



W.P.(MD).No.2679 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.2679 of 2021

and

W.M.P.(MD)No.2209 of 2021

K.Arivazhagan

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to
Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner of Municipal
Administration,
11th Floor, Urban Administrative
Building,
(Opp. CIBA Building),
75, Santhome High Road,
MRC Nagar,
Raja Annamalaipuram,
Chennai-600 028.
- 3.The Commissioner,
Karur Municipality,
Karur.



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4.The Pension Sanctioning Authority /
The Commissioner,
Karur Municipality,
Karur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order in Na.Ka.No.17500 / 2020 / F.3 dated 06.11.2020 passed by the 2nd respondent and quash the same and consequently, direct the 1st respondent to pass appropriate orders declaring that the petitioner is entitled for the pensionary benefits under the Tamil Nadu Pension Rules 1978, duly counting 50% of petitioner's service on NMR-daily wage rate from 05.05.1988 to 22.03.2006 along with regular service from 23.03.2006 to the date of retirement i.e. 31.08.2022, within a time limit to be fixed by this Court.

For Petitioner	: Mr.A.Thirumurthy
For R-1 & R-2	: Mr.D.Gandhi Raj Special Government Pleader
For R-3 & R-4	: Mr.J.Senthil Kumaraiah, Standing Counsel

ORDER

This writ petition has been filed seeking to call for the records relating to the order Na.Ka.No.17500 / 2020 / F.3 dated 06.11.2020 passed by the 2nd



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respondent and quash the same and consequently direct the 1st respondent to pass appropriate orders declaring that the petitioner is entitled for the pensionary benefits under the Tamil Nadu Pension Rules, 1978, duly counting 50% of the petitioner's service on NMR-Daily wage rate from 05.05.1988 to 22.03.2006 along with regular service from 23.03.2006 to the date of retirement, that is, 31.08.2022 within a time frame fixed by this court.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

2.1. After qualifying SSLC, the petitioner was sponsored by the employment exchange, vide letter, dated 07.04.1988 to the 3rd respondent - Karur Municipality for appointment as NMR on daily wage rate basis and after certificate verification including community certificate and interview conducted on 20.04.1988, the 3rd respondent selected and appointed the petitioner as daily wage employee in a vacant post, vide order dated 22.04.1988, following which the petitioner joined duty on 05.05.1988.



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2.2. G.O.(D)No.125 Municipal Administration and Water Supply Department, dated 27.05.1999 was issued directing the various Municipalities and Corporations to prepare seniority list of Daily Wage Employees appointed through Employment Office prior to 01.10.1996, for the purpose of regularizing them in the vacancies in Entry Level Posts in regular time scale of pay. Accordingly, the 3rd respondent published a seniority list dated 20.04.2000, in which the petitioner was placed at serial No.3.

2.3. While so, a ban was imposed on all appointments, vide G.O.Ms.No. 212, Personal and Administrative Department, dated 29.11.2001 till 07.02.2006 when the said ban was lifted vide G.O.Ms.No.14, Personal and Administrative Department. Hence, despite preparation of seniority list dated 20.04.2000, till 2006, the NMR employees including the petitioner were not regularized as per G.O.D.No. 125 dated 27.05.1999.

2.4. Consequent to the lifting of ban, G.O.Ms.No. 21, Municipal Administration and Water Supply Department, dated 23.02.2006 was issued to appoint the employees, on consolidated pay and NMRs on daily wages on roll



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as on 01.10.1996, in the vacant post and to regularize their services in the regular post from the date of issuance of order. Accordingly, the petitioner's service was regularized by appointment as “Turn Cock” in time scale of pay of Rs.2550-55-2660-60-3220 + usual allowance, vide order dated 22.03.2006 as passed by the 3rd respondent, following which the petitioner joined duty as Turn Cock on 23.03.2006. After serving for a period of almost 16 years, the petitioner was due to retire from service on superannuation on 31.08.2022.

2.5. Considering the petitioner's initial appointment on 05.05.1988, following the extant recruitment norms, the petitioner was paid with monthly salary and he became a regular employee from 05.05.1998 and was covered under Tamil Nadu Pension Rules, 1978. As a part of the same, he was enrolled under General Provident Fund Scheme under GPF Account No. 772 and GPF subscription was recovered from his salary from the month of April 2006 onwards and GPF account slips were also issued for the years 2006-2007, 2007-2008 and 2008-2009. That apart, GPF subscription was also recovered up to 2009 and was remitted to his GPF Account No.772. While so, to his shock and surprise without any notice, GPF subscription was not recovered from his



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salary from October 2009. Without any notice, further he was transferred from Tamil Nadu Pension Rules to contributory pension scheme, which is applicable only to those who are freshly appointed on or after 01.04.2003 and the contributory pension scheme subscription was recovered from his salary from 2009 and was remitted to the CPS account. Thus, the petitioner has been deprived of his legal right to get pensionary benefits under the Tamil Nadu Pension Rules, 1978 behind his back, which is illegal. Hence, the petitioner made a representation dated 04.03.2020 to the third respondent with the request to continue him in the GPF Account No.772 from October 2009 which is a part of old pension scheme and to disburse pensionary benefits under Tamil Nadu Pension Rules, 1978. However, the 3rd respondent did not consider the same.

