



W.P.No.29787 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order Reserved on : 15.11.2023

Order Pronounced on : 14.12.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.29787 of 2023
and W.M.P.No.29386 of 2023

P.Philip Samuel

.. Petitioner

Versus

1.The Director,
Vector Control Research Center,
Indian Council of Medical Research,
Indira Nagar, Puducherry.

2.The Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi-29.

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

.. Respondents

Prayer: Writ Petition is filed under Section 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus to call for the records

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pertaining to the order passed by the Central Administrative Tribunal, Chennai dated 18.07.2023 in O.A.No.486 of 2022 to set aside the same and to direct the respondents to provide promotion, pension and all other monetary benefits by regularizing his service from the date of his initial appointment (1988 to 2023) till his superannuation.

For petitioner : Mr.M.T.Arunan
for M.A.Aruneshe

For R1 to R2 : Mr.K.Srinivasamurthi
(Speical) for ICMR

For R3 : Tribunal

ORDER

P. Dhanabal, J

This Writ Petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the Central Administrative Tribunal, Chennai dated 18.07.2023 in O.A.No.486 of 2022 to set aside the same and to direct the respondents to provide promotion, pension and all other monetary benefits by regularizing his service from the date of his initial appointment i.e., 1988 to 2023 till his superannuation.



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2. According to the petitioner he joined as Research Scientist on

12.09.1988 on project for a monthly consolidated salary of Rs.3000/-.

Subsequently his consolidated salary was changed into scale of pay and allowed to contribute towards ICMR CPF. The project was extended from time to time till 18.07.2013 as Research Scientist. The petitioner was issued the permanent appointment order and joined duty on 19.07.2013. The petitioner had been working without any break of service till January 2013 continuously for 35 years. The petitioner explained to the respondents the earlier service rendered before 2013 for taking into consideration of the entire service for length of service, for promotion and for other monetary benefits. But the respondents have not taken any steps. Hence the petitioner filed O.A.No.150 of 2022 and obtained order to dispose the representation dated 15.03.2022. The second respondent disposed of the representation dated 26.05.2022, but held that the petitioner is not eligible for the pension under old scheme which was not in existence after January 2004. The above said impugned order dated 26.05.2022 is against the Rules. The petitioner served as Research Scientist continuously in a long term JE project from 1988 to 2013 and thereafter working as Research Scientist B from 2013 till January 2023. The petitioner was retired as Scientist D in January 2023 as a regular employee of the respondents. Thereafter, the petitioner has filed O.A.No.486 of 2022 before



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Central Administrative Tribunal, Chennai for regularization of his service and the same was dismissed. Further the respondents have not paid the CPF amount of Rs.12,41,746/- and the same is still lying with the respondents. Therefore, now the petitioner has filed this Writ Petition as against the order passed by the Central Administrative Tribunal, Chennai.

3. The case of the respondents is that the applicant was appointed as Research Scientist on consolidated emolument basis at Rs.3000/- per month in an adhoc project entitled JE Control Trial Studies in South Arcot District, initially for a period of one year on 12.09.1988 at Centre for Research in Medical Entomology (now merged with VCRC), Madurai through Memorandum dated 07.09.1988. Thereafter, the consolidated salary of Rs.3000/- was transferred into the scale of pay of Rs.2200-4000/- w.e.f.12.09.1988, through letter dated 07.12.1988. Subsequently, the project engagement of the applicant was extended in the same project from time to time on yearly basis till July 2013 by CRME, Madurai.

3.1 Thereafter, the applicant was appointed as regular Scientist-B in pay Band-3; Rs.15,600-39,100/- plus Grade Pay of Rs.5400/- on 18.07.2013 at Centre for Research in Medical Entomology, Madurai vide ICMR letter dated 16.07.2013. Consequent, upon the appointment of Scientist-B, the applicant



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has given representations to count his period of service rendered in the project for pensionary benefits. The said representations were forwarded to the Director General for consideration. On 17.12.2019, in reply ICMR informed that there is no new point to consider the representation of the applicant, as the inability to count the past service has been conveyed to him earlier. Accordingly, the same was intimated to the applicant vide letter dated 01.01.2020. The applicant aggrieved by the reply, filed an O.A.No.150 of 2022 before the Central Administrative Tribunal, Chennai, to count his period of service for pensionary benefits. The learned Central Administrative Tribunal, Chennai directed the respondents to consider representation of the applicant and to issue detailed and reasoned speaking order.

3.2. In pursuance of the above said order, the respondents have passed speaking order dated 26.05.2022 by informing that the request of the applicant to count the past service, rendered under the project, could not be acceded to as there is no rule position to support his claim. The applicant was not absorbed as Scientist-B and he has been appointed as Scientist-B through direct recruitment on 18.07.2013 at CRME, Madurai. The claim of the applicant that he is eligible for consideration of pensionary benefits, for his service in the project could not be accepted as the services rendered in the project is co-



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terminus along with the closure of the project. Therefore, the Tribunal after took into consideration of all the aspects correctly dismissed the application.

