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W.P.No.26122/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.26122 of 2021
and W.M.P.Nos.27574 & 27575 of 2021

1. M.Sheik Abdul Kadhar
2. L.Alagesan
3. V.Vertivel
4. R.Umarani
5. G.Chitra
6. M.Saraswathy
7. N.Sivasubramanian
8. T.Ravi
9. N.Baskaran
10. S.Balaji
11. A.Sankar
12. M.Ramesh
13. D.Prakasam
14. V.Shanmugam
15. A.Radhakrishnan
16. B.Sharmila Begum

...

Petitioners

/vs/

1. The Principal Secretary to Government,
Personnel & Administrative Department,
Fort St. George,
Chennai – 600 009.



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2. Principal Secretary to Government,
Finance Department,
Fort St. George,
Chennai – 600 009.

3. The Principal Commissioner &
Commissioner for Revenue Administration,
Chepauk,
Chennai – 600 005.

4. The Director of School Education,
College Road,
Chennai – 600 006.

5. The Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

6. The Commissioner / Director of Treasuries & Accounts,
Saidapet,
Chennai – 600 015.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to count the services of the petitioners w.e.f. 08.04.1996 i.e. date of judgment in O.A.No.483/1995 which was confirmed by the Hon'ble Supreme Court in Civil Appeal No.810/1998 dated 28.09.1999 for the purpose of pensionary benefits in pursuance of the Tamilnadu Pension Rules together with all consequential service and monetary benefits.



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For Petitioners ... Mr.V.Stanly Rajasingh
for Mr.G.Bala

For Respondents ... Mr.S.Arumugam
Government Advocate for R1 to R4

Mrs.K.Vasanthamala
Government Advocate for R5 & R6

ORDER

The petitioner has filed this writ petition seeking a writ of mandamus directing the respondents to count their services w.e.f. 08.04.1996 for the purpose of pensionary benefits in pursuance of the Tamilnadu Pension Rules together with all consequential service and monetary benefits.

2. The petitioners who have been originally working in Census Department have been given with the fresh appointment in pursuant to the scheme of the Government made under G.O.Ms.No.209 dated 23.11.2001. Similarly placed persons have filed various litigations and in pursuant to the orders of the Hon'ble Supreme Court made in C.A.No.810 of 1998 dated 28.09.1999 and the orders passed in Contempt Petition filed before the Supreme Court in Cont.P.No.103 of 2000 in C.A.No.810 of 1998 dated



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29.08.2001, a scheme has been framed by the Government of Tamil Nadu in order to extend the benefit of absorbing the retrenched employees of Census 1991 in the State Government, local bodies etc. For which, the following conditions were prescribed :

"(1) The Director of Census Operations, Tamil Nadu, Chennai is requested to prepare a list of all retrenched employees of Census 1991 category-wise with details of qualification, age, date of registration in the Employment Exchange, residential address etc., in consultation with the Director of Employment and Training and furnish to the District Collectors.

(2) The Director of Employment and Training is requested to obtain the details of the retrenched Census Employees from various employment exchanges and to furnish them to Director of Census whenever required.

(3) All Heads of Departments, Public Sector Undertakings Autonomous bodies and local bodies under the Government of Tamil Nadu in Chennai as well as in Districts should contact the District Collectors concerned while filling up all existing and future vacancies (except these posts to be filled up by candidates through the Tamil Nadu Public Service Commission) and appoint them in the post suitable to their



qualifications in such vacancies, only from those names sponsored by the District Collectors from out of the lists of retrenched Census Employees of 1991 maintained by them.

(4) The District Collectors shall sponsor these retrenched Census employees of 1991 following strictly the seniority with reference to the date of registration in the Employment Exchange.

(5) In respect of the candidates already sponsored for employment, got appointment and ousted subsequently for want of vacancies may also be sponsored now.

(6) Heads of Departments, Chief Executive Officers of all Public Sector Undertakings, Autonomous Bodies and Local Bodies under the Government of Tamil Nadu Shall call for those candidates required from the District Collectors indicating the posts, the qualifications prescribed for those posts and Community such as General turn, Backward Classes, Most Backward Classes / Denotified Communities, Scheduled Castes and Scheduled Tribes.

(7) Suitable candidates shall be absorbed following the roster on communal rotation to the posts for which the rule of reservation is applicable.

(8) The candidates absorbed are to be appointed as fresh



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employees in those departments / Organisations.

