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W.P. No.28084 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-07-2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.P. No.28084 of 2012

1. S. Raghavan (Deceased)
 2. Vimala Raghavan (P-2)
 3. Priya Sudharasan (P-3)
- ... Petitioners

(P-2 and P-3 were substituted as LR's of the deceased P-1, as per order dated 15.07.2024 in W.M.P.No.10466/2024 in W.P.No.28084/2012)

-VS-

The State of Tamil Nadu,
represented by its Secretary to Govt.,
Public Works (F1) Dept.,
Fort St. George,
Chennai – 9.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorified Mandamus or any other writ to call for the records in respect of Order No.893/F1/2012-1 dated 12.03.2012 issued by the Respondent and to quash the same and consequently direct the respondent to fix the pension and other applicable related benefits on par with the prevailing rates and rules.



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For Petitioners

:

Mr. K. Thulasiraman
(for Mr. R. Kothandaraman)

For Respondent

:

M/s. V. Nanmaran
Additional Government Pleader

ORDER

The order No.893/F1/2012-1 dated 12.03.2012 issued by the Respondent is under challenge. The direction is also sought for to fix the pension and other applicable retirement benefits.

2. The petitioner was in service in Government of Tamil Nadu for Geological work in relation to Ground Water in Public Works Department from 25.03.1970 to 30.11.1982. Thus he attained a total service period of 12 years 8 months and 6 days. Initially, he served in the post of Geological Assistant under work charge establishment and promoted to the post of Assistant Geologist (re-designated as Assistant Director (Geology)) in the Public Works Department.

3. The petitioner was offered to the post of Personal Assistant



additionally with his regular post to the Superintendent Engineer, Ground Water circle, Public Works Department, Madurai for a short while during 1981.

It has been further stated that the petitioner has resigned his job and it was accepted by the Government in G.O.Ms.No.2247, Public Works Department dated 17.11.1982.

4. The petitioner took up contract service at National level in the National Co-operative Agriculture and Rural Development Banks Federation Limited, Mumbai, which is being run by the Co-operative Banks and Ministry of Agriculture and Co-operation. He served in the above said Federation for 14 years from 06.12.1982 to 31.12.1996 as Project Officer and later promoted as Director. His representations for sanctioning of pension were all rejected, hence this writ petition.

5. Heard Mr. K. Thulasiraman, learned counsel appearing for the petitioners and Mr. V. Nanmaran, learned Additional Government Pleader appearing for the respondent.

6. The learned Additional Government Pleader would vehemently



contend that he was appointed under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services in the proceedings No.A1/5471/71 dated 01.09.1971 of the Director of Ground Water, Madras and joined duty as Geological Assistant (Emergency) on 07.10.1971. Subsequently, he was posted as Assistant Geologist (re-designated as Assistant Director (Geology)) and joined duty on 30.06.1978. He would further contend that the petitioner has served under Emergency provisions as per Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services from 07.10.1971 to 30.11.1982 for a total service of 11 years 1 month and 23 days. Subsequently, he was appointed as Geological Assistant in the Tamil Nadu Engineering Service and as per Chief Engineer's (Ground Water), Public Works Department, Madras proceedings No.A2/5890/78 dated 16.12.1982 as per Rule 23 of the Tamil Nadu Pension Rules, 1978, as he has resigned from the post of Assistant Director (Geology), he is not entitled for pension.

7. The learned Additional Government Pleader would also strenuously argue that Rule 82 of the Tamil Nadu Pension Rules, 1978 can only be resorted to, only in exceptional cases. For easy understanding his service particulars is given hereunder:



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Information taken from the Office Register of the Executive Engineer, Ground Water Branch, Madurai			
<i>Period of service</i>	<i>Designated Post</i>	<i>Basic</i>	<i>Place</i>
25.03.1970 to 04.10.1971	Geological Assistant	Work Charge Establishment	Ground Water Branch, Public Works Department, Chennai
Transferred to Tirunelveli Sub-region			
07.10.1971 to 29.06.1978	Geological Assistant	Rule 10(a)(i) Probational cadre	(a) Madurai Ground Water Branch, Tirunelveli Sub-region (transferred) (b) Chief Engineer, Ground Water Branch, Secretariat, Chennai (transferred) (b) Ground Water Branch Chennai – Assistant Geologist (in-charge)
30.06.1978 to 31.11.1982	Assistant Geologist [Assistant Director (Geology)]	Promotion given by High Level Selection Committee	Ground Water Branch, Tirunelveli and Madurai
06.12.1982 to 31.12.1996	Project Officer and later promoted as Director	Direct Appointment	National Co-operative Agriculture and Rural Development Banks Federation Limited, Mumbai,

8. From the above details, it is inferred that from 25.03.1970 to 29.06.1978, the petitioner had worked as Geological Assistant on temporary basis. From 30.06.1978 to 31.11.1982, he worked as Assistant Geologist [re-



designated as Assistant Director (Geology)] on regular basis, wherein the selection was made by the High Level Selection Committee. Therefore, for his service period of 12 years 8 months 6 days, whether the petitioner is eligible for pension is the moot question.

