



W.P.No.12935 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

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

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1. S.R.Balasubramaniam
2. N.Athikesavalu
3. K.Jayakumar
4. M.Velayutham
5. P.Subramaniam
6. P.Loganathan
7. R.Anandasekaran
8. O.K.Jagadeesan
9. S.Soundararajan

...Petitioners

-Vs -

1. The Government of Tamil Nadu
Rep. By its Additional Chief
Secretary to Government,
Finance Department,
Fort St. George, Chennai-600 009.
2. The Principal Secretary to Government
Highways and Minor Ports Department,
Fort St. George, Chennai-600 009.
3. The Principal Secretary to Government,
Tourism, Culture And Religious
Endowments Department,
Fort St. George,
Chennai-600 009.



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4. The Tamil Nadu State Construction Corporation Limited,
Rep. By its Managing Director (Addl. Charge)
and the Chief Engineer,
(Construction and Maintenance)
Highways Department,
No.76, Sardar Patel Road,
Highways Complex, Guindy,
Chennai-600 025.

5. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Government of Tamilnadu,
No.119, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai-600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing all respondents herein to count the entire service rendered by the petitioners in the fourth respondent corporation as well as the service rendered in the fifth respondent department and consequently settle all the terminal benefits due to the petitioners like, Annual increment and Arrears, Gratuity (DCRG) pensionary benefits under the Old Pension Scheme, encashment of 240 days earned leave and encashment of 90 days of unearned leave on private affairs will be calculated on the basis of last drawn salary on the date of his superannuation along with 12% interest for belated payment thereon within a time frame



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For Petitioners : Mr.K.M.Ramesh, Senior Counsel
For Mr.V.Subramani

For Respondents : Mr.E.Vijay Anand
Additional Government Pleader

ORDER

This writ petition has been filed for direction, directing all respondents herein to count the entire service rendered by the petitioners in the fourth respondent corporation as well as the service rendered in the fifth respondent department and consequently settle all the terminal benefits due to the petitioners like, Annual increment and Arrears, Gratuity (DCRG) pensionary benefits under the Old Pension Scheme, encashment of 240 days earned leave and encashment of 90 days of unearned leave on private affairs together with 12% interest.

2. The petitioners were originally working under the fourth respondent corporation. Subsequently they were transferred to various other department of the government of Tamil Nadu. All the petitioners were transferred to the fifth respondent department and accommodate in various posts. As per the government order in G.O.Ms.No.27 Finance (BPF) Department, dated 24.01.2007, permanently absorbed employees



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of sick government undertakings/co-operatives in various government department and government organization, where they are working on deputation and on contract basis. Further, as per the guidelines the petitioners were absorbed from the date of joining in the HR & CE department vide G.O.No.172 Tamil Development, Religious Endowment and Information (RE2-1) Department dated 01.07.2009.

3. Further for permanent absorption in Hindu Religious and Charitable Endowment department, the service registers of the employees of the fourth respondent who are absorbed in the fifth respondent, which have been maintained by the fourth respondent during the month of December 2005 to June 2009, have been received by the fifth respondent for making necessary entries in regard to the sanction of annual increment and leave details. After their retirement from the fifth respondent, while calculating their total service, they calculated their service without considering the service rendered in the fourth respondent corporation. Therefore, the petitioners submitted representation to include the service period to calculated the terminal benefits. Since the same was not considered, they filed the present writ petition.



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

5. The similar issued already dealt with by the Madurai Bench of this Court in the case of ***N.Kannan Vs. The Commissioner and ors.***, in ***W.P.(MD).No.10396 of 2015*** and by an order dated ***18.01.2019*** held as follows :-

“16. To be more specific and brief, the Government Order dated 22.09.1993 stipulates that if the employees are transferred from TNSCC to State-Owned Corporations and Boards, on absorption, all the benefits due to employees shall be remitted by the previous employer to the new employer and the new employer is expected to sanction / grant those benefits accrued under the previous employer to the newly inducted employees. Since TNSCC, HR&CE, State-Owned Corporations and Boards are State within Article 12 of the Constitution of India, there cannot be any discrimination with regard to grant of service benefits to the persons like the petitioner in view of the fact that similarly placed employees, who were deputed to Tamil Nadu Human Rights Commission were granted benefits by G.O.Ms.No.300 dated 15.12.2008.



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17. If an employee commits moral turpitude, the terminal benefits and gratuity could be deprived, but not the wages already earned by that employee for the services rendered. If the contention of the respondents that except pay protection, the petitioner is not entitled to any other monetary benefits, is accepted, it would amount to not only depriving his rights, but also placing that employee, who had not committed any misconduct on par with the employee, who had committed misconduct.

18. In view of what is stated herein-above, this Writ Petition is allowed and since TNSCC and HR&CE Department fall within the meaning of State and it is only an adjustment from one wing to another wing to be made by the Government, the 5th respondent is directed to settle the entire service benefits together with 12% interest per annum to all persons, including the petitioner, within a period of 30 days from the date of receipt of a copy of this order and thereafter, get it reimbursed from TNSCC;”

The above case squarely applicable to the case on hand and the petitioners are entitled for terminal for their entire service period.

6. In view of the above order, the respondents 1 & 2 are directed to count the entire service rendered by the petitioners in the



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fourth respondent corporation as well as the the fifth respondent department and consequently disburse the terminal benefits due to the petitioners like, Annual increment and Arrears, Gratuity (DCRG) pensionary benefits under the Old Pension Scheme, encashment of 240 days earned leave and encashment of 90 days of unearned leave on private affairs with interest at the rate of 6% (six percentage) per annum, within a period of twelve weeks from the date of receipt of a copy of this Order.

7. With the above directions, the Writ Petition stands allowed.

There shall be no orders as to costs.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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To

1. The Additional Chief

Secretary to Government,
Government of Tamil Nadu
Finance Department,
Fort St. George, Chennai-600 009.

2. The Principal Secretary to Government

Highways and Minor Ports Department,
Fort St. George, Chennai-600 009.



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rts

3. The Principal Secretary to Government,
Tourism, Culture And Religious
Endowments Department,
Fort St. George,
Chennai-600 009.
4. The Managing Director (Addl. Charge)
and the Chief Engineer,
(Construction and Maintenance)
Tamil Nadu State Construction
Corporation Limited
Highways Department,
No.76, Sardar Patel Road,
Highways Complex, Guindy,
Chennai-600 025.
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