



W.A.(MD)No.1261 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1261 of 2014

and

M.P.(MD)No.2 of 2014

The Commissioner,
Madurai Corporation,
Madurai District.

...Appellant

/Vs./

1.M.Poomaalai (Died)
2.P.Tamilarasi
3.P.Manikandan
4.P.Murugan
5.P.Sudha

...Respondents

(R2 to R5 are brought up as legal heirs of the deceased first respondent through memo dated 10.07.2023.)

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order made in W.P.(MD)No.36 of 2010 dated 11.12.2013 on the file of this Court.



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For Appellant : Mr.R.Murali
For Respondent : Mr.Vetrivel
for Mr.S.Rajasekar

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

We have heard detailed submissions of Mr.R.Murali, for the Commissioner of Madurai Corporation / appellant and Mr.Vetrivel, for the respondent / writ petitioner.

2. The writ petitioner is no more as on date and a memo is filed enclosing a copy of the death certificate as well as the legal heirship certificate. The details of the legal heirs set out therein are taken note of and the Registry is directed to amend the array of parties accordingly.

3. The writ petition had been allowed by an order dated 11.12.2013. The prayer in the writ petition was a challenge to an order passed by the appellant on 03.12.2009 rejecting the petitioner's request for pensionary benefits.



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4. The writ petitioner was in the service of Madurai Corporation as Temporary Motor Attendant on daily wages since 1963. In 1979, the services of the petitioner were regularized and he continued in service till 24.01.1992. Thereafter there was a long hiatus, and the petitioner had absented himself, ostensibly for medical reasons, for a period of 15 years. This led to his dismissal from service on 11.05.2019.

5. Unfortunately for the petitioner, there has been no challenge to this order. The factum of dismissal is noted by the learned Single Judge, who also notes the position that the order has not been under challenge at any point of time. Despite this, the learned Judge has proceeded to apply G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 as per which 50% of the past period of the service is to be included to subsequent service period for the purpose of settlement of retirement benefits.

6. As rightly pointed out by learned Panel counsel, the grant of pensionary benefits would depend on continuity of service of the



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petitioner and Rule 21 of the Tamil Nadu Pension Rules, 1978, makes it categoric that dismissal or removal of Government servant from a service or post, entails forfeiture of his past service.

7. The reasons for dismissal are not really relevant in this context and what matters is whether the dismissal was challenged and varied in any way. In the present case, the order of dismissal dated 11.05.2009 stares the writ petitioner on the face as remaining unchallenged. Infact, the petitioner is well aware of the factum of dismissal, as in his subsequent representation dated 18.07.2009, he seeks reinstatement in employment as well in addition to monetary benefits.

8. The order of the learned Single Judge granting the petitioner the benefit of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 cannot be countenanced, as the said GO does not carve out any exception or make any variation to Rule 21, which is absolute. We thus find merit in this writ appeal and allow the same reversing the order of the learned Single Judge.



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9. Learned counsel for the appellant then, as a last ditch effort, draws our attention to the order passed in W.P.(MD)No.9469 of 2009 on 18.09.2009 pointing out that there has been a direction from this Court to consider his representation for pensionary benefits. It is the disposal of that representation that has given rise to the order impugned in the present writ petition. Reference to order dated 18.09.2009 is futile as there is no positive direction for disposal of representation from the Court, but only mandamus simpliciter that evidently has to be in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.] & [R.V.J.]
10.07.2023

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



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AND
R.VIJAYAKUMAR, J.

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