



Rev.Appl.No.94 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2024

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Rev.Appl.No.94 of 2024
in
W.P.No.10218 of 2022

S.Thamaraikannan Applicant/Petitioner

Vs

1. The Government of Tamil Nadu,
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,
M.R.C.Nagar,
R.A.Puram, Chennai – 600 028.

4. The Accountant General (A & E),
Tamil Nadu,
361, Anna Salai,
Chennai – 18.

.... Respondents/Respondents

Prayer : Review Application filed under Section 114 read with Order XLVII



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Rule I of Civil Procedure Code to review the order of this Court dated 27.02.2024 passed in W.P.No.10218 of 2022.

For Petitioner : Mr.N.Subramanian
For R1 & R2 : Mr.V.P.R.Elamparithi
Additional Government Pleader
For R3 : Mr.Krishna Ravindran
Standing Counsel

ORDER

This Review Application has been filed to review the order passed by this Court dated 27.02.2024 in W.P.No.10218 of 2022, thereby dismissed the writ petition.

2. The writ petition has been filed challenging the order passed by the first respondent dated 19.05.2020, thereby directed the third respondent to furnish the records of the petitioner to ensure the period of service as Assistant Engineer in the Public Works Department and also obtained calculation sheet for pensionary liability from the Chennai Metropolitan Water Supply and Sewerage Board for the period from 28.01.1989 to 19.02.1991 for the services rendered by the petitioner in the Board and willingness of the Board to remit the said amount to the Government account.

3. A perusal of the counter filed by the fourth respondent reveals that this Court dismissed the writ petition on the ground that the petitioner did



not obtain any No Objection Certificate from the third respondent to join under the second respondent. After his resignation, he joined as Assistant Engineer under the second respondent. Therefore, there was break in service and the petitioner was not issued any No Objection Certificate. Therefore, as per Rule 12(5)(a)(ii) of the Tamil Nadu Pension Rules, 1978, the request made by the petitioner to include his serviced rendered under the third respondent cannot be considered and dismissed the writ petition.

4. The learned counsel appearing for the petitioner brought to the notice of this Court that already the petitioner was selected for appointment to the post of Assistant Engineer in the Public Works Department in the year 1985-1986. Due to delay in selection process, the petitioner was appointed as Assistant Engineer in the Chennai Metropolitan Water Supply and Sewerage Board and the appointment of Public Works Department was issued in the year 1991. Therefore, on the request of the Metro Water Board, he submitted his resignation and it was duly accepted and he was relieved from the Metro Water Board and joined in Public Works Department. Despite his resignation, the service of the petitioner has to be counted for pension by virtue of Rule 12(1), 12(2), 12(5)a, 23, 24 and 25. That apart, the request was already considered by the first respondent and in fact, it was directed the third respondent to produce



certain records. Therefore, the petitioner had challenged the return of the valid proposal of the Chief Engineer recommending to include services of the petitioner rendered in the third respondent for pension, seeking willingness of the third respondent to contribute their share for the pension despite the mandate stipulated under the proviso to Rule 12(5)(a) of the Tamil Nadu Pension Rules.

5. It is relevant to extract the proviso of Rule 12(5)(a) of the Tamil Nadu Pension Rules, which reads as follows :

“12(5)(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”.

6. The proviso says 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.

Therefore, the return of the proposal of the Chief Engineer cannot be accepted.

That apart, he has also relevant to extract the proviso under Section 23 of the Tamil Nadu Pension Rules, 1978, which reads as follows :

“23. Forfeiture of service on resignation :- (1)

Resignation from a service or post entails forfeiture of past service :

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.

(2) Interruption in service in 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 recovered 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.”

7. Accordingly, his 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. The representation submitted by the petitioner was taken into



consideration to count his service period of 2 years and 23 days from 28.01.1989 to 19.02.1991 rendered under the third respondent prior to his service under the second respondent for pension purpose. It was recommended and forwarded the same to the first respondent to count the service for pension benefits. Therefore, seeking willingness of the third respondent to remit their contribution was totally unwarranted, since the liability to pay for pension including gratuity even for the services rendered in local bodies shall be borne by the respective local body or State Government. Hence, the State Government has to bear the cost of pension and gratuity. Therefore, the impugned order passed by the first respondent dated 19.05.2020 cannot be sustained and it is liable to be quashed.

8. In view of the above, the order passed by this Court in W.P.No.10218 of 2022, is set aside and the impugned order passed by the first respondent dated 19.05.2020 is hereby quashed. The respondents 1 and 2 are directed to count the services of 2 years 23 days rendered by the petitioner under the third respondent for his pension purpose and accordingly, to revise his pension with effect from 30.04.2019 and pay arrears with applicable interest within a period of eight weeks from the date of receipt of a copy of this order.



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9. In the result, this Review Application stands allowed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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Public Works Department,
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G.K.ILANTHIRAIYAN,J.

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