



W.P.(MD).No.17670 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17670 of 2020

A.Robinson

... Petitioner

Vs.

1.The Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Director of Fisheries,
Nandanam,
Chennai-600 035.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to dispose of the petitioner's appeal dated 11.05.2020 which was filed against the 2nd respondent proceedings in Lr.no.420/M1/2013 dated 24.01.2020 in the light of the G.O.Ms.No.50 Personnel and Administrative Reforms (Personnel G) Department, dated 19.11.1976.

For Petitioner : Mr.K.Vamanan



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For Respondents : Mr.P.Thambidurai
Government Advocate

ORDER

The present writ petition is filed seeking direction to the 1st respondent to dispose of the petitioner's appeal dated 11.05.2020 which was filed against the 2nd respondent proceedings in Lr.no.420/M1/2013 dated 24.01.2020 in the light of the G.O.Ms.No.50 Personnel and Administrative Reforms (Personnel G) Department, dated 19.11.1976.

2. The petitioner was working as Inspector of Fisheries in the respondent department and retired from service on attaining the age of superannuation on 31.12.2005. He was fully qualified for the post of Sub Inspector of Fisheries. He joined the service on 16.04.1975 as temporary employee sponsored by the Employment Exchange and subsequently, he was selected by the Tamil Nadu Public Service Commission for the said post and his service was regularized with effect from 10.05.1979. In the meanwhile, during the period of 16.04.1975 and 10.05.1979, he was working for about 1 year 5 months and 28 days as temporary employee in the post of Sub Inspector of Fisheries in the department.



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While he was working as temporary employee, the department ousted him for want of vacancy and re-engaged him in the post of Sub Inspector of Fisheries. The said break in service had happened only due to the administrative ground i.e., for want of vacancy and not on the fault of the petitioner. Thereafter, his re-appointment in the year 1977-1978 were made in pursuance to the instructions by the Government in G.O.Ms.No.50 Personnel and Administrative Reforms (Personnel G) Department, dated 19.11.1976. In the said Government Order, the Government had directed the department to take appropriate steps to collect the list of retrenched employees for want of vacancies by the respective District Collector and to appoint them in the vacancies. The petitioner was appointed through Tamil Nadu Public Service Commission on 10.05.1979, but he was not granted with any pay protection. He was working temporarily in the respondent department and also did not condone the retrenched break in service period, even after the issuance of specific Government Order i.e., G.O.Ms.No.1024, Personnel and Administrative Reforms (Personal G) Department, dated 06.09.1979 by the Government. After his regularization on 10.05.1979, he continued his service and retired on 31.12.2005 on attainment of the age of superannuation, thereby rendering a service of 29 years 2 months and 19 days, including the break in service from 16.04.1975 and excluding the intermittent



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period of break in service. He was short of 9 months and 11 days for 30 years which is the qualifying service for full pension. He made several representations to condone the period of break in service during his temporary service ranging from 16.04.1975 to 10.05.1979 and requested to grant all monetary and service benefits. He also sent several representations to the respondents and finally, the 2nd respondent issued an order, dated 10.03.2012, wherein his representation was partly considered and condoned the break in service period alone. However, the 2nd respondent refused to take the said break in service period for calculating the service for pension. The 2nd respondent through his proceedings, dated 17.03.2014 has refused to grant increment as well as other benefits even after having condoned the break in service period of his service between 16.04.1975 and 10.05.1979.

3. Aggrieved by the said order, dated 17.03.2014 passed by the 2nd respondent, the petitioner sent an appeal to the 1st respondent on 12.05.2014. However, the said appeal was disposed of by the proceedings of the 2nd respondent, dated 24.01.2020 rejecting his appeal. The petitioner had filed his appeal before the 1st respondent against the 2nd respondent proceedings, dated 17.03.2014. Once again, he also filed another appeal before the 1st respondent



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Government Secretary on 11.05.2020 through registered post against the 2nd respondent's proceedings, dated 24.01.2020. The petitioner's appeal is still pending before the 1st respondent. Despite several reminders to the 1st respondent sent by the petitioner on 23.07.2020 and 03.09.2020, there is no avail and his appeal still remains pending without being disposed of. Hence, the petitioner has filed this writ petition.

4. The 2nd respondent has filed an elaborate counter contending that the petitioner was appointed as Sub Inspector of Fisheries on temporary basis under Rule 10 (a) (i) of the erstwhile General rules for the Tamil Nadu State and Subordinate Service (Now Sub-section (1) of Section 17 of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 (Tamill Nadu Act 14 of 2016) and his service was also not regularized in the post of Sub-Inspector of Fisheries. Further, he was ousted from time to time for want of vacancy and caused break in service of 1 year 5 months and 28 days. Hence, the pay protection cannot be granted to the petitioner for the above said break in service in the post of Sub-Inspector of Fisheries. On that ground, this writ petition is liable to be rejected.



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5. Heard Mr.K.Vamanan, learned counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate for the respondents.

6. The claim of the petitioner is to dispose of his appeal memorandum, dated 11.05.2020 which is pending before the 1st respondent. The 1st respondent has not chosen to file a counter as well. Hence, without going to the merits of the case, this Court is inclined to make a specific direction to the 1st respondent to dispose of the petitioner's appeal memorandum, dated 11.05.2020 which was filed against the 2nd respondent proceedings in Lr.no.420/M1/2013 dated 24.01.2020 in the light of the G.O.Ms.No.50 Personnel and Administrative Reforms (Personnel G) Department, dated 19.11.1976 within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. In view of the above said observations, this Writ Petition is disposed of. No costs.

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

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L.VICTORIA GOWRI, J.

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