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W.P.No. 42450 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No. 42450 of 2016
and
W.M.P.No. 36340 of 2016

V.Mohanraj

... Petitioner

Vs.

1. The Commissioner,
Municipal Administration,
Chepauk, Chennai - 5
2. The Regional Director of
Municipal Administration,
Arisipalayam, Salem - 9
3. The Commissioner,
Karur Municipality,
Karur.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for records relating to third respondent's Proceedings made in Na.Ka.No. 6431/2016/E4, dated 03.10.2016, to quash the same and consequently direct the respondents 1 to 3 to consider grant of admissible pension, by taking into account 50% of the temporary services with effect from 01.06.1994 followed by regularization and bringing into time scale of pay of the said services until his



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superannuation with effect from 31.01.2015 and to extend all benefits, both pension, retiral and the accrued arrears thereto forthwith.

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For petitioner : Mr.L. Chandrakumar
For R1 & R2 : Mr.Vadivelu Deenadayalan
Additional Government Pleader
For R3 : Mr.S.Kowsik

ORDER

This writ petition is filed seeking for Certiorarified Mandamus to quash the Proceedings in Na.Ka.No. 6431/2016/E4, dated 03.10.2016 and consequently direct the respondents 1 to 3 to grant of admissible pension to the petitioner by taking into account 50% of the temporary services with effect from 01.06.1994 followed by regularization and bringing into time scale of pay of the said services until his superannuation with effect from 31.01.2015 and to extend all benefits, both pension, retiral and the accrued arrears

2. The facts in brief as per the affidavit are as follows:-

2.1 The petitioner was appointed as Water Supply Attender, termed as Turn Clock Operator, with effect from 01.06.1994 and has been continuously discharging duties till his superannuation with effect from



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31.01.2015. Initially, the petitioner was appointed on temporary basis, subsequently considering the request made by the petitioner, services were regularized with effect from 24.05.2010.

2.2. It is the case of the petitioner that he has completed 21 years of service as on date of retirement on 31.01.2015 thereby he has to be given full pension considering the service rendered by him even as a temporary employee with effect from 01.06.1994 until he was regularized on 24.05.2010. Since the request for grant of full pension has been declined by way of impugned order. Aggrieved by the same, the present writ petition is filed.

3. The third respondent has filed a detailed counter affidavit in which it is stated that as per the decision of the Full Bench of this Court in W.A.No.158 of 2016, dated 03.12.2019, reported in 2019(6) CTC 705, the petitioner is not entitled for adding 50% of the service rendered by him on temporary basis for considering the pension.

4. Heard both sides and also perused the materials available on record.



5. The learned counsel for the third respondent has relied on the Full Bench judgment of this Court in ***The Government of Tamil Nadu and Ors. vs R.Kaliyamoorthy, (W.A.No. 158 of 2016, dated 03.12.2019)*** wherein, it is held as follows:

“41. Thus, a Government servant who may have been appointed before the cut off date of 31.03.2003 may be entitled to Government Pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularization is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10(a)(i) alone will be entitled to get pension.”

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

“(i) Those who are freshly appointed on or after 01.04.2023 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.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent



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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 regularized 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 cut off 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 pas service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were 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.”

6. Considering the above, it is clear that the person whose services were regularized prior to 01.04.2003 can claim to include the past service rendered on temporary basis for the purpose of the pension. In the case on



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hand, though the petitioner working on temporary basis with effect from 01.06.1994 and his services were regularized on 24.05.2010 which is much later than the cut off date which is 01.04.2003. Therefore, basing on the writ appeal referred above, the 50% of the service rendered by him on temporary basis cannot be added to the regular service of the petitioner to consider the pension.

7. In view of the above, this writ petition is dismissed. Costs made easy. Consequently, connected miscellaneous petition is closed.

07.03.2024

nsI

Index:Yes/No

Speaking Order : Yes/No

Neutral case citation: Yes/No

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3. The Commissioner,
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