



W.P.(MD)No.12828 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.12828 of 2020
W.M.P(MD).No.10884 of 2020

P.Pandidurai

... Petitioner

Vs.

1.The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Registrar of Co-operative Societies,
Kilpauk,
Chennai-600 010.

3.The Deputy Registrar of Co-operative Societies,
Near Collectorate Complex,
Opposite to Government Women's College,
Sivagangai.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent vide his Letter No.6488/CL2/2017/2017-7, dated 30.01.2018 and quash the same as



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illegal and consequently to direct the Respondents herein to count the petitioner's entire service as Watchman in the Construction Wing of Co-Operative Department from 05.07.1978 to 26.11.1999 on par with 46 work Assistants employed in the said Construction Wing of Co-operative Department for the purpose of pension and extend the benefit of Full Pension as per G.O.(3D) No.33, Public Works (C1) Department, dated 03.11.2016, without any discrimination and within a time frame as fixed by this Court and for other reliefs.

For Petitioner	: Mr.P.Mahendran
For Respondents	: Mr.S.R.A.Ramachandran
	Additional Government Pleader

ORDER

This writ petition has been filed to call for the records pertaining to the impugned order issued by the first respondent vide Letter No. 6488/CL2/2017/2017-7, dated 30.01.2018, quash the same as illegal and direct the respondents herein to count the petitioner's entire service as Watchman in the Construction Wing of Co-Operative Department from 05.07.1978 to 26.11.1999 on par with 46 Work Assistants employed in the said Construction Wing of Co-operative Department for the purpose



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of pension and extend the benefit of Full Pension as per G.O.(3D) No.33, Public Works (C1) Department, dated 03.11.2016, without any discrimination and within a time frame as fixed by this Court and for other reliefs.

2. The case of the petitioner is that the petitioner was appointed as Watchman in the Construction Wing of the Co-operative Department on 05.07.1978. The petitioner, three other Watchmen and 46 Work Assistants, who were recruited through Employment Exchange after 14.01.1977 by the 2nd respondent and were working in the said Construction Wing, had been paid salary on consolidated basis.

3. In these circumstances, the second respondent has requested the Government for creation of 46 posts of Work Assistant and four Posts of Watchman so as to bring them into the regular establishment and the Government has also sanctioned for creation of the said posts. Separate time scale of pay was fixed for the post of Work Assistants and Watchmen. In this regard, the first respondent has passed an order in



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G.O.Ms.No.266, (Co-operation, Food and Consumer Food Protection Department), dated 26.11.1999. In pursuance of the said Government Order, the petitioner's service was regularized in the post of Watchman in the said Construction Wing by proceedings of the Executive Engineer, Construction Division No.IV, Co-operative Department, Madurai, dated 08.02.2001. However, the said Construction Wing became defunct with effect from 31.08.2003. Thereafter, the Ministerial Service Employees, Drivers, Record Clerks and other Basic Servants were absorbed into the respondents Co-operative Department and since the petitioner was employed as Watchman in the said Construction Wing, he was posted to the third respondent Office with effect from 01.09.2003. The said 46 Work Assistants were posted to the Public Works Department as Work Inspector Grade-II.

4. When the superannuation was nearing, all the 46 Work Assistants requested the Authorities concerned to count their entire temporary services rendered in the said Construction Wing of the respondent Co-operative Department. However, the same was rejected



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and the retired employees of Work Assistants were given the benefit of counting 50% of their past service rendered in the temporary service for the purpose of pension. Aggrieved by the same, the said Work Assistants have approached the Tamil Nadu Administrative Tribunal, Chennai and the petitioner has also approached the said Tribunal by filing an application in O.A.No.4267 of 2002. However, the Tribunal has ordered that 50% of the past service rendered in the temporary service can be taken into account for calculation of pension. Aggrieved by the same, the said Work Assistants have approached this Court by filing writ petitions to count their past temporary services for the purpose of pension and this Court has also issued direction to that effect by order dated 19.09.2007. In pursuance of the same, the Principal Secretary to the Government, Public Works Department, has also issued an order in G.O.(3D).No.33, Public Works (C1) Department, dated 03.11.2016 implementing the directions issued by this Court. In order to avail the said benefit, the petitioner has made a representation in the year 2017 and the petitioner has filed a writ petition in W.P(MD).No.13822 of 2017 and this Court, vide order dated 26.07.2017, has disposed of the said writ petition by