Therefore, the Writ Petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner would contend that the petitioner was appointed on long term project as Research Scientist on 12.09.1988 for a period of one year. Thereafter his service has been extended by the respondent till July 2013 without any break of service. Thereafter the service of the petitioner was made permanent and he joined duty on 17.07.2013 as Scientist-B. The similarly placed other persons Research Scientist, Assistance and Drivers approached the Central Administrative Tribunal, Chennai and obtained order for regularization on 04.12.2001. The Department has filed Writ Petition before the High Court and the same was also dismissed on 25.08.2006. Thereafter, the same was challenged before the Hon'ble Supreme Court and it was dismissed on 26.10.2009. Therefore, the petitioner sent a representation to the respondents for taking into account of his earlier service period of 25 years and for awarding old pension scheme. The petitioner got superannuation in January 2023. The representation of the petitioner was not considered and thereafter, the petitioner approached the Central Administrative Tribunal, Chennai and the Tribunal has directed the



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respondents to pass speaking order and thereafter, the respondents passed the order dated 26.05.2022 by rejecting the claim of the applicant.

4.1. Thereafter, the petitioner approached the Central Administrative Tribunal and filed O.A.No.486 of 2022 and the same was dismissed by holding that the petitioner joined duty as permanent employee on 19.07.2013 and he retired from his service on 31.1.2023, but he has not challenged the said appointment immediately, further the appointment of the petitioner is after 01.01.2004 and thereby, he is not eligible for old pension and the service rendered from 1988 to 2013 was purely contractual basis for the project and thereby, dismissed the application. Therefore, the order passed by the learned Central Administrative Tribunal is liable to be set aside by allowing this Writ Petition.

5. The learned counsel appearing for the respondents would contend that the petitioner was appointed in the year 1988 on contractual basis in the project initially for a period of one year and thereafter his service as contractual basis for a project extended till July 2013 and thereafter the petitioner was appointed under direct recruitment. Since the petitioner was working as contractual basis in a project, his service cannot be taken into account for



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pensionary benefits. The petitioner has given representation and the same was also suitably replied to him, and then, he again filed O.A.No.150 of 2022 before the Central Administrative Tribunal in that the Tribunal directed the respondents to pass speaking order. Thereafter, the respondents passed speaking order by rejecting the claim of the applicant dated 26.05.2022. As against the said order, the petitioner filed the present O.A.No.486 of 2022 for regularizing his service, but the Tribunal has correctly dismissed the application by holding that the previous service rendered by the applicant is only temporary adhoc basis and the said petitioner was appointed through direct recruitment in the year 2013 and thereby, he is not entitled to the pensionary benefits and his service cannot be regularized and the said period cannot be taken for counting the pensionary benefits. Further the petitioner failed to challenge the order passed by the respondents in appointing the petitioner on regular basis. Therefore, the order passed by the Tribunal is well reasoned and thereby, the petition is liable to be dismissed.

6. This Court heard both sides and perused the materials available on record.

7. It is admitted fact that the applicant was appointed in the year 1988



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on contractual basis for the project and thereafter he was appointed on direct recruitment as Scientist on 19.07.2013. The petitioner himself admitted that he was appointed on contractual basis as in the project till 18.07.2013. Initially the salary was on consolidated basis and thereafter, it was transferred to pay scale. Though it was transferred to pay scale, the temporary service on contractual basis cannot be taken into account for counting the period for pensionary benefits. It is well settled law that the temporary or contractual basis cannot be counted for pensionary benefits and the date of appointment as permanent employee has to be taken into account. In this case, the petitioner himself admitted the employment of contractual basis and again in the year 2013, he was appointed as Scientist-B through direct recruitment and thereby, he accepted the contractual basis and he has not challenged the same immediately after his regular appointment. Further the petitioner was not appointed on absorption and he was appointed on direct recruitment. Therefore, the past service rendered by the petitioner on contractual basis cannot be taken into account for pensionary benefits. The learned Central Administrative Tribunal also elaborately discussed about the same and dismissed the application by holding that the petitioner is not entitled to count the past service rendered by him for pensionary purpose. Further the petitioner was appointed after 01.01.2004, and thereby the old pension scheme will not



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be applicable to the petitioner's case.

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8. As discussed supra, this court is of the opinion that there is no perverse or infirmity found on the order passed by the learned Central Administrative Tribunal and the impugned order does not warrant any interference by this Court. Hence, this Writ Petition has no merits and it deserves to be dismissed. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J)

(P.D.B.J)

14.12.2023

Index: Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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To

1. The Director,
Vector Control Research Center,

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Indian Council of Medical Research,
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