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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.1660 of 2021

N.Dhanaraj

... Appellant

Vs

1.The Assistant Director,
Kancheepuram District,
Kancheepuram.

2.The Director of Town Panchayat,
O/o. The Director of Town Panchayat,
IV Floor, Kuralagam,
Chennai – 600 108.

3.The Executive Officer,
Walajahbad Town Panchayat,
Kancheepuram District.

... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 05.12.2017 made in W.P.No.31399 of 2017.

For Appellant : Mr.K.M.Subrahmaniam



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For RR1 & 2 : Mr.M.Bindran
Additional Government Pleader
For R3 : Mr.R.Neelakandan

JUDGMENT

(Judgement of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred by the unsuccessful petitioner, wherein, his claim for counting his past services from 1983 to 1998 and from 2001 to 2006 along with his regular services as per the Government orders for the purpose of pension and grant pension with effect from 01.12.2013, along with arrears of pension had been negatived.

2. Heard Mr.K.M.Subrahmaniam, learned counsel for the appellant, Mr.M.Bindran, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 and Mr.R.Neelakandan, appearing on behalf of the 3rd respondent.

3. The learned counsel for the appellant would submit that the appellant was originally appointed as an Electrical Helper under the Tamil Nadu Steels Limited, Arakonam. He had continued to work in the said



establishment till winding up of the said Enterprises. A Voluntary Retirement Scheme was envisaged, for which the appellant had also applied and he was relieved from services on 31.07.1998 under the Voluntary Retirement Scheme. Thereafter, the Government by G.O.Ms.No.524, Industries Department, dated 21.08.1998, based upon the representations of the persons/employees of the said Tamil Nadu Steels Limited issued orders to absorb such employees of Tamil Nadu Steels Limited in the State Public Sector Organizations. The said order also extended the said benefit to the employees who had opted for voluntary retirement, if they are otherwise eligible, but, however, on a condition that the compensation received by them under the Voluntary Retirement Scheme would have to be collected back in easy monthly installments. Thereafter, the Government in G.O.Ms.No.623, Industries Department, dated 22.09.1998 extended the Scheme provided under the aforesaid G.O. even in respect of the Tamil Nadu Electricity Board and in the Municipal Offices such as Municipalities, Corporations and Town Panchayats. Thereafter, the appellant had been appointed in the 3rd respondent Panchayat by its proceedings dated 24.07.2001 as an Electrician in the Street Maintenance Department under a



consolidated pay.

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4. He would further submit that the Government by G.O.Ms.No.142 Municipal Administration Water Supply Department, dated 23.09.2015 had directed the employees such as the appellant to be brought under the time scale of pay. His services were also regularised with effect from 02.05.2004 by the proceedings of the 3rd respondent. The appellant had also superannuated in the year 2013. He would submit that while granting the pensionary benefits, the services of the appellant that he had put in the post of Electrician at the Tamil Nadu Steels Limited was not counted, as also the period from 2001 to 2006, in which he was working on a consolidated pay has also not taken for granting pensionary benefits. He would submit that if the Government orders in G.O.Ms.No.524, is applied to the present case along with G.O.Ms.No.623, that the absorption should have been made based upon the services put in by the appellant in the said establishment would only suggest that the said period of service ought to be counted. He would submit that this aspect has not been considered by the learned Single



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Judge and hence, seeks interference of the order of the learned Single Judge and issue a direction to the respondents to count the services of the appellant both under the Tamil Nadu Steels Limited and under the consolidated pay of the 3rd respondent for his pensionary benefits.

5. Countering his arguments, Mr.R.Neelakandan, learned counsel for the 3rd respondent would submit that the appellant was not employed in the services pursuant to the Government order relied upon by him i.e., his services under the Tamil Nadu Steels Limited. In the year 2000, under proceedings dated 20.06.2000, the 2nd respondent herein had sanctioned the post of Electrician and Helper on consolidated pay in various Town Panchayats, pursuant to which the appellant, on his application was called for an interview and was appointed as an Electrician to maintain the street lights in the 3rd respondent Town Panchayat on a consolidated pay. He would further submit that the appellant had never been appointed in the 3rd respondent Panchayat pursuant to the Government orders benefiting the employees/voluntary retired employees of the Tamil Nadu Steels Limited. This source of employment is a separate source of employment and therefore, the claim of the appellant should not be entertained. He would



further submit that pursuant to the retirement, the various pensionary benefits had been calculated to the appellant and the same had been received by him without any objections whatsoever.

6. He would submit that the learned Single Judge had dismissed the Writ Petition in which the impugned orders were passed on 05.12.2017. Even though, he had filed this Writ Appeal in the year 2018, the appellant had received the said payment without any objection/protest or reserving his right subject to the result in the Writ Appeal. Therefore, he would submit that there is no necessity to adjudicate the appeal any further.

7. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

8. Even though, the appellant had made a claim that he had been absorbed pursuant to the beneficial Government orders issued in favour of



the employees including the employees who have taken voluntary retirement of the Tamil Nadu Steels Limited, there is no proof that had been produced before us to substantiate that his appointment in the 3rd respondent Town Panchayat was based upon the aforesaid orders. Further, if such an appointment had been given to the appellant as claimed by him, then the appellant could not have been appointed on a consolidated pay, but, would have been absorbed as regular employee of the Town Panchayat where he would also been subjected to recovery of the compensation paid under the Voluntary Retirement Scheme. From the facts, it is not such a case. However, the appellant had been only appointed on a consolidated pay. If his claim had been correct, he would have raised this issue of absorption even at an initial stage that is immediately after his appointment in the year 2001. However, the appellant had accepted the consolidated pay and also agitated his rights based upon subsequent Government orders and his post was regularised with effect from the year 2004. This conduct of the appellant would only lead us to a conclusion that he had acquiesced himself of the appointment as a fresh appointment and he had given up his right to seek appointment pursuant to the Government orders issued in the year



1998 benefiting employees of the Tamil Nadu Steels Limited.

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9. Further, as rightly pointed out by the learned Additional Advocate General, the appellant had also received all his pensionary benefits that too without reserving any rights that would accrued to him in the pending Writ Appeal. Further, a Full Bench of this Court, in *W.A.No.158 of 2016 and etc., batch* had held that a person whose services has been regularised prior to 01.04.2003 alone will be entitled to count their past services for their pensionary benefits. Admittedly, in this case, the appellant had been regularised only in the year 2004. For that simple reason alone, the claim of the appellant need not be entertained.

10. In fine, this Writ Appeal fails and is accordingly, dismissed.
However, there shall be no orders as to costs.

(R.S.K.,J.)

(K.B., J.)

16.02.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No



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and
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