9. The learned counsel appearing for the petitioner, Mr.K.Thulasiraman would vehemently argue that as per Rule 11 of Tamil Nadu Pension Rules, he is entitled for grant of pension though his service was temporary in nature.

10. In order to have a clear understanding, Rule 11 of Tamil Nadu Pension Rules is extracted hereunder:

“11. Commencement of qualifying services – (1). Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. It the case of a Government servant retiring on or after the first October 1969, temporary or officiating service in the pensionable post whether rendered in a regular capacity or not shall count in full as qualifying services even if it is not followed by confirmation.”



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11. Rule 11 of Tamil Nadu Pension Rules explains the qualifying service of the Government Servants should be reckoned, even if the Government Servant has worked in temporary capacity after 01.10.1969, it shall count in full qualifying service in a pensionable post. It is relevant to note that, even the post is not confirmed, still his service can be taken into account for reckoning the period for pension.

12. To buttress his arguments, the following judgements were referred to. In ***The State of Tamil Nadu and another vs. M Dhinakaran and 3 others in W.A. No.2770 of 2018, dated 14.02.2019***, wherein similarly placed employee, who was appointed as Geological Assistant in the year 1973 had filed a writ petition for sanction of pension on the basis of his total service from the date of his initial appointment till the date of his resignation and to pay his entire arrears notwithstanding Rule 23 of Tamil Nadu Pension Rules forfeiting the past service on resignation. The said writ petition [W.P.No.25674 of 2014] was ordered in favour of the petitioner against which this appeal was filed by the Government stating that the representation of the petitioner was rejected on the ground that Rule 23 of Tamil Nadu Pension Rules provides for forfeiture of past services in case of resignation from service.



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13. In the said writ petition, the writ petitioner M. Dinakaran was appointed as Geological Assistant in the year 1973. The post was subsequently re-designated as Assistant Geologist in Public Works Department. His service was regularised in the year 1982. The employee had put in 13 years and 5 months of service and he resigned on 21.01.1987 due to illness and it was accepted by the Competent Authority by an Order dated 21.02.1989. His application for pension on pro rata basis was rejected on the ground that Rule 23 provides for forfeiture of past services in case of resignation from service.

14. Against the dismissal Order passed in the above said Writ Appeal, the Government had preferred S.L.P in ***S.L.P.(Civil) No.22194 of 2019***, wherein, the Hon'ble Supreme Court has observed as follows:

“11. The decision of the learned Single Judge rendered on 31.08.2017 was challenged by the State in the Writ Appeal No.2770 of 2018. The Division Bench having considered the pleadings of the parties noticed that the employee suffered serious medical issues for which he had to tender his resignation. The Court also referred to the earlier judgment in the case of State of Tamil Nadu vs. V. Jesudoss & Anr. passed in W.A.No.1651 of 2000 on 08.07.2009 wherein the Court opined that the bar under Rule 23 would not be applicable in the case of the present category employee. The Court then expressed the opinion that in a case of this nature, the power of relaxation conferred under Rule 82 of



the Pension Rules, should have been invoked by the authority. Accordingly the State's Writ Appeal came to be dismissed under the impugned judgment dated 14.02.2019 upholding the decision favouring the employee.”

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15. The learned counsel appearing for the petitioner also referred to Rule 82 of Tamil Nadu Pension Rules. In suitable cases rules may be relaxed in order to avoid undue nature that may be caused to the petitioner. He further submitted that the petitioner only in the year 2010 has made representations to the Government for extending the pension, as he was financially not in a sound position, hence he was forced to give such representations.

16. In the case on hand, the petitioner resigned the post of Assistant director and joined as Project Officer in the National Co-operative Agriculture and Rural Development Banks Federation Limited, Mumbai. As mentioned supra, Rule 11 would apply even if the Government Servant worked on temporary basis. The petitioner having worked in the Public Works Department for more than 12 years and at present, he is aged about 80 years requesting to order for pension.



17. In the above said case, the petitioner M. Dhinakaran also worked as Geological Assistant in the Public Works Department in the year 1973 and after 13 years of service, he resigned the post on medical grounds.

18. Based on the above said discussions and judgment made in the writ appeal, the petitioner is entitled for grant of pension for the service rendered as Geological Assistant and thereafter as Assistant Geologist for the period from 25.03.1970 to 31.11.1982. In such view of the matter, the impugned order suffers from perversity and stands quashed. Accordingly,

- i. The petitioners may make a representation enclosing requisite documents to the respondent preferably within a period of four weeks from the date of receipt of copy of this order.
- ii. In case, if any documents are needed, they shall be duly informed in writing.
- iii. After collecting the documents necessary, orders shall be passed in accordance with law preferably within a period of eight weeks from the date of receipt of such representation from the petitioner.



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19. In the result, the writ petition is allowed with the aforesaid directions. Consequently, connected miscellaneous petitions, if any stand closed. No costs.

24-07-

2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To

1. The State of Tamil Nadu,
represented by its Secretary to Govt.,
Public Works (F1) Dept.,
Fort St. George,
Chennai – 9.



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R. KALAIMATHI, J.

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