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W.P.No.12382 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

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

W.P.No.12382 of 2022 and
WMP.No.11838 of 2022

M.Shanmugam

... Petitioner

Vs.

- 1.The Secretary to the Government,
Rural Development Department,
Secretariat,
Chennai 600 009
- 2.Commissioner and Director of
Rural Development Department,
Panagal Buildings,
Saidapet,
Chennai 600 015
- 3.Director of Local Fund Audit
Integrated Complex for Finance Department
(Panchayat Union Pensions)
4th Floor,
Nandanam,
Chennai 600 035
- 4.The Commissioner,
Cauverypakkam Panchayat Union,
Cauverypakkam,
Vellore District

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the first respondent in Na.Ka.No.9537/PA-5/2020-2 dated 02.11.2021 and quash the same and consequently direct the third respondent to sanction pension and other retirement benefits of the petitioner with interest from the date of retirement of the petitioner i.e. from 30.06.2012 till the date of realization.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents

For R1 to3 : Mr.V.Veluchamy,
Additional Government Pleader

For R4 : No appearance

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 01.11.2021 thereby rejected the request made by the petitioner seeking sanction of pension and other retirement benefits.

2. The petitioner was recruited to the post of Night Watchman through employment exchange as contingent post in the existing vacancy



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on 01.12.1986. Thereafter, the fourth respondent appointed him as Office Assistant by transfer of service on 10.03.1993. His service was regularised in the category of Office Assistant with effect from 10.03.1993 as per the orders passed by the fourth respondent dated 12.01.1995. After completion of his 19 years of service, he was retired from service with effect from 30.06.2012 on attaining the age of superannuation. However, the pension proposals of the petitioner were returned by the third respondent. Therefore, the petitioner made representation and considering the same, the third respondent by order dated 30.08.2018 sanctioned minimum pension of Rs.3,050/- from 01.07.2012. However, the petitioner was not granted other benefits on the ground that the petitioner was appointed as Contingent Watchman and awaiting ratification order from the Government since he was appointed after 01.04.1981 in violation to GO.Ms.No.267 Rural Development Department dated 22.12.1999 which was ordered to ban new recruitment of contingent and part time employees.



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3. The learned counsel appearing for the petitioner submitted that the petitioner was paid salary for the service rendered by him in a sanctioned post under pensionable establishment and after deducting his contribution towards pension fund for the past 26 years, he is denied pension. The petitioner was recruited through employment exchange and as such, he was qualified to hold the post of Office Assistant by following Rule 3 of Tamilnadu Basic Service Rules. Hence, there is no need to get any ratification order from the Government to award pension and other benefits to the petitioner. As per GO.Ms.No.267 Rural Development Department dated 22.12.1999, services of 218 contingent watchman who have been appointed on daily wage basis and who have been engaged after 01.04.1981 and completed 10 years of service were regularised. But the petitioner's name was left out since he was promoted as Office Assistant by an order dated 12.01.1995 on the file of the fourth respondent. In fact, the pension proposals of the petitioner were pending from the year 2012 till the year 2021. Therefore, the petitioner made several representations and also he was constrained to approach this Court in WP.No.35650 of 2019. After directions issued by this Court, the



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first respondent rejected the claim of the petitioner by the order impugned in this writ petition.

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. On perusal of the counter filed by the third respondent, revealed that the pension proposals of the petitioner were returned on the ground that the appointment of the petitioner in the category of contingent establishment on 01.12.1986 was banned as per GO.Ms.No.878 Rural Development and Local Administration Department dated 15.05.1981. Accordingly, no new posts in the category of contingent establishment after 01.04.1981 should be created and the vacancies after 01.04.1981 should not be filled up. Regularisation of the petitioner before completion of 10 years on 10.03.1993 was made. Therefore, ratification is very much needed from the Government and anticipating the ratification from the Government, minimum pension of Rs.3,050/- was sanctioned from 01.07.2012 on 25.06.2018.



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6. The fourth respondent filed counter stating that there is a specific bar as per the Government Order in GO.Ms.No.267 Rural Development Department dated 22.12.1999 and as such ratification of the appointment is very much necessary for appointment of the petitioner as Watchman in the year 1986 and then only, pension and other retirement benefits can be granted.

7. Admittedly, the petitioner was appointed through Employment Exchange due to exigency of service under unavoidable circumstances in order to protect tools and plants and other Government properties as Watchman on 01.04.1981. Thereafter, the petitioner was appointed as Office Assistant by transfer of service on 10.03.1993. His service was also regularised in the category of Office Assistant with effect from 10.03.1993. Therefore, the benefit under GO.Ms.No.267 Rural Development (E7) Department dated 22.12.1999 was not extended to the petitioner. As per the Government Order, 218 Contingent Watchman engaged after 01.04.1981 got ratified and their services were regularised.



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Further, the petitioner is a physically challenged person. As per terms of the GO.Ms.No.151 Social Welfare and Nutritious Meals Programme Department dated 16.10.2018, the intention of the Government is to regularise, even in respect of those who have been appointed on consolidated pay and who have completed 2 years of service has to be regularised in time scale of pay by relaxing the rules. Therefore, the petitioner is also entitled for all benefits. In fact, after filing the writ petition by the petitioner in WP.No.35650 of 2019, the minimum pension which was granted already to the petitioner was also stopped.

8. In view of the above, the order impugned cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order passed by the first respondent dated 01.11.2021 is quashed. The third respondent is directed to sanction pension and other retirement benefits to the petitioner from the date of his retirement i.e. 30.06.2012 with interest at the rate of 6% per annum within a period of eight weeks from the date of receipt of copy of this order.

9. With the above direction, this writ petition stands allowed.



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Consequently, connected miscellaneous petition is closed. There shall be
no order as to costs.

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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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