2.6. Therefore, the petitioner filed W.P.(MD)No.8776 of 2020 seeking to direct the respondents to consider his representation dated 04.03.2020 and to continue him in GPF Account No. 772 from October 2009 and to declare that he is entitled for the pensionary benefits under the Tamil Nadu Pension Rules, 1978, duly counting 50 percent of his service on NMR daily wage rate from 05.05.1988 to 22.03.2006 along with regular service from 23.03.2006 to the



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date of retirement. This Court, by order dated 06.08.2020 disposed of the said writ petition, directing the petitioner to forward a copy of the representation addressed to the 3rd respondent to the 1st and 2nd respondents along with the copy of the High Court order dated 06.08.2020 and on receipt of the same the 1st and 2nd respondents were directed to consider the said representation on merits and in accordance with law.

2.7. Accordingly, the petitioner's representation dated 04.03.2020 along with the order of this Court, dated 06.08.2020 were sent to the respondents on 02.09.2020. However, the 2nd respondent had passed order dated 06.11.2020 rejecting his representation dated 04.03.2020 stating that the petitioner had been appointed as Turn Cock only on 23.03.2006 and the contributory pension scheme has been implemented from 01.04.2003 as per G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003 and hence, the amount credited into his GPF Account No.772 from 01.04.2006 to 28.02.2011 has been remitted into the contributory pension scheme on 27.04.2011 and hence, the petitioner could not be transferred to old pension scheme and 50 percent of NMR service from 05.05.1998 to 22.02.2006 could not be counted for pension purpose and further



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he cannot be considered as Office Assistant, as his present post and the post of Office Assistant are coming under different categories. Challenging the same, this writ petition came to be filed.

3. The learned counsel for the petitioner submitted that the matter in the instant case is no more res integra and this Court in ***W.P.(MD)No. 21363 of 1994 dated 30.06.2003 filed by Nagaratchi Mithivandi, Scooter matrum Kattana Kazhipadam Paniyalargal Maanila Sangam, Trichy*** has directed the 1st respondent to regularize the services of the members of the said petitioner sangam within three months from the date of receipt of the order. The learned counsel further relied upon the order passed by this Court in ***W.P.No. 8266 of 1996 dated 06.08.2003 in the case of Inam Karur Town Panchayat*** in which this Court had passed a similar direction to regularize the services of the daily wage workers of Inam Karur Town Panchayat and further contended that the orders passed by this court in the aforesaid cases would squarely cover the facts and circumstances of this case and pressed for allowing the writ petition.



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4. The 2nd respondent has filed a counter affidavit and the learned Special Government Pleader Mr.D.Gandhiraj submitted that, the writ petitioner was appointed as nominal muster roll on daily wage from 22.04.1988 and joined the duty on 05.05.1988 and only by virtue of the 3rd respondent's order dated 23.09.2020, the writ petitioner was made permanent as a Turn Cock. He further submitted that, as per G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003, any person appointed after 01.01.2003 was provided only with contributory pension scheme. That apart, he further submitted that since there was no specific head to deposit the pension contribution given by the employee, the same has been paid in the treasury account of Karur Municipality Provident Fund Account. In such a way, the subscription received from the petitioner towards his pension contribution was deposited in Karur Municipality Provident Fund Account. Subsequently, vide G.O.Ms.No.172, (Finance) (PGC) Department dated 16.06.2010, the contribution given by the employees as well as the Government has been deposited in the special head for contribution pension scheme from 01.04.2006 onwards.



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5. He further contended that only on account of the said development as of now, Rs. 47,36,184/- (Rupees Forty Seven Thousand Thirty Six Thousand One Hundred and Eighty Four only) has been deposited in the new pension scheme account. However, he insisted that the writ petitioner had misinterpreted the said situation for his own convenience and has stated that his contribution was earlier deposited in provident fund and only in the recent past the same has been deposited in the new pension scheme. Categorically contending that the said submission of the petitioner is a clear case of wrong presumption, he further clarified that the petitioner's earlier contribution was paid only with the municipality provident fund account only because there was no special head for depositing his contribution. Once a new head was created for the new pension scheme the petitioner's contribution was duly deposited into the same. On the basis of the said submissions the learned Special Government Pleader pressed for dismissal of the writ petition.

6. Heard, the learned counsel appearing for the petitioner Mr.A.Thirumurthy, the learned Special Government Pleader appearing for the respondents Mr.D.Gandhiraj 1 and 2 and the learned Standing Counsel



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Mr.J.Senthil Kumaraiah, appearing for the respondents 3 and 4 and carefully perused the materials available on record.

7. It is needless to state that the petitioner was appointed, vide appointment order dated 22.04.1988 as sponsored by the employment office after duly conducting interview and certificate verification and he joined duty as a regular employee on 05.05.1988 and was paid with monthly salary. The writ petitioner had put in a continuous service of more than 480 days within a period of 24 consecutive months and hence he was eligible for permanency from 05.05.1990 as per the Tamil Nadu Industrial Employees (Conferment of Permanent Status) Act, 1981. That apart, the first respondent had passed G.O. (D)No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, directing the Municipalities and Corporations to prepare seniority list of daily wage employees appointed through employment exchange prior to 01.10.1996 for the purpose of regularizing them in the vacancies in entry level post in regular time scale of pay. Following which, the 3rd respondent prepared and published the seniority list, vide Proc. Na