



W.P(MD)No.25442 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD)No.25442 of 2019

and

W.M.P(MD)No.22003 of 2019

K.Veeranan

... Petitioner

Vs.

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

2.The Managing Director
Tamil Nadu Cooperative Milk Producers
Federation Ltd., (AAVIN)
Madhavaram,
Chennai - 600 051.
Now Having Office at Chamiers Road,
Nandanam,
Chennai - 600 035



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3.The General Manager

Madurai District Co-operatiive Milk Producers

Union Ltd., (AAVIN)

Sathamangalam,

Madurai - 625 020.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the third respondent in Na.Ka.No.1003/Tho.Vu/2017 dated 26.09.2019 quash the same and consequently direct the respondents herein to pay regular pension under the Tamil Nadu Pension Rules, 1978 for the regular service of petitioner from 27.05.1982 to the date of retirement on 31.05.2006 and reckoning 50% of his past service from 03.07.1974 to 26.05.1982 as per G.O.Ms.No.408 Finance (Pension) Department, dated 25.08.2009.

For Petitioner : Mr.P.Mahehdran

For Respondents : Mr.P.Subbaraj - for R1

Special Government Pleader

Mr.J.Devasenar - for R2 & R3



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ORDER

Heard Mr.P.Mahendran, learned counsel for the petitioner, Mr.P.Subbaraj, learned Special Government Pleader appearing for the first respondent, Mr.J.Devasenar, learned Standing Counsel appearing for the respondents 2 and 3 and perused the materials available on record.

2. The case of the petitioner is that he was appointed as a Casual Labour in December, 1967 in the Cattle Feed Section, Madurai Milk Project Unit, Madurai. Thereafter, he was appointed as an Educate Mazdoor by the Project Officer, Tamil Nadu Dairy Development Corporation Board vide proceedings in ROC.No.16660/74/84 dated 03.07.1974. Thereafter, he was promoted as Senior Mazdoor by proceedings of the third respondent in Ref.No.26622/B3/81 dated 27.05.1982. After completion of 10 years of service, he was promoted to Selection Grade and fixed pay scale of Selection Grade scale of Rs. 800-15-1010-20-1150 with effect from 01.04.1992. Again after completion of 20 years of service, he was promoted to Special Grade and



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the third respondent fixed pay scale of Special Grade scale of Rs.2750-70-3800-75-4000 in proceedings in Na.Ka.No.4599/PaVu.Ku. 2/2002 dated 21.08.2002. Subsequently, on superannuation, the petitioner was allowed to retire on 31.05.2006 by the proceedings of the third respondent. After retirement, the third respondent is only making *ex-gratia* pension at the rate of Rs.2,917/-. The petitioner requested the third respondent to consider his case for regular pension, but in vain. He submitted a detailed representation dated 06.03.2019 to the respondents for regular pension. As no response from the respondents, the petitioner filed a Writ Petition in W.P.(MD)No.8633 of 2019 before this Court and the said Writ Petition was disposed of on 10.04.2019 with a direction to consider the request of the petitioner. In compliance of the said order, the third respondent passed the impugned order in Na.Ka.No. 1003/Tho.Vu/2017 dated 26.09.2019 refusing to grant regular pension stating that the petitioner initially joined the service as Mazdoor in 1982 and retired from service on 31.05.2006 and the retirement benefits payable to the petitioner were already disbursed and *ex-gratia* pension and EPF pension also paid to the petitioner. It is stated in the order impugned in this Writ Petition that to consider the past service of the



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petitioner prior to 1982 worked in Madurai Milk Project Unit, Madurai, the previous records are not available at their office. On that ground the third respondent rejected the request of the petitioner. Aggrieved by the order, dated 26.09.2019 of the third respondent, the present Writ Petition has been filed.

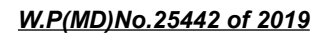
3. In the counter affidavit filed by the third respondent, it is averred that the third respondent Union was established on 01.02.1981 and the petitioner was working as an employee in the third respondent Union after absorbed from the service of Tamil Nadu Government Dairy Development Corporation and got promotion as Senior Mazdoor from 01.04.1982 and retired from service on 31.05.2006 as Special Grade Senior Mazdoor. It is further averred that the third respondent Union as a Co-operative Institution is coming under the ambit of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. After retirement of service from the Union, necessary steps were taken to sanction eligible pension to the petitioner under the Employees' Pension Scheme, 1995 and the petitioner is regularly getting the pension till date. For the calculation of pension his period of service is taken from



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01.04.1982 to 31.05.2006. It is further averred that when the petitioner is eligible for *ex-gratia* pension as per G.O.(Ms)No.186 of Animal Husbandry and Fisheries Department, dated 16.12.2016 and as per the letter of the Commissioner (Dairy Development Department) dated 19.12.2016, he was sanctioned with *ex-gratia* pension and is paid as on date.

4. It is also averred in the counter affidavit that the previous employment of the petitioner with Dairy Development Corporation was not accounted for calculation of pension meant for the Government employees in the absence of any Government Order providing such eligibility for pension to the employees who were working earlier under the Government for some period either for permanent employee or a daily wages employee or in any other public sector undertaking. In the counter affidavit it is further averred that in the year 2009 the State Government issued G.O.No.408 Finance (Pension) Department, dated 25.08.2009, wherein the pension benefits extended to the employees of the Government of non-provincialised services with certain conditions. It is stated that on relying the said Government Order, the petitioner



5. The learned counsel for the petitioner submits that the petitioner is entitled for regular pension under the Tamil Nadu Pension Rules, 1978 which was in force from 01.01.1979 to 31.03.2003. As per Rule 10(1)(iii) of Tamil Nadu Pension Rules, 1978 and as per Order No. 1408 Finance (Pension) Department, dated 25.08.2009, the petitioner is entitled to reckon half of his previous service as Educator from 03.07.1974 till 25.01.1975. When he was transferred and employed as Mazdoor in Palani Chilling Centre by proceedings dated 25.08.2009.



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6. The learned counsel further submits that the third respondent failed to consider the disqualification and non-eligibility of a person under Rule 2(a) to (e) of 1978 Pension Rules. As per the petitioner's counsel all the provisions of 1978 Pension Rules are squarely applicable to the petitioner and the third respondent has lost sight of application of law and passed the impugned order illegally and sought to allow the Writ Petition.

7. The learned Standing Counsel appearing for the third respondent submitted that the petitioner without giving breathing time to the third respondent to consider the claim of service records filed W.P. (MD)No.8633 of 2019 which was disposed of on 10.04.2019 with a direction to consider the representation of the petitioner.

8. The learned counsel further contends that to consider the representation of the petitioner with utmost care and verified the relevant records of the petitioner and since those documents were dated back to 39 years and found that no such related documents in connection to the employment of the petitioner under the Diary Development Corporation



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are available with the respondent Union, thereby, passed the impugned order, rejecting the request of the petitioner.

9. Having heard the submissions of the respective counsels, all admitted facts are not in dispute, from the date of initial engagement of the petitioner in the Tamil Nadu Dairy Development Corporation to till date of superannuation and also there is no dispute with regard to the payment of the EPF amount and Gratuity amount, etc.

10. The only issue to be considered in this Writ Petition is whether the petitioner is entitled for the pensionary benefits under the Tamil Nadu Pension Rules, 1978 or not.

11. At this stage, the learned counsel for the petitioner placed a copy of the order dated 09.12.2022 in W.P.(MD) No.26682 of 2019 of Madurai Bench of Madras High Court stating that in the identical circumstances, the said Writ Petition is filed and it is allowed.

12. On careful perusal of the said order, this Court is of the



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considered opinion that the said order is squarely applicable to the issue raised in the present Writ Petition.

13. The observations and findings of the learned Single Judge in its order, dated 09.12.2022 passed in W.P.(MD)No.26682 of 2019 are extracted herein under :

"8. The petitioner has not impleaded the Government as a party. Therefore, this Court suo moto impleaded the State of Tamil Nadu represented by its Secretary, Department of Animal Husbandry, Chennai as the proposed respondent. The Secretary / proposed respondent shall consider the petitioner's claim in the light of the above observations and grant family pension to the petitioner. The respondents shall not decline the family pension by stating that there is no documents available or there is no service records available of the deceased employee. With the available records and the records that are submitted before the EPF authority as well as the Government orders and without demanding for the service records, the respondents shall grant pension to the petitioner.



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The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order."

14. In the above order, this Court categorically held that the respondents shall not decline the Family Pension by stating that there is no documents available or there is no service records available of the deceased employee. With the available records and the records that are submitted before the EPF Authority as well as the Government orders and without demanding for the service records, the respondents shall grant pension to the petitioner. This Court has no any different opinion than the opinion expressed in the said order.

15. Accordingly, by following the order stated supra, this Writ Petition is allowed with a direction to the respondents to grant pension to the petitioner within a period of three months from the date of receipt of a copy of this order.

16. No costs.



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17. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet :Yes/No
NCC : Yes / No
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BATTU DEVANAND, J.

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