



W.P.(MD)Nos.3183 to 3189 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.3183 to 3189 of 2019

W.P.(MD)No.3183 of 2019:

R.Sundararaj

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by the Secretary
to Government,
Rural Development Department,
Secretariat, Fort St. George,
Chennai-9.

2.The Commissioner / Director of
Survey and Settlement,
Chepauk, Chennai-600 005.

3.The District Collector,
Collector, Sivagangai District,
Sivagangai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 1st respondent in Letter No.13326/Pa.A.4/2016-2, dated 14.06.2017 and to quash the same and consequently, to direct the respondents to count the entire temporary services of the petitioner worked in the cadre of Field Surveyor cum Draftsman/Section Writer for pension purpose and accordingly, revised the petitioner's pension and pensionary benefits and further, to pay the consequential arrears with in a stipulated time may be fixed by this Court.

For Petitioner : Mr.M.Saravanakumar
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

The writ petition in W.P.(MD)No.3183 of 2019 is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 14.06.2017 passed by the 1st respondent and consequently, to direct the respondents



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to count the entire temporary services of the petitioner worked in the cadre of Field Surveyor cum Draftsman/Section Writer for pension purpose and accordingly, revised the petitioner's pension and pensionary benefits and further, to pay the consequential arrears with in a stipulated time may be fixed by this Court.

2. The petitioners in all the writ petitions are similarly placed persons. The petitioners were initially recruited by the District Employment Exchange under 10(a)(i) under temporary services on consolidated pay and they were appointed as Field Surveyor cum Draftsman / Section Writer. Thereafter, the Government issued G.O.Ms.No.910, Commercial Taxes and Religious Endowment Department, dated 10.08.1983 and absorbed the temporary appointees appointed on consolidated pay to on regular service in time scale of pay. The petitioner has rendered the regular service and retired on 31.12.2011.



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After retirement, he was paid pensionary benefits and other benefits attached to the regular service. While calculating the period of service, the respondents have taken into account the 50% service rendered in consolidated pay under Section 11(4) of the Pension Rules and paid the benefits.

3. The similarly placed persons had challenged the taking of 50% service instead of full service had filed W.P.Nos.12477 and 12478 of 2007 and this Court, vide order, dated 25.03.2014, directed the respondents to take the full service. Aggrieved over the same respondents preferred a writ appeal and the same was dismissed. A contempt petition in Cont.P.No.1589 of 2017 was filed and the respondents under the threat of contempt had complied with the orders of the Court. Since the respondents had granted the relief and granted full pension for the service rendered in temporary employment, the petitioners by relying on



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the aforesaid order is claiming the same relief.

4. This Court is not able to accept the contention of the petitioner since the said claim of the petitioner is against the provisions of law under Section 11(4) of Pension Rules. The petitioner was absorbed in the regular service from the date of order of absorption, admittedly prior to the absorption the petitioner's appointment was under 10(a)(i), in such circumstances the petitioner is not entitled to take the temporary service along with regular service. Article 14 cannot be claimed when it is against law and any illegality cannot be perpetuated.

5. Under Tamil Nadu Subordinate Service Rules, it has been categorically stated that the person employed under 10(a)(i) cannot demand or have any right to claim any benefits attached to the regular service, since they would not be considered as completed probation.



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Under section 17(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 it has also been held so and the relevant portion is extracted hereunder:

“(5) A person appointed under sub-sections (1), (2) or (4) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category. The services of a person appointed under sub-sections (1), (2) or (4) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned.”

As rightly pointed out by the Learned Additional Government Pleader, it is not a substantive post as well.

6. Therefore, under 11(4) of Tamil Nadu Pension Rules and under 17(1) of the Tamil Nadu Government Servants (Conditions of Service)



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Act, 2016 and under 10(a)(i) of the Tamil Nadu Subordinate Service Rules, the claim of the petitioners cannot be entertained. Hence, the writ petitions are dismissed. No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No

09.06.2023

Tmg

To

- 1.The Secretary to Government,
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Rural Development Department,
Secretariat, Fort St.George,
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- 2.The Commissioner / Director of
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S.SRIMATHY, J

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