



W.P.(MD)No.9268 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.9268 of 2020

T.Subash Chandran

... Petitioner

Vs.

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.

2. The Director of Medical and Rural Health Service,
DMS Complex,
Tenyampet,
Chennai - 600 006.

3. The Dean,
Tirunelveli Medical College Hospital,
Tirunelveli.

4. The Deputy Director of Leprosy,
Tirunelveli Medical College Hospital,
Tirunelveli.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India



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praying for issuance of Writ of Mandamus, directing the respondents 3 and 4 to reconstruct petitioner's Service Register based on the petitioner's original appointment dated 03.05.1971, his last service salary register and sent a pension proposal to the respondents 1 and 2 Sanction Authority and consequently, direct the respondents 1 and 2 after receiving pension proposal and to grant pension to the petitioner under Rule 43(2) a(3) of the Tamil Nadu Pension Rules in accordance with law.

For Petitioner : Mr.J.John
For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This Writ Petition has been filed for a direction to the respondents 3 and 4 to reconstruct petitioner's Service Register based on his original appointment dated 03.05.1971 and his last service salary register and sent a pension proposal to the respondents 1 and 2 and consequently, direct the respondents 1 and 2 after receiving pension proposal, to grant pension to the petitioner under Rule 43(2) a(3) of the Tamil Nadu Pension Rules in accordance with law.



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2. The learned counsel appearing for the petitioner would submit that he appointed as Lab-Technician in Coimbatore Medical College on 03.05.1971 and thereafter, he was transferred to the Leprosy Unit in the Tirunelveli Medical College as Lab-Technician by the second respondent in his proceedings dated 30.10.1984 and worked till February 1985. The fourth respondent granted medical leave to the petitioner due to his illness and based on his family circumstances, he could not join duty till his retirement. However, the respondents have not initiated any departmental proceedings against the petitioner and he retired on 12.09.2009. He further stated that for the initial period of three years, his service was regularised and thereafter, it was not regularised by the respondents 1 and 2. He applied for pensionary benefits to the fourth respondent on 21.09.2018, but the same has not been considered. Thereafter, on 23.10.2018, he made a representation to the third respondent to furnish his Service Register and other connected documents, but the third respondent informed him that his Service Register is not available in his office. Hence, he made a petition to the Hon'ble Chief Minister Special Cell, vide letter dated 22.11.2018 in person for seeking pensionary benefits and the same has been forwarded to the second



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respondent for necessary action. He also made representation to the District Collector, Tirunelveli, requesting to take action to grant pensionary benefits, but the same has also not been considered. Due to non-availability of his Service Register, the fourth respondent is not in a position to forward his pension proposal to the respondents 1 and 2.

3. In a catena of decisions, this Court has granted pensionary benefits by considering the minimum eligible period of service as per Rule 43(3) of Tamil Nadu Pension Rules, 1978 (herein after referred to as 'the Rules'). In similar circumstances, the Hon'ble Apex Court in the case of ***Shiksha Parishad vs. Suganabai*** reported in ***2004 A.I.R. SCW*** held that the the service period of ten years as sufficient for pension and directed the authorities to issue a pension with arrears within three months. In the said case, the employee was not terminated or dismissed from service after his unauthorised absence. As per the Pension Rules, the minimum period of ten years service is eligible for pension and whereas the petitioner has rendered 13 years of service and went on leave with the permission of the respondents. Hence, the present Writ Petition has been filed.



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4. The learned Additional Government Pleader appearing for the respondents would submit that admittedly the petitioner was appointed as Lab Technician and thereafter transferred to the fourth respondent Unit in the year 1985. After joining the fourth respondent Unit, the petitioner had taken a prolonged leave after in the month of February, 1985. For the past three decades, he has not approached any of the respondents even before the date of his retirement due to his superannuation. After three decades, the petitioner has approached the respondents for pension. Even though he was not stated any single explanation in his affidavit for his unauthorized leave of his service in the past years. He also denied that the petitioner's service register was misplaced due to the deviation of Leprosy Unit from the third respondent in the year 1997. As per Rule 53, the petitioner ought to have submit his application for pension within a period of one year before the date of his retirement. Further, as a Government employee having a responsibility to do his job, lethargically taking unauthorized leave for past three decades and now blaming the Government for the unfortunate misplacement of his service register, is not sustainable one. Accordingly, he



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prays for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner claimed that he appointed as Lab Technician in Coimbatore Medical College in the year 1971 and thereafter, he was transferred to Leprosy Unit in the Tirunelveli Medical College as Lab Technician. Due to his illness, he has taken prolonged leave from February 1985 onwards and he did not join duty till his retirement. It is also not in dispute that he made representation to the fourth respondent in the year 2018 for payment of pensionary benefits and continuously pursued his remedy before the different authorities including Chief Minister Special Cell. However, there is no justification on the part of the petitioner in not approaching the authorities after 1985 either to rejoin his duty or making representation to permit him to rejoin in his duty and after a lapse of three decades, the petitioner made a representation for pensionary benefits which is not



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sustainable one. The petitioner cannot shun away from his responsibility and blame the authorities for his mistakes. Moreover, the Service Register is the ultimate record of the employment details of the petitioner. In the absence of the Service Register, the authorities cannot come to a conclusion as to the period in which the petitioner had actually worked and also the period of his absence whether authorized or unauthorized. Even though it is the responsibility of the authorities to maintain the Service Register, the petitioner ought to have approached the authorities without any delay so that the authorities could have taken steps for reconstruction of the Service Register and thereby the petitioner's grievance could have been redressed. The present Writ Petition is filed after a lapse of three decades from the date of his unauthorised absence is hit by laches and hence, the prayer sought in the Writ Petition cannot be granted.

7. Accordingly, this Writ Petition is dismissed in the above terms.

No costs.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

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Health and Family Welfare Department,
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