thereafter, he got retired from service on 31.05.2016, on attaining the age of superannuation.

2.4. According to the petitioner, the respondents have taken his qualifying service with effect from the date of his transfer to the P.W.D from the Outgaret Commune Panchayat and the petitioner's date of entry is shown as 14.05.1992. The respondents have ignored his service from the date of his initial appointment i.e. 31.03.1984 till the date he was transferred to P.W.D from Outgaret Commune Panchyat i.e. 31.03.1988 and they have taken his service only from 01.04.1988 to 12.05.1992. Therefore, he is entitled to get 50% of the service rendered by him from the year 1984. However, the same benefit has been granted in the case of other candidates who were transferred along with him. Since his case was not considered and the benefit was not given on par with other candidates, he filed an Original



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Application in OA No.1189 of 2018 before the Tribunal. The Tribunal has directed the respondents to consider his case on par with the other persons within a period of two months. Pursuant to the said direction of the Tribunal, the second respondent has passed an order on 26.11.2018 rejecting the claim of the petitioner by stating that the benefit, which was granted to Devarasu and similarly placed persons was a mistake committed by the authority and they have taken steps to cancel the order as well as the benefit granted to said Devarasu and similarly placed persons.

2.5. Aggrieved by the order dated 26.11.2018, the petitioner has filed Original Application in OA No.310/217/2019, before the Central Administrative Tribunal. The Tribunal, by order dated 06.03.2019, dismissed the said OA by holding: *"The impugned order very clearly brings out that there is no specific Government Order for counting of service rendered to bodies such as Oulgaret Commune Panchayat in the absence of which the benefit of 50 % service could not be granted. Since this is a policy matter, the Tribunal will not be able to issue any directions. As for the contention that one Devarasu had been granted the benefit, the*



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impugned order clearly states that it was a mistake and action was being taken to recover the excess payment made as per Rule 70 of the CCS Pension Rules 1972. In the above circumstances, we are of the view that no prima facie case has been made out for the Tribunal to interfere." OA is misconceived and is accordingly dismissed. Aggrieved by the said order dated 06.03.2019 passed by the Tribunal, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner by relying on Rule 14 of CCS (Pension) Rules submits that the petitioner is entitled for counting half of the services rendered by him as over head tanker in the panchayat. The Tribunal, without considering the case of the petitioner in a proper prospective, had dismissed the said OA, denying to any grant any relief to the petitioner. Therefore, the order of the Tribunal is liable to be set aside.

4. Learned Special Government Pleader appearing for respondents 1 and 2 would submit that the petitioner served as over head tanker only as a daily rated employee under the contingency and his services cannot be



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counted as a qualifying service for the purpose of pensionary benefit.

Therefore, the order of the Tribunal is perfectly valid. The writ petition is liable to be dismissed.

5. Heard the parties and perused the materials available on record.

6. The point for consideration in this writ petition is "whether the period served by the petitioner as overhead tanker/daily rated employee in the panchayat can be considered as qualifying service for the pensionary benefit in the light of Rule 14 of the CCS Pension Rules?". It is necessary to examine Rule 14 of the CCS Pension Rules which is extracted hereunder:

"14(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service of post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify :

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by



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deputation to a service or post to which these rules apply."

7. In the light of the aforesaid Rule, the Government of India has issued a memorandum in G.I.,MF.,OM.No.F.12(1)-E.V/68 dated 14.03.1968. The relevant portion of the said memorandum is extracted hereunder:

(2) Counting half of the service paid from contingencies with regular service- Under Article 368 of the CSRs (Rule 14), periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz....."



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8. In the aforesaid Memorandum, the Government has taken a decision that half of service paid to the contingencies will be allowed to be counted for the purpose of terminal gratuity under the CCS Rules at the time of absorption in regular employment. The aforesaid memorandum issued by the Central Government applies to the facts of the present case for the reason that the petitioner was originally appointed as a overhead tanker in Outlgaret panchayat on 31.03.1984 and served till 31.03.1988 as a daily rated contingency employee in the panchayat. Thereafter, based on seniority, the petitioner has been transferred to the P.W.D and his services were regularized and subsequently, he retired from service. The said fact cannot be disputed by the respondent. We accept the contention of the petitioner. Therefore, the petitioner is entitled for treating the period he has rendered from 31.03.1984 to 31.03.1988 as a overhead tanker in the panchayat, as qualifying service for the purpose of pensionary benefit.

9. In view of the above, the order of the Tribunal is liable to be set aside. Accordingly, the order passed in OA No.217 of 2019 dated 06.03.2019 passed by the Tribunal is set aside and consequently, the writ



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petition stands allowed with a direction to the second respondent to grant benefit of 50% of the service rendered by the petitioner from his initial appointment in Outgaret Commune Panchayat on 31.03.1984 till the date of regularization of service in P.W.D. i.e. 11.05.1992 (now the said panchayat has been upgraded as Municipality) and to recalculate and pay the pension and other benefits to the petitioner with retrospective effect, within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above directions, the writ petitions stands allowed. There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
09.11.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



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To

1. The Secretary
Union of India
The Government of Puducherry
Government for Public Works,
Chief Secretariat, Puducherry.

2. The Chief Engineer,
Public Works Department,
Puducherry.



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D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.

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