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W.P. No. 5031 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 5031 of 2018
and
W.M.P. No. 39372 of 2018

V. Jothilingam (deceased)

1.P. Vasanthi

2.J. Deepak

[P1 & P2 are substituted as Lrs of deceased V.Jothilingam, as per order dated 05.08.2024 in W.M.P. No. 22856 of 2024 in W.P. No. 5031 of 2018]

... Petitioners

Vs.

1.The Principal Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Labour,
DMS Complex,
Chennai – 600 006.

3.The Director,
Tamilnadu Institute of Labour Studies,
No.5, Kamarajar Salai, Triplicane,
Chennai – 600 005.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order No.E/208/16 dated 09.08.2017 passed by the third respondent and to quash the same and consequently to direct the respondents to treat the services of the



petitioner rendered in the Tamilnadu Institute of Labour Studies, Chennai from 09.01.1980 to 31.12.2012 as pensionable service, to calculate and pay pension and other terminal benefits to the petitioner as provided under the Tamilnadu Pension Rules, 1978.

For Petitioners : Mr. N.K. Srinivasan
For Respondents : Mr. M. Alagu Gowtham,
Government Advocate

ORDER

The W.P. No. 5031 of 2018 was originally filed by one V. Jothilingam. During the pendency of this writ proceedings, he died and his wife and son filed substitute petition bearing W.M.P. No. 22856 of 2024 in W.P. No. 5031 of 2018 and the same was allowed by order of this Court dated 05.08.2024.

2. This is a petition filed by the original petitioner seeking to quash the order No.E/206/16 dated 09.08.2017 passed by the third respondent and to direct the respondents to treat the services of the petitioner rendered in the third respondent institute from 09.01.1980 to 31.12.2012 as pensionable service, to calculate and pay pension and other terminal benefits to the petitioner as provided under the Tamil Nadu Pension Rules, 1978.

3. The facts leading to filing of this case are as follows :

(i) The petitioner joined in the third respondent institute as a Record Clerk on 09.01.1980 (FN) and subsequently promoted as Selection Grade Record Clerk vide



proceedings No.E/4174/90 dated 28.08.1990 of the third respondent.

(ii) In the year 1987, the third respondent institute was brought under the control of the Tamil Nadu Institute of Labour Studies Society created by the Government of Tamil Nadu. When the representatives of the staff of the third respondent institute expressed their apprehension about their eligibility of pension in the event of the third respondent institute coming under the society, the first respondent assured that the service benefits of the staff would not be affected due to conversion of the Government institute into a society.

(iii) In 1990, the employees of the third respondent were directed to join the Employees' Provident Fund (EPF) Scheme. He joined the EPF Scheme during 1990, his contribution toward the Scheme was deducted from his salary only from the year 1997. Later, the EPF subscription arrears for the period from 01.04.1988 were also been recovered from the petitioner. While he was working as Special Grade Record Clerk, he attained the age of superannuation on 31.12.2012 and was relieved from the services pursuant to the orders passed by the third respondent.

(iv) Thereafter, expressing his grievances, the petitioner sent a representation dated 20.01.2016 to the respondents. Since nothing was forthcoming, the petitioner filed W.P. No. 13823 of 2017 seeking to direct the respondents to consider his representation dated 20.01.2016 and it was disposed of by order dated 05.06.2017 directing the third respondent to consider the said representation on merits.

(v) Pursuant to the directions of this Court, the third respondent, by the



impugned order, rejected the claim of the petitioner on the ground that after conversion of the third respondent institute into a society, the petitioner became a member under the Act, 1952 and availed EPF benefits, that once he was covered and had remitted the EPF contribution, it was understood that he was a member of the EPF Scheme and that all along his service, he did not make any such representation to the third respondent regarding his wish to go back to the Government service. Challenging the same, this writ petition is filed.

4. Learned counsel appearing for the petitioner submitted that the main grievance of the petitioner is that the third respondent ought to have given him all pensionary benefits under the Tamil Nadu Pension Rules, 1978. However, he was granted pension only under the Employees' Pension Scheme, 1995 as provided under the Tamil Nadu Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the Act, 1952). In a similar situation, one Mr.K.Jayaraman, who was a professor of the third respondent institute, filed W.P. No. 5473 of 2009 before this Court, which ended in dismissal on 15.02.2009. Challenging the said order of this Court, the said Mr.K.Jayaraman filed W.A. No. 259 of 2010 and it was allowed by a Division Bench of this Court by judgment dated 29.09.2011. The special leave petition filed by the respondents herein came to be dismissed as time barred by confirming the judgment in the said writ appeal. In order to avail the benefit of pensionary benefits, the petitioner made a representation to the 3rd respondent seeking



Government pension applicable to the government servants, however, the same was rejected. Hence, he prayed for allowing the Writ Petition.

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5. The third respondent filed a counter affidavit stated as follows:

(i) The third respondent institute was functioning as an autonomous body with effect from 01.4.1988. The employees, who were working till 31.03.1988, were deemed to have been absorbed from 01.04.1988. At the time when the petitioner joined in the services of the third respondent, it was a government institute and thereafter, it was converted into a society with effect from 01.04.1988. This was notified to all the employees so as to exercise their option of getting relieved from the government institute for absorption as the employees of the society under the terms and conditions of the relevant Regulations. The petitioner also exercised his option and in accordance with the same, the petitioner would be entitled to get retirement benefits under the Act, 1952.

