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W.P.No.10218 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

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

W.P.No.10218 of 2022 and
WMP.No.9923 of 2022

S.Thamaraikannan

... Petitioner

Vs.

- 1.The Government of Tamilnadu,
Rep. By its Secretary,
Public Works Department,
Secretariat, Chennai-9
- 2.The Engineer-in-Chief(WRO) &
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-5
- 3.Chennai Metropolitan Water Supply and Sewerage Board,
Rep. By its Managing Director,
No.75, Santhome High Road,
MRC Nagar,
RA Puram, Chennai 600 028
- 4.The Accountant General(A&E),
Tamilnadu,
361, Anna Salai,
Chennai-18

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the first respondent relating to Government letter



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No.5758/F1/2020-1 dated 19.05.2020 and quash the same and consequently to direct the respondents 1, 2 and 4 to count the services of 2 years and 23 days rendered by the petitioner under the third respondent for his pension and accordingly to revise the pension of the petitioner with effect from 30.04.2017, the date of retirement, and pay the consequent arrears of pension along with interest therefor at the rate as may be fixed by this Court with effect from 30.04.2017 to the date of payment within a time frame as may be fixed by this Court.

For Petitioner : Mr.N.Subramaniyan

For Respondents

For R1 & 2 : Mr.K.Tamilvendan,
Government Advocate

For R3 : Mr.Krishna Ravindran,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 19.05.2020 thereby directed the petitioner to furnish additional particulars to consider the request made by the petitioner to include his past service in the third respondent Board.

2. The petitioner was selected as Assistant Engineer in the



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Tamilnadu Public Works Department by direct recruitment through Tamilnadu Public Service Commission for the year 1986. However, he was not given appointment and he was asked to wait for accrual vacancies due to legal disputes. In the meantime, he was selected as Assistant Engineer in the third respondent Board and he had joined as Assistant Engineer on 28.01.1989. Thereafter, the petitioner was given employment in the first and second respondents Department as Assistant Engineer. Therefore, he had resigned from the post in the third respondent Board and had joined as Assistant Engineer in the second respondent Department on 30.04.1991. After completion of his service, he had retired from service. While he was in service, the petitioner submitted representation before the second respondent to count his service period of 2 years and 23 days rendered in the third respondent Board prior to joining in the Office of the second respondent for calculating his pensionary benefits. On receipt of the same, the first respondent, by order dated 19.05.2020, directed the third respondent to ensure the correctness of period of service rendered by the petitioner as Assistant Executive Engineer in Public Works Department, service book



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of the petitioner and to obtain calculation sheet for pensionary liability from the third respondent for the period from 28.01.1989 to 19.02.1991.

3. On perusal of the counter filed by the fourth respondent and on the submissions made by the learned counsel appearing on either side, revealed that the petitioner had joined the service as Assistant Engineer on 27.01.1989 under the third respondent. Thereafter, he resigned from the said post on 19.02.1991. Thereafter, he joined as Assistant Engineer on 01.05.1991 under the second respondent. Thereafter, he retired from service on attaining the age of superannuation on 30.04.2017. Accordingly, his service period was calculated as 24 years 11 months and 11 days for his pensionary benefits. The claim of the petitioner is that the erstwhile service of the petitioner under the third respondent for the period of 2 years and 24 days has to be calculated for pensionary benefits. The petitioner did not obtain any no objection certificate from the third respondent to join under the second respondent department. He simply resigned his post and after period of 4 months, he had joined as Assistant Engineer under the second respondent. Therefore, there was



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break in service. That apart, the third respondent did not issue any no objection certificate and the petitioner did not even obtain any permission to join under the second respondent as Assistant Engineer. As per Rule 12(5)(a)((ii) of the Tamilnadu Pension Rules, for the employees of the Local Body who are appointed subsequently as an employee of the State Government are allowed to count their service under the Local Body for the purpose of pension only if they have applied for the appointment under the State Government through proper channel or with prior permission of the administrative authority concerned. It is relevant to extract the provision under Rule 12(5) of the Tamilnadu Pension Rules, 1978 hereunder:

"12(5)(a)-Temporary Local Body Employee or State Government servant who has been appointed under the state Government service or under any Local Body, as the case may be, shall be allowed to count his qualifying service rendered under the respect Local Body or the State Government service, as the case may be, for the grant of pension by the State Government or Local Body from where he eventually retires in respect of the following two categories, namely:



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(i) Person who having been retrenched from the service of the Local Body or State Government, secures employment under the State Government or Local Body, as the case may be, either with or without interruption of service from the date of retrenchment; and

(ii) Person who, while holding temporary post under the State Government or Local Body applied for a post under any Local Body or State Government, as the case may, through proper channel or with proper permission of the administrative authority concerned.

(b) The pensionary liability shall be shared between the respective Local Body and the Government, as the case may be, on the basis of length of qualifying service rendered under each of them

Provided that when a person retires on or after the 1st April 1987, the liability for pension including gratuity shall be borne in full by the respective Local Body or the State Government, as the case may be, under which such person has been permanently absorbed at the time of retirement."

4. As per the above proviso, such an employee should have been absorbed to the service of the State Government from where he retires and the liability for pension including gratuity should be borne by



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the Government. Whereas the petitioner had not been absorbed into the service of the Public Works Department. He had resigned his post from the third respondent on his own volition. It has been confirmed by the third respondent Board. Thereafter, he had joined in the second respondent Department as new appointment. Therefore, the request made by the petitioner to include his service rendered under the third respondent cannot be considered and as such, this Court finds no infirmity or illegality in the order passed by the first respondent. As such, this writ petition is devoid of merits and liable to be dismissed.

5. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.Secretary,
The Government of Tamilnadu,
Public Works Department,
Secretariat, Chennai-9
- 2.The Engineer-in-Chief(WRO) &
Chief Engineer(General),
Public Works Department,
Chepauk, Chennai-5
- 3.Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.75, Santhome High Road,
MRC Nagar,
RA Puram, Chennai 600 028
- 4.The Accountant General(A&E),
Tamilnadu,
361, Anna Salai,
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