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W.P.Nos.34752 of 2022, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

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

W.P.Nos.34752, 34756, 34760, 34764, 34776, 34778, 34779, 34785,
34789, 35242, 35245, 35246 & 35247 of 2022

WP.No.34752 of 2022

J.Thirumalainarayanan

... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep.by its Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai 600 009
- 2.The State of Tamilnadu,
Rep. By its Principal Secretary to Government,
Commercial Taxes Department,
Fort. St.George,
Secretariat,
Chennai 600 009
- 3.The Commissioner of Commercial Taxes,
4th Floor, Ezhilagam Building,
Kamarajar Road,
Chepauk, Chennai-5
- 4.The Deputy Commissioner(Inspection),
Commercial Taxes Department,
Villupuram District,
Villupuram
- 5.The Principal Accountant General(Tamilnadu),



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O/o the Principal Accountant General,
AG's Office Complex, 361, Anna Salai,
Teynampet,
Chennai 600 018

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents to sanction retirement benefits including regular pension, by counting the period of service rendered by the petitioner in the post of Typist from 05.11.1989 onwards including the period of break in service with payment of revised pension and other retirement benefits, based on the representation submitted by the petitioner dated 19.07.2022 within a time frame to be fixed by this Court.

WP.No.34752, 34756, 34764 of 2022

For Petitioner : Mr.G.Sankaran,
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents
For R1 to 4 : Mrs.V.Yamuna Devi,
Special Government Pleader

For R5 : Mr.V.Vijayshankar

WP.No.34760, 35242, 35245, 35246, 35247
34778, 34779 & 34785 of 2022

For Petitioner : Mr.G.Sankaran,
Senior Counsel
for Mr.S.Nedunchezhiyan



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For Respondents

For R1 to 3 : Mrs.V.Yamuna Devi,
Special Government Pleader

For R4 : Mr.V.Vijayshankar

WP.No.34776, 34789 of 2022

For Petitioner : Mr.G.Sankaran,
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents

For R1 to 5 : Mrs.V.Yamuna Devi,
Special Government Pleader

For R6 : Mr.V.Vijayshankar

COMMON ORDER

These writ petitions have been filed for direction to the respondents to sanction retirement benefits including regular pension, by counting the period of service rendered by the petitioners in their respective posts including the period of break in service with payment of revised pension and other retirement benefits, based on their representations.

2. The petitioners were engaged on temporary basis by



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conducting selection through the Employment Exchange to the post of Steno Typist/ Typist/ Junior Assistant respectively in the absence of recruitment through Tamilnadu Public Service Commission. Accordingly, the petitioners were appointed in their respective posts in the regular time scale of pay and in regular sanctioned post through Employment Exchange. Subsequently, the recruitment to the post of Steno Typist / Typist / Junior Assistant through Employment Exchange were banned by order passed in GO.Ms.No.185 Personnel and Administrative Reforms Department dated 15.05.1991. Therefore, they were ousted from service due to ban for temporary appointments, thereby more than about 5000 persons affected due to ouster from service. Therefore, they made representation and the Government passed order in GO.Ms.No.433 Personnel and Administrative Reforms Department dated 14.12.1993 and directed that the temporary employees appointed in the post of Steno Typist / Typist / Junior Assistant through Employment Exchange in the year 1986 and subsequently ousted from service are allowed to write Special Qualifying Examination to be conducted by Tamilnadu Public Service Commission for regular absorption into service. Accordingly,



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examination was conducted on 24.06.1995, wherein the petitioners had participated and also passed examination. However, they were given employment only after period of nearly 2 ½ years.

2.1 The candidates, who had participated and failed in the Special Qualifying Examination, filed application before the Tamilnadu Administrative Tribunal seeking regularisation of service. The Tribunal allowed the application and aggrieved by the same, the Government filed writ petition before this Court. The writ petition was also dismissed and directed the Government to implement the order passed by the Tribunal within a period of eight weeks. Accordingly, those who failed in the Special Qualifying Examination were reinstated and their services were regularised from the date of initial appointment. On the other hand, those who had passed in the Special Qualifying Examination were regularised only after period of nearly 2 ½ years from passing the examination. Therefore, they submitted detailed representation.

3. Mrs.V.Yamunadevi, the learned Special Government Pleader



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submitted that as per GO.Ms.No.89 Personnel and Administrative Reforms dated 28.07.2020, the period of break in service cannot be considered for both passed /failed candidates during their temporary service period as no provision available in Fundamental Rules of Government of Tamilnadu, 1922 for regulating the break in service period. As per Rule 25 of the Tamilnadu Pension Rules, 1978, the break in service shall be treated as condoned and the pre-interruption service, if any, shall be treated as qualifying service for pensionary benefits and the period of interruption shall not count as qualifying service.

4. At this juncture, the learned Senior Counsel appearing for the petitioners submitted that those who had benefited by the Government Order in GO.Ms.No.124 Personnel and Administrative Reforms Department dated 12.09.2009, failed in the Special Qualifying Examination. Unfortunately, those who cleared the Special Qualifying Examination were not regularised from the date of their initial appointment.

5. In fact, in the Cooperation Department, the request made by



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the persons who had cleared the Special Qualifying Examination for regularisation from the date of initial appointment for the purpose of calculation of pension was considered. In exercise of power conferred in Rule 85(a) of the Tamilnadu Fundamental Rules, 1978, the Government ordered that the non duty period be treated as extra-ordinary leave without allowances without medical certificate by relaxing Rule 18(1) of the Tamilnadu Fundamental Rules, 1978 and also to count the out of employment period as qualifying service for the purpose of calculation of pension. Further, even as per Rule 25 of Tamilnadu Pension Rules, the petitioners are coming under Rule 25(1). Accordingly, the break in service shall be treated as condoned inasmuch as break in service not caused by resignation or removal from service or participation in strike or otherwise.

6. Further, as per GO.Ms.No.89 Personnel and Administrative Reforms dated 28.07.2020, the services of persons who had passed Special Qualifying Examination shall be regularised from the date of their initial appointment without reference to break in service caused due to



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delay in passing order of reinstatement into service. Insofar as the petitioners are concerned, they were appointed to the post of Steno Typist / Typist / Junior Assistant respectively through Employment Exchange on temporary basis. In view of the order passed in GO.Ms.No.185 Personnel and Administrative Reforms Department dated 15.05.1991, they were ousted from their respective services. Subsequently, after nearly 2 ½ years, after clearing the Special Qualifying Examination, they were given employment, that too after nearly 2 ½ years from the date of the examination.

7. Accordingly, the respondents are directed to sanction retirement benefits by counting the period of service rendered by the petitioners in their respective posts including the period of break in service with payment of revised pension and other retirement benefits within a period of twelve weeks from the date of receipt of copy of this order.

8. With the above direction, all the writ petitions are allowed.



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There shall be no order as to costs.

18.03.2024

Internet: Yes

Index: Yes/No

Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.Principal Secretary to Government,
The State of Tamilnadu,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai 600 009
- 2.Principal Secretary to Government,
The State of Tamilnadu,
Commercial Taxes Department,
Fort. St.George,
Secretariat,
Chennai 600 009
- 3.The Commissioner of Commercial Taxes,
4th Floor, Ezhilagam Building,
Kamarajar Road,
Chepauk, Chennai-5
- 4.The Deputy Commissioner(Inspection),
Commercial Taxes Department,
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- 5.The Principal Accountant General(Tamilnadu),
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