(ii) The petitioner also gave a consent letter on 12.06.1990 to the Provident Fund Commissioner for covering under the Act, 1952. Pursuant to that, he was allotted a number. On retirement, the petitioner was paid a sum of Rs.4,98,806/- towards gratuity and earned leave encashment as per the provisions of the Payment of Gratuity Act, 1972 and it was received without any murmur. The petitioner is also receiving pension under the EPF Scheme.

(iii) The facts in W.P.No.5473 of 2009 filed by the said Mr.K. Jayaraman are



entirely different to the facts of this case and hence the petitioner cannot avail the benefit of said order. Though the petitioner retired on 31.12.2012, however, after a lapse of three years, he sent a representation dated 20.01.2016 to the respondents claiming pensionary benefits applicable to the government servants which was rejected by way of impugned order. Ultimately, he sought to dismiss the writ petition.

6. This Court heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the petitioner joined in the 3rd respondent institute as Record Clerk in the year 1980 and thereafter his services were regularized. Subsequently, in the year 1987, the third respondent institute was brought under the control of the Tamil Nadu Institute of Labour Studies Society created by the Government of Tamil Nadu pursuant to which, the 3rd respondent institute was converted into a society in the name of Tamil Nadu institute of Labour Society which was registered under the Tamil Nadu Societies Registration Act, 1975 which started functioning with effect from 01.04.1998. Subsequently, the employees of the erstwhile institute were absorbed in the said society.

8. It is the claim of the petitioner that he was not given pensionary benefits



under the Tamil Nadu Pension Rules, 1978, however, he was granted pension only under the Employees' Pension Scheme, 1995 as provided under the Tamil Nadu Employees' Provident Fund and Miscellaneous Provisions Act, 1952. However, it is seen from the records that admittedly, the petitioner has given a consent letter on 12.06.1990 to the Provident Fund Commissioner for availing retirement benefits under the Act, 1952 only based on which, he was brought under the purview of EPF Scheme and accordingly, after attaining superannuation on 31.12.2012, he is receiving pensionary benefits under the Act, 1952. While the petitioner has already received a final settlement on account of his retirement, is already receiving pension under the EPF Scheme he cannot claim for Government Pension.

9. Learned counsel appearing for the petitioner further relied upon the decision of the Division Bench of this Court vide order dated 29.09.2011 in W.A.No.269 of 2010 wherein, a similarly situated person namely one K.Jayaraman was granted Government pension and claimed that a similar relief may be extended to the petitioner herein as well. A perusal of the said order reveals that the facts put in issue in case of Jayaraman is entirely different from that of the petitioner's case as the said Jayaraman entered into service in the year 1975 and retired in the year 2021. Even prior to the formation of the society in the year 1988, he has rendered the qualifying service of more than 10 years for availing Government pension, however, in the present case, the petitioner has not rendered the qualifying service of 10 years, as he



entered into the service only in the year 1980 and the society was formed in the year 1988. Therefore, the petitioner is not eligible for availing Government Pension and other pensionary benefits in terms of Tamil Nadu Pension Rules, 1978.

10. Learned counsel for the respondents relied on the order of this Court in W.P. No. 14800 of 2017 and contend that the issue raised in the present writ petition is clearly covered in the said writ petition. The relevant portion of the order is extracted herein under: -

4.The petitioner cannot claim the benefit of the Tamil Nadu Pension Rules, 1978, since the 3rd respondent is a Society and not governed by the Government Service Rules including the Tamil Nadu Pension Rules, 1978.

5.It is not in dispute that the petitioner is governed under the Employees Pension Scheme, 1995 as provided under Employees Provident Fund and Miscellaneous Provisions Act, 1952. Accordingly, he is receiving pension under the Provident Fund Pension Scheme. Since, the services of the petitioner are not governed under the Tamil Nadu Government Servants Service Rules and the Tamil Nadu Pension Rules, 1978, the benefit of the Pension Rules cannot be granted to the writ petitioner.

6.The learned counsel for the petitioner made a submission that one Professor who served in the 3rd respondent Society was benefited pursuant to the orders passed by the Division Bench of this Court in W.A.No.269 of 2010, dated 29.09.2011 and the Government also issued orders in G.O.Ms.No.260, dated 11.11.2013. Perusal of the



said order reveals that the said Professor was brought under the pensionable scheme and there is no reference about the application of Tamil Nadu Pension Rules, 1978. Thus, the similarity shown by the petitioner is not actually similar and the Professor was also brought under the pensionable scheme under the Employee Provident Fund Scheme and therefore, the claim of the writ petitioner deserves no merit consideration. It is made clear that the services of the writ petitioner are falling under the service regulations of the 3rd respondent Society which is registered and the employees working in the 3rd respondent Society are not Government servants appointed under the Government Service Rules and thus, the provisions of the Tamil Nadu Pension Rules, 1978 is inapplicable in respect of the services rendered by the employees in the 3rd respondent Society. Thus, the petitioner has not made any acceptable ground for the purpose of considering the relief.

11. Learned counsel for the respondent further submitted that this Court has also passed similar order in W.P. No. 776 of 2018.

12. Admittedly, in the two orders stated supra, this Court has considered the identical issue and dismissed the said writ petitions filed by the petitioners who are similarity situated to the petitioner herein.

13. For the reasons aforesaid, this Writ Petition stands dismissed.

14. Consequently, connected miscellaneous petition is closed. There shall be



no order as to costs.

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W.P. No. 5031 of 2016

21.08.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

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BATTU DEVANAND, J.

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