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W.P.No.5785 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.5785 of 2022
and
W.M.P.No.5873 of 2022

K. Murali

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Petitioner

Vs

1. The Additional Chief Secretary to Government,
Forest and Environment Department,
Fort St.George, Chennai – 9.
2. The Principal Chief Conservator of Forest,
'Panagal Building' Saidapet,
Chennai – 15.
3. The Director of Municipal Administration and
Water Supply Department,
Chepauk, Chennai – 5.
4. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai – 9.
5. The Commissioner,
Nagapattinam Municipality,
Nagapattinam.
6. The Director of Local Fund Audit,
Kuralagam, Chennai – 104.
7. The Assistant Director,



W.P.No.5785 of 2022

Local Fund Audit Department,
Nagapattinam.

WEB COPY

8. The Wildlife Warden,
District Collector's Office,
Nagapattinam.

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Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order passed by him Letter No.16407/Forest 2(i)/2020-3 dated 07.02.2022 and quash the same and direct the respondent to count the entire service rendered by the petitioner in the Municipal Administration & Water Supply Department as a Cleaner in the Nagapattinam Municipality from 01.11.1989 to 11.12.2007 for the purpose of pensionary benefits.

For Petitioner : Mr.K.Venkataramni,
Senior Counsel
for Mr.M.Muthappan

For R1 to R4, R6 to R8 : Mrs.G.Krishna Raja
Additional Government Pleader

For R5 : Mr.P.Srinivas
Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned order dated 07.02.2022 in Letter No.16407/Forest 2(i)/2020-3 passed by the first respondent, thereby rejected the request made by the petitioner to take into



W.P.No.5785 of 2022

consideration of 50% service from 01.08.1990 to 19.04.2001 as daily wage.

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2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner had joined as a Technical Assistant on NMR basis in Nagapattinam Municipality on 01.11.1989 and worked till 19.04.2000. Subsequently, he was appointed as Cleaner on regular basis and by proceedings dated 20.04.2000, his service was regularised and he was brought into time scale of pay by the Municipal Commissioner, Nagapattinam. Thereafter, on the basis of his seniority in the Employment Exchange, by proceedings dated 22.03.2007, he was called for written test for the post of Assistant Draughtsman. By the proceedings dated 30.11.2007, he was selected and appointed by the Wild Life Warden, Nagapattinam. Thereafter, the petitioner submitted his resignation and he was relieved from the Municipal Administration Department from 01.12.2007. His resignation was accepted and he was relieved from the service in the post of Cleaner as on 11.12.2007. On 12.12.2007, he reported to duty in the new post. His service in the cadre of Assistant Draftsman was regularised by the proceedings of the Wild Life Warden on 19.07.2010. While he was in service as Junior Draughting Officer, he was informed about the



W.P.No.5785 of 2022

allotment of his PF Account Number by the Local Fund Audit Department.

However, his case was not considered under the Old Pension Scheme on the ground that he joined the service after 01.04.2003 in the Forest Department. His earlier service in the Municipal Sewa Department was not considered to bring the petitioner under the Old Pension Scheme i.e, Tamil Nadu Liberalised Pension Rules, 1978.

4. As per G.O.Ms.No.408, Finance (Pension), dated 25.08.2009, half of the service rendered by non-provisionalized, consolidated pay, honorarium and daily wage labourers should be counted for the purpose of pensionary benefits. As far as the petitioner is concerned, he had joined in Municipal service in the regular time scale of pay as early as on 20.04.2000 and on selection in the Forest Department, he had joined as Assistant Draughtsman in the year 2007. Admittedly, there is no break in service. The petitioner was a regular Government employee as Cleaner in the Municipal Administration Department and he had rendered service from 1989-2000 on temporary basis and on regular basis from 20.04.2000 to 11.12.2007. Therefore, the petitioner submitted a representation to count 50% of his service rendered prior to his service in the Forest Department and add the period of service for the purpose of pensionary benefits. It was not considered and as such, the petitioner was



W.P.No.5785 of 2022

constrained to approach this Court in W.P.No.4092 of 2015 seeking direction to count the entire service rendered by the petitioner for the purpose of pensionary benefits.

5. This Court directed the first respondent to consider the representation submitted the petitioner within a period of twelve weeks from the date of receipt of a copy of the order in the light of the order passed by the Full Bench of this Court in the case of ***The Government of Tamil Nadu and Ors Vs. R.Kaliyamoorthy***, reported in ***(2019) 5 LW 673***. Even then, it was not considered and as such, the petitioner filed Contempt Petition before this Court. After filing the Contempt Petition, the first respondent rejected the representation submitted by the petitioner. Hence, the present writ petition.