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(9) Rules relating to age and sponsoring through Employment Exchange may be relaxed in favour of those retrenched Census Employees of 1991.

(10) The fresh recruitment through the Employment Exchange or from open market should be made till the lists of retrenched Census Employees of 1991 maintained by the District Collectors concerned are exhausted.

(11) A monthly report in the progress of absorption of retrenched personnel of Census 1991 shall be sent by the District Collectors to the Government in the Personnel and Administrative Reforms (P) Department by the first week of succeeding month."

3. In fact, in the above conditions itself, it has been clearly stated that the candidates will be observed as fresh employees in the respective departments / Organisations. The petitioners have been appointed in pursuant to the above scheme on 21.07.2004 as Junior Assistants in the Commercial Tax Department. Their services were also regularised subsequently vide G.O.Ms.No.17, Commercial Tax and Registration



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Department dated 15.02.2010 from the date of their appointment on 21.07.2004.

4. Mr.V.Stanly Rajasingh. the learned counsel for the petitioners submitted that the new pension scheme is given into effect and the delay on the part of the Government cannot be attributable to the petitioners.

5. In this regard, similarly placed persons have already filed writ petitions in W.P.Nos.3733, 1404 & 433 of 2020 and in which this Court has passed the following order :

“11.In an identical situation, vide order dated 21.11.2017 in W.P.No.9208 of 2012, this Court has already allowed the case. The learned Single Judge of this court in the aforesaid order has held as under:

“17.Therefore, in the above circumstances, the petitioner is entitled to be covered under the old pension scheme reckoning his date of appointment from 07.01.2003, where the government had granted him the benefit vide G.O.(2D) No.2, School Education (M1) Department. The other orders passed by the second and fourth respondents herein, merely a consequential orders and therefore, in all fairness, the date of appointment of the petitioner



ought to be taken as 07.01.2003, i.e., prior to coming into force of the new pension scheme with effect from 01.04.2003. The rejection letter dated 10.05.2010, rejecting the claim of the petitioner is only on the ground that the petitioner joined the post only on 16.04.2003 and hence, within the mischief of the new pension scheme cannot stand the test of judicial scrutiny.

18.In view of the above conclusion, the said rejection letter in Na.Ka.No.13272/R1/E1/2010, dated 10.05.2010, cannot be sustained in law. Therefore, the same is set aside and the writ petition is allowed. There shall be a consequential direction to the respondents that the petitioner ought to be treated as an employee covered under the old pension scheme for the purpose of pensionary benefits.”

12.Further appeal to, the Division Bench of this Court in W.A.No.2708 of 2013 was also dismissed on 11.12.2018. The case of the petitioner is slightly different from the case of the employee who were covered by the decision of the full bench of this court in the above case.

13.The petitioner were entitled to absorbed into the services before the amendment to the Tamil Nadu Pension Rules, 1978 vide G.O.Ms.No.259, Personal and Administration department, dated 06.08.2003. The petitioners were not absorbed, despite the order of the



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Hon'ble Supreme Court on 28.09.1999. The order of the Hon'ble Supreme Court was later complied with reluctance and reservation in terms of the G.O.Ms.No.209, dated 23.11.2001. It has to be therefore construed that the petitioners were entitled to be covered under the erstwhile Tamilnadu Pension Rules 1978 as it stood prior to its amendment, as the delay in the appointment of the petitioners into the Government service was not on account of their fault, but on account of the attitude of the respondent in not absorbing them into the Government service in terms of the Hon'ble Supreme Court and the order passed in the Contempt Petition of the Hon'ble Supreme Court. Therefore, these writ petitions deserves to be allowed as prayed for.

14.Accordingly, these writ petitions are allowed. The respondents are directed to take appropriate steps to enter into the service register of these petitioners as the persons covered by Tamil Nadu Pension Rules, 1978 as it stood prior to amendment vide G.O.Ms.No.259, Personal and Administrative department, dated 06.08.2003 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.”



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6. In the light of the aforesaid order, the petitioners herein, who are also similarly placed, are entitled to get the same relief. Accordingly, this writ petition is disposed of with a direction to the respondents to count the services of the petitioners w.e.f. 08.04.1996, i.e. date of judgment in O.A.No.483/1995 which was confirmed by the Hon'ble Supreme Court in Civil Appeal No.810/1998 dated 28.09.1999, for the purpose of pensionary benefits in pursuance of the Tamilnadu Pension Rules together with all consequential service and monetary benefits. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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R.N.MANJULA ,J.

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