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W.P.(MD)No.15677 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.15677 of 2016

S.Kumaresan

... Petitioner

vs.

- 1.The Principal Accountant General
(A&E),
Office of the Principal Accountant
General (A&E),
361, Anna Salai, Chennai-18.
- 2.The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai.
- 3.The Director of Medical and Rural
Health Services,
Office of the Directorate of Medical
and Rural Health Services,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the



W.P.(MD)No.15677 of 2016

WEB COPY

records relating to the impugned order made in No:P20/3/12017241/ADK, dated 15.02.2016, on the file of the 1st respondent herein and to quash the same and consequently, to direct the 1st respondent to count the petitioner's Military Service from 09.11.1983 to 06.01.1989, as qualifying service for the purpose of pension by implementing G.O.(D)No.1490, Health and Family Welfare Department, dated 20.11.1997 and to pay arrears of pension with effect from 31.05.2013.

For Petitioners : Mr.M.Thiurnavukkarasu
For Respondents : Mr.P.Thambidurai
Government Advocate

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order, dated 15.02.2016, on the file of the 1st respondent herein and consequently direct the 1st respondent to count the petitioner's Military Service from 09.11.1983 to 06.01.1989, as qualifying service for the purpose of pension by implementing G.O.(D) No.1490, Health and Family Welfare Department, dated 20.11.1997 and to pay arrears of pension with effect from 31.05.2013.



W.P.(MD)No.15677 of 2016

WEB COPY

2. The petitioner has served in the military from 09.11.1983 to 06.01.1989. The petitioner is a qualified Doctor with post graduate in M.D., (Child Health). After the service in the military as Short Service Commission, the petitioner was relieved as Major on 06.01.1989. Thereafter, appointed as Assistant Surgeon in Government Primary Health Centre, Pudukkottai on 26.06.1991. After 22 years of service, the petitioner retired on 31.05.2013.

3. The petitioner is seeking to include the Military Service and grant pensionary benefits. The same was declined by the first respondent by stating that the petitioner has retained the gratuity amount which the petitioner had received from the Military Service and therefore, the petitioner's service cannot be considered.

4. The contention of the petitioner is that as early as 16.12.1996 itself the petitioner has submitted his willingness to repay the entire



W.P.(MD)No.15677 of 2016

WEB COPY

gratuity received from the Military Service and thereafter, to consider to include the said service for the purpose of seniority, pension and gratuity, etc. But the respondents have not passed any order based on the representation. The 3rd respondent is the appropriate authority to consider and pass orders.

5. The 3rd respondent has stated in the counter affidavit that since there was break in service from 07.01.1989 to 25.06.1991 from Military Service to Assistant Surgeon, the petitioner cannot claim to include the Military Service. The said contention of the 3rd respondent is erroneous because whenever ex-serviceman is taking up any civil post, if there is any break in service, that ought to be condoned. In the present case, there is hardly one and half years of break in service. Therefore, the petitioner is entitled to condone the said break in service.

6. Moreover, the petitioner has submitted his willingness to repay



W.P.(MD)No.15677 of 2016

WEB COPY

the entire terminal / gratuity to the first respondent and thereafter, count the seniority, pension and other benefits.

7. Therefore, this court is passing the following order:

- i. The 2nd and 3rd respondents are directed to condone the break in service for the period from 07.01.1989 to 25.06.1991.
- ii. The petitioner is directed to deposit the entire gratuity which the petitioner had received from the military service to the 3rd respondent within a period of 4 weeks from the date of receipt of a copy of this order.
- iii. Thereafter, 3rd respondent shall deposit the said amount to the first respondent.
- iv. The 1st respondent shall rework the pensionary benefits



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W.P.(MD)No.15677 of 2016

and issue fresh pension order to the petitioner. The first respondent shall quantify and pay the pensionary benefits to the petitioner.

v. The entire exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

8. With the above said observation, the writ petition is disposed of.

No costs.

Index : Yes / No

02.03.2023

Internet : Yes

NCC : Yes / No

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W.P.(MD)No.15677 of 2016

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WEB COPY



W.P.(MD)No.15677 of 2016

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W.P.(MD)No.15677 of 2016

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