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W.P.(MD)No.5565 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5565 of 2016

M.Nagarajan

.

... Petitioner

vs.

The Commissioner of Fisheries,
Anna Salai, Teynampet,
Chennai-600 006.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the respondent herein relating to his proceedings Na.Ka.No. 17514/S4/2015, dated 30.06.2015 and to quash the same and consequently, to direct the respondent to fix the petitioner's pension taking the service rendered from 06.01.1979 to 30.11.1983 as break in service and pay the pension to the petitioner.

For Petitioner : Mr.V.Venkkatasamy

For Respondent : Mr.M.Lingadurai
Special Government Pleader



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ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned proceedings, dated 30.06.2015 and consequently, to direct the respondent to fix the petitioner's pension taking the service rendered from 06.01.1979 to 30.11.1983 as break in service and pay the pension to the petitioner.

2. The petitioner joined as Office Assistant in the respondent department on 06.01.1979. Thereafter, he faced disciplinary proceedings and was dismissed on 30.11.1983. Aggrieved over the same, the petitioner preferred W.P.No.6827 of 1984 and the petition was subsequently transferred to Tamil Nadu Administrative Tribunal, Chennai after the formation of the same and renumbered as T.A.No.634 of 1989. After considering the same, the Tribunal allowed the same, vide order, dated 04.09.1991, with a direction to the respondent to take the petitioner back as fresh basic servant instead of remanding the matter



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back to the disciplinary authority for fresh consideration.

3. Based on the direction, the petitioner was reinstated and joined duty on 25.11.1991 and the service was regularized through G.O.Ms.No. 29, Animal Husbandry and Fisheries (FS II) Department, dated 16.02.1996, with effect from 25.11.1991. The petitioner submitted a representation to take the earlier service for pensionary benefits and the same was rejected, vide order, dated 05.05.2005. The reasons stated in the rejection order is that the petitioner was re-appointed after the dismissal and there is no rule in the Tamil Nadu Pension Rules to take the service rendered before the dismissal. Against the said order, the petitioner preferred W.P.(MD)No.10066 of 2006. However, the same was withdrawn with liberty to approach the concerned authorities. The petitioner retired on 31.07.2013. After retirement on advice again submitted a representation to consider the past service and fix the pensionary benefits. Without considering the same, the respondent



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rejected the claim of the petitioner, vide impugned order, dated 30.06.2015. Aggrieved over the same, the present writ petition is filed.

4. The respondent has filed a counter affidavit stating that as per Rule 22 of the Tamil Nadu Pension Rules, counting of past service on dismissal or removal will not arise, since on dismissal, the past service will be forfeited. Therefore, the respondent prayed to dismiss the writ petition.

5. Heard Mr.V.Venkkatasamy, learned Counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondent and perused the records.

6. The learned Counsel for the petitioner submitted that the petitioner died on 30.04.2021. However, he is not able to contact the legal heirs of the petitioner.



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7. On perusing the order passed by the Tribunal, it is seen that the Tribunal has granted relief to reinstate the petitioner instead of remanding the matter to the disciplinary authority for fresh enquiry. The Tribunal has not stated that the petitioner's dismissal is appropriate and it is liable to be confirmed. When the Tribunal has not rendered such finding, when the punishment is not confirmed, then it cannot be stated that the petitioner is dismissed from service. Since it cannot be construed as dismissal, Rule 22 forfeiture will not come into effect. If there is no forfeiture, the petitioner is bound to certain relief.

8. Hence, this Court is directing the respondent to take the service of the petitioner from 06.01.1979 to 30.11.1983 and the service from 25.11.1991 to 31.07.2013 as two different spells of service. For the period in between 1983 to 1991, the petitioner is not entitled to



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continuity of service or backwages and the said period can never be taken for any benefits. Therefore, the respondent is directed to rework by taking these two service as different spells of service and calculate the pensionary benefits applicable to the petitioner. It is made clear that the petitioner is entitled to pensionary benefits from the date of filing of this writ petition and not prior to it. The said benefits shall be disbursed to the legal heirs of the petitioner. As and when the legal heirs of the petitioner submit any claim, the same may be considered in accordance to the direction stated supra. When the legal heirs of the petitioner submit any application, the respondent shall consider the same within a period of eight weeks from the date of receipt of the application.

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

No costs.

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

The Commissioner of Fisheries,
Anna Salai, Teynampet,
Chennai-600 006.



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S.SRIMATHY, J

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