



W.P.(MD).No.8160 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 23.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8160 of 2016

R.Chelladurai

... Petitioner

Vs.

1.The Secretary to Government,
Public Works Department,
St.George Fort,
Chennai.

2.The Engineer in Chief (WRO) and Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai – 5.

3.The Superintending Engineer,
WRO/Public Works Department,
Tamirabarani Basin Circle,
Tirunelveli.

4.The Executive Engineer,
Public Works Department/WRO,
Anti Sea Erosion Division,
Nagercoil – 1.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his



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proceedings Ka.No.2230/2015/Ni.1/(Napa.3 Varu) dated 13.10.2015 and quash the same as illegal and consequently directing the respondents to pass suitable orders by counting the petitioner's prior service rendered as Junior Engineer from 01.06.1983 to 31.10.1983 and 23.03.1984 to 11.05.1987 for fixing his salary and other service benefits based on his representation dated 23.11.2015 and in the light of the order passed in W.P.Nos.21987 and 21988 of 2006 dated 26.10.2006 by this High Court.

For Petitioner : Mr.D.Srinivasa Ragavan

For Respondents : Mr.S.R.A.Ramachandran,
Additional Government Pleader.

ORDER

This Writ Petition is filed challenging the impugned order dated 13.10.2015 with a consequential prayer to count the petitioner's prior service rendered as Junior Engineer from 01.06.1983 to 31.10.1983 and 23.03.1984 to 11.05.1987 for fixing his salary and other service benefits based on his representation dated 23.11.2015 and in the light of the order passed in W.P.Nos. 21987 and 21988 of 2006 dated 26.10.2006.



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2. The petitioner was initially appointed as NMR Technical Assistant in the Public Works Department on daily wages basis through Employment Exchange on 10.02.1982. Thereafter, he was appointed as Junior Engineer vide proceedings dated 01.06.1983. While the petitioner was working as Junior Engineer, he was retrenched from service for want of vacancy on 31.10.1983. Thereafter, he was reappointed as Junior Engineer vide proceedings dated 01.03.1984. The petitioner has worked as Junior Engineer until 11.05.1987, on which date again he was retrenched from service for want of vacancy. Thereafter, the petitioner was again appointed as NMR Technical Assistant on 05.08.1991 and worked upto to 06.07.1995. Thereafter, from 07.07.1995, the petitioner was accommodated as Technical Assistant vide G.O.Ms.No.408, Public Works (D2) Department, dated 31.05.1995. Then, the petitioner was appointed as Junior Engineer from 28.02.2001 by Engineer in Chief (WRO) and Chief Engineer and thereafter, he continued his service as Junior Engineer. Now, the petitioner has attained superannuation and retired from service on 30.06.2019.

3. The contention of the petitioner is that the petitioner is entitled to include his service from 1983 to 1987 and by condoning the break in service for a period of 6 months as per Fundamental Rule 26(a)Note (1), wherein it



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states if any Government servant was discharged due to want of vacancy but subsequently if he was appointed in the same post, he can draw his last drawn salary prior to discharge from service and also he is entitled to count such service for his future increment with time scale of pay.

4. But the respondents rely on G.O.Ms.No.400 P & AR Department dated 29.08.1986, wherein it states that a person who was retrenched cannot count the service rendered by him in the earlier post. Infact, the impugned order refers to the said G.O.Ms.No.400 and had declined the relief.

5. On perusal of the said G.O. and Fundamental Rule, it is seen that the said Government Order states that the retrenched employee is not entitled, but the Fundamental Rule states that the discharged employee is entitled to calculate such service for his benefits as well as the salary and other benefits. Both states “for want of vacancy”, but G.O. states “retrenched”, but FR states “discharged”. The nomenclature differs but the effect is one and the same. Especially when there was no vacancy the employee was not continued in the said service. Therefore, this Court is of the considered opinion that the petitioner is entitled to the relief.



6. The Learned Counsel for the petitioner relied on the judgment rendered in W.P.No.21987 of 2006 and W.P.No.21988 of 2006 dated 26.10.2006 wherein by relying on the said FR 26(a) relief was granted to the petitioners therein. The relevant portion of the aforesaid judgment is extracted hereunder:

"12. Fundamental Rule 26(a) specifically provides that all duty in a post on a time scale counts for increments in that time scale. Note 1 issued under F.R.26(a), under G.O.Ms.No.1072 P and A.R. (FR.III) Dept., dated 31.10.1986, makes the Rule position explicit in the following words:

"Note 1.-If an officiating Government servant in a post, who has no substantive appointment is discharged from service for want of vacancy, he shall on appointment to the same post, draw the pay last drawn prior to his discharge from service. The periods prior to the discharge from service shall count for purpose of future increment in the time scale of pay of that post."

13. A reading of the above Note 1 in F.R.26(a) makes it clear that even an officiating Government servant, who has no substantive appointment, is entitled to count his past service for the purpose of pay fixation as well as future increments. While that being the case even in respect of officiating Government servants who have no substantive appointment, a similar benefit cannot be denied to the petitioners who were actually Approved Probationers in the post of Field Assistants, by virtue of their regular appointment in the year 1981.



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14. Since the Government had not considered the aforesaid Rule position while fixing the pay of the petitioners, at the bottom-most stage, on reappointment in the year 1993, treating the petitioners as fresh entrants, the action of the respondents is totally illegal. Therefore, the petitioners are entitled to the relief prayed for in the Original Applications, now transferred to this Court.

15. Accordingly, the writ petitions are allowed and the respondents are directed to condone the break in service suffered by the petitioners in the year 1989 and to grant the benefit of pay fixation as well as future increments by counting the entire period of service rendered by them from the date of their initial appointment in the year 1981, as duty for all purposes. Such an exercise shall be done by the respondents and completed within a period of four months from the date of receipt of a copy of this order or on production of this order by the petitioner. No costs”.

The issue in the aforesaid judgment is that the respondents therein had treated the petitioners as fresh entrants and had fixed the pay without taking the previous service. After considering the same, the Court had held that treating the petitioners as fresh entrant is illegal and the said service ought to be counted after condoning the break in service. Therefore, this Court is of the considered opinion that the petitioner is entitled to condone the break in service and to count the said service for pensionary benefits.



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7. The next contention that was raised by the respondents is that the petitioner was serving as Technical Assistant, then was appointed as Junior Engineer for brief period. Since the petitioner was not taken in the same post, hence the said relief cannot be granted. It is seen that the petitioner was retrenched in the post of Junior Engineer from 01.06.1983 to 31.10.1983. Again, he has rendered the service of Junior Engineer from 23.03.1984 to 11.05.1987. Subsequently, he was again appointed in the post of Technical Assistant NMR. Since the G.O.Ms.No.408 dated 31.05.1995 states that the petitioner and the similarly placed persons should be accommodated by creating supernumerary post, the petitioner was accommodated in the Technical Assistant. If the respondents have included the petitioner in the Junior Engineer post, the said service would be continued. When both the services are available, the respondents ought to have appointed the petitioner in the Junior Engineer post only. Infact some of the candidates were appointed as Junior Engineers in the same G.O. Therefore, this Court is of the considered opinion that declining the benefit by citing that the petitioner was appointed in a different post is not sustainable. The petitioner is entitled to include the service rendered for the said period. The respondents shall include the said service rendered by the petitioner.



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8. The respondents further submitted that if the said period is included then the respondents would be financially burdened. Moreover, the petitioner has claimed belatedly. On considering this plea, this Court is of the considered opinion that the petitioner is not entitled to monetary benefits for the said period due to efflux of time and due to the financial burden on the respondents. However, the petitioner is entitled to the effect of such monetary benefits in the pensionary benefits. Therefore, the impugned order is quashed and the respondents are directed to count the said period and grant the monetary effect in the pensionary benefits. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

23.03.2023

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



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S.SRIMATHY, J.

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