



W.P(MD)No.1099 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.1099 of 2017
and W.M.P. (MD) No.921 of 2017

P.Chinnasamy

...Petitioner

Vs.

1. The State of Tamil Nadu
Represented by its Secretary,
Animal Husbandry, Dairying
and Fisheries (FS-II) Department,
Fort St. George,
Chennai – 600 009.

2. The Director of Fisheries,
DMS Campus,
Anna Salai,
Teynampet,
Chennai – 600 018.

3. The Accountant General (A & E),
No.361, Anna Salai,
Chennai – 600 018.

4. The Chief Executive Officer,
Madurai District Fish Farmers Development Agency,
No.6, Abdul Kabarkan Road,
Tallakulam,
Madurai District.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in Letter No.2583/FS-2/2015-5 dated 25.05.2016 on the file of the Respondent No.1 and quash the same as illegal and consequently directing the respondents to calculate half of the temporary service rendered by the petitioner between 12.02.1983 to 16.07.1999 for pension benefits as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 and accordingly to re-fix the pension of the petitioner within the time stipulated by this Court.

For Petitioner : Mr.G. Karthik
For R1, R2 & R4 : Mr.P.Subbaraj
Special Government Pleader
For R3 : Mr.P.Gunasekaran

ORDER

Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents 1, 2 and 4 and the learned counsel appearing for the third respondent and perused the records.



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2. The case of the petitioner is that the petitioner was appointed as temporary fisherman through employment exchange and joined duty at Madurai District Fish Farmers Development Agency. He rendered his service till 19.11.1990 as fishermen. His service was regularized with effect from 20.11.1990. Thereafter, in the year 2006, he was promoted to the post of Fisheries Supervisor Grade II. He worked for about 35 years and retired on 30.09.2011 on attaining superannuation.

3. The learned counsel for the petitioner submits that the petitioner is entitled to get the past service calculated for pensionary benefits. The petitioner submitted several representations to the respondents seeking to include past service rendered by him from 12.02.1983 to 16.07.1999 and to re-fix the pensionary benefits. As there is no response from the respondents, the petitioner filed a Writ Petition in W.P(MD) No. 2287 of 2015 before this Court. The said Writ Petition was disposed of by order dated 23.02.2015 directing



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the second respondent therein to consider the representation of the petitioner dated 30.01.2015 and pass suitable orders on merits and in accordance with law within the period of two weeks from the date of the copy of the order. The petitioner requested the respondents to consider his representation in the light of the order of this Court. On considering the same, the respondent No. 1 passed the impugned proceedings in Letter No.2583/FS-2/2015-5, dated 25.05.2016 stating that as per Rule 12 of Tamil Nadu Pension Rules, 1978, the services rendered under the Government and paid by the Government from the Consolidated Fund of the State shall qualify for pension after his duties and pay are regulated by the Government. It is also stated in the said order that the petitioner has rendered his service in Fish Farmers Development Agency, which was a registered society and his services were regularized with effect from 20.11.1990. i.e., after absorption into Government Service as per G.O. (3D) No.2, Animal Husbandry, Dairying and Fisheries Department, dated 20.11.1990. As such, the service rendered by the



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petitioner in the Fish Farmers Development Agency shall not qualify for pension.

4.The learned counsel further submits that as per G.O.Ms.No.408, Finance (Pension) Department, 25.08.2009 the half of the temporary service would be calculated for pension along with the regular service. He further submits that in pursuance to the said Government Orders regarding inclusion of half of temporary service for pension, necessary amendments were made to the Tamil Nadu Pension Rules. Accordingly, Rule 11 of the Tamil Nadu Pension Rules is amended to that effect. As such, the petitioner is entitled for re-fixation of pensionary benefits and the learned counsel for the petitioner sought to allow the Writ Petition.

5. The learned Special Government Pleader appearing for the respondents 1, 2 and 4 would submit that the petitioner herein would not come under Rule 11 of the Pension Rules as Pension Rule 12 clearly mandates that only those employees, who were drawing



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salary under consolidated fund, are entitled for pension and since the temporary service of the petitioner herein is under Fish Farmers Development Agency, the society registered under the Societies Registration Act is not entitled for counting his services with the society.

6. The learned standing counsel appearing for the third respondent adopted the same argument of the learned Special Government Pleader.

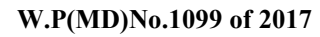
7. Having heard the submissions of the respective counsels and upon careful perusal of the materials available on record, there is no dispute with regard to the admitted facts of the case. In the counter affidavit filed by the respondent No.4, it is clearly stated that the petitioner was appointed as daily wages fisherman on 06.05.1980 in the Fish Farmers Development Agency, Madurai. On the disbandment of the said Society, the Government was pleased to



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appoint him along with other workers by absorption vide G.O. (3D) No.2, Animal Husbandry and Fisheries Department dated 20.11.1990 and he was appointed as Fisherman with effect from 20.11.1990 and as and when the society itself is disbanded and the Government absorbed all the workers working in the said society into the Fisheries Department with effect from 20.11.1990, the petitioner is entitled for counting his past service rendered in the said society. As such, the contention of the respondents that the service of the petitioner rendered in the Agency cannot be counted for the purpose of pension is not tenable. The learned counsel for the petitioner has drawn attention of this Court to the order of this Court dated 26.10.2016 in W.P(MD)No.20756 of 2016 and the order dated 17.02.2021 in W.P(MD)No.1517 of 2021 and batch.

8. On a careful perusal of the said orders, it appears that this Court considering the fact that similarly situated persons are granted the benefit of counting their past service and the State



9. Accordingly, for the aforementioned reasons, this Writ is allowed with the following directions:

ii) The respondents are directed to calculate half of the temporary service rendered by the petitioner from 12.02.1983 to 16.07.1999 for calculating the notional benefits as per G.O.Ms.No.408 Finance(Pension) Department dated 25.08.2019 and to refix the pension of the petitioner.

8



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of six weeks from today.

10. No costs.

11. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No
CM

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BATTU DEVANAND, J.

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