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directing the first respondent to consider the representation of the petitioner dated 09.04.2017 in the light of the Government Order in G.O.(3D).No.33, Public Works (C1) Department, dated 03.11.2016, pursuant to which, the present impugned order has been passed rejecting the claim of the petitioner. Challenging the same, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that in respect of similarly situated persons, their past temporary services were calculated and they were granted full pension. Hence, the petitioner is also entitled for the same relief. However, without considering the Government Order in G.O.(3D).No.33, Public Works (C1) Department, dated 03.11.2016, the first respondent has mechanically rejected the representation of the petitioner which is not sustainable one. Hence, he prays for allowing the present writ petition.

6. The learned Additional Government Pleader appearing for the respondents would submit that the pension proposal in respect of the



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petitioner was prepared by the third respondent bearing in mind the instructions issued by the Government in G.O.(Ms).No.266, Co-operation, Food and Consumer Protection Department, dated 26.11.1999 and also the orders issued by the Administrative Tribunal. Accordingly, the total length of service put in by the petitioner in the Construction Wing was calculated as 21 years, 2 months and 11 days and 50% of the service rendered by him in the Construction Wing was arrived to be 10 years, 7 months and 5 days which was included in his total length of service of 22 years, 3 months and 10 days. The pension proposal of the petitioner was forwarded to the Accountant General, Chennai, by the third respondent and the Accountant General, after verifying the correctness of the pension gratuity and family pension in respect of the petitioner had sanctioned the pension benefits of the petitioner. After receiving the pensionary benefits, the petitioner has preferred a representation before the 1st respondent in the year 2017 and the 1st respondent after considering the representation of the petitioner had held that the Government Order issued in G.O.(3D).No.33, Public Works (C1) Department, dated 03.11.2016, could not be applied in the case of the



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petitioner, since the orders were issued by the Public Works Department based on the directions of this Court in various writ petitions filed by the causal workers redeployed in Public Works Department.

7. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

8. The petitioner's entry in service, regularization and retirement are not in dispute. The grievance of the petitioner is that the past services of the similarly situated persons were calculated and they were granted full pension. In respect of the petitioner, 50% of his temporary service rendered by him as Casual Labour was only calculated. In order to claim on par with them, the present writ petition has been filed. Admittedly, 50% of the temporary service rendered by him as Casual Labour was taken into account for the purpose of calculation of pension. The total length of the service rendered by him was calculated as 22 years, 3 months and 10 days. The petitioner has retired from service on 28.07.2011. After a lapse of six years, the petitioner has made a claim on



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par with other co-employees before the first respondent. The first respondent, after considering the representation of the petitioner, has held that the Government Order issued in G.O.(3D).No.33, Public Works (C1) Department, dated 03.11.2016, could not be applied in the case of the petitioner, since the orders were issued by the Public Works Department based on the directions of this Court in various writ petitions filed by the casual workers redeployed in Public Works Department. As per the Tamil Nadu Pension Rules, the petitioner will be entitled to count 50% of his past temporary service rendered by him as casual labour. Further, in the case of ***the Government Of Tamil Nadu vs R. Kaliyamoorthy*** reported in ***2019(6) CTC 705***, the Hon'ble Full Bench of this Court, in paragraph No. 45 of the judgment, has held 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



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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 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."



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9. In view of the judgment of the Hon'ble Full Bench of this Court, it is made clear that “ 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”. Hence, the claim made by the petitioner in the present writ petition to count his entire service as Watchman in the Construction Wing of Co-Operative Department from 05.07.1978 to 26.11.1999 and to extend the benefit of full pension as per G.O.(3D) No.33, Public Works (C1) Department, dated 03.11.2016,, cannot be granted.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2023

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

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M.DHANDAPANI,J.

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