6. A perusal of the counter filed by the fifth respondent reveals that the petitioner did not obtain any permission for appearing in the selection with the Forest Department and no permission was obtained from the fifth respondent. His PF account was closed based on his resignation and accumulations were also paid to him. Therefore, the entire service and the relevant benefits have been concluded with regard to his service with the fifth respondent. The service of the petitioner with the fifth respondent as a Cleaner



W.P.No.5785 of 2022

in the Engineering Section have been completely given up by the petitioner.

Further, there has been no transfer of service of the petitioner to the Forest Department for the reason that the petitioner has not obtained any permission for participating in the selection for the recruitment or for the appearance in the selection tests for the recruitment. Therefore, the petitioner is not entitled to carry forward any benefits from his service from the fifth respondent.

7. It is pertinent to note that the Hon'ble Full Bench of this Court held as follows :

“5. In view of the aforesaid submission made by the parties concerned as well as the learned Senior Counsel has also relied upon the decision rendered by the Hon'ble Full Bench of this Court in the case of The Government of Tamil Nadu and Ors V. R.Kaliyamoorthy, reported in 2019-5-L.W. 673, dated 03.12.2019 and the relevant paragraph No.45 of the order, which is extracted hereunder ;

“45. In the light of the above, we answer the reference as follows :-

(i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259, dated 06.08.2003.



WEB COPY



W.P.No.5785 of 2022

(ii) *Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.*

(iii) *In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.*

(iv) *Those government servants who were appointed in the aforesaid four categories before the cutoff date and later appointed under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.*

(v) *Those government servants who were*



WEB COPY



W.P.No.5785 of 2022

appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.”

8. Admittedly, the petitioner had served as a Technical Assistant on NMR basis under the fifth respondent from 01.11.1989 to 19.04.2000. Therefore, half of the service will have to be counted for the purpose of pensionary benefits. Further, the petitioner submitted his resignation and the same was duly accepted and he was relieved from service. In the said letter, the petitioner stated that he has been selected for appointment as Assistant Draughtsman in the Forest Department and in order to join in the new post he resigned the post of Cleaner. Rule 23 of the Pension Rules clearly says that the resignation from a service or post entails forfeiture of past services provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Further, it states that interruption in service is a case falling under the proviso to sub-rule (1) due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be



W.P.No.5785 of 2022

covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.

9. As stated supra, immediately, after his resignation on 11.12.2007, he joined in the new post on 12.12.2007 without any break of service. Further, the petitioner had served with the fifth respondent from 01.11.1989 to 19.04.2000 as an NMR. Subsequently, he was appointed as a Cleaner on regular basis, since the petitioner possessed technical qualification. His appointment was regularised and he was brought into time scale of pay by the proceedings dated 20.04.2000. Therefore, as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, the service rendered in non-provisionalised, consolidated pay, honorarium and daily wages earlier to 01.04.2003 or before absorption in the regular time scale of pay, it is provided full time job then 50% of the service should be taken into consideration for the purpose of pensionary benefits. Further, the forfeiture of service in Rule 23 of the Tamil Nadu Pension Rules and as well as Section 49 of the Tamil Nadu Government Servants (Contingencies of Service) Act, 2016 will have no application in the case of the petitioner. The proviso to Rule 49 is very clear that nothing contained in this Section will affect the operation of proviso to



W.P.No.5785 of 2022

Rule 23 and Rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978.

Therefore, the petitioner is entitled to get the benefits of GPF Account under Tamil Nadu Pension Rules, 1978, which is under the control of Local Fund Audit.

10. In view of the above, the impugned order dated 07.02.2022 in Letter No.16407/Forest 2(i)/2020-3 passed by the first respondent, is liable to be quashed and it is hereby quashed. The first respondent is directed to count 50% of service rendered by the petitioner in the fifth respondent from 01.11.1989 to 19.04.2000 and the entire service rendered by the petitioner under the fifth respondent as a Cleaner from 20.04.2000 to 11.12.2007 for the purpose of pensionary benefits and grant benefits within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, this Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

13.02.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To



W.P.No.5785 of 2022

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Nagapattinam.

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Lpp

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WEB COPY



W.P.No.5785 of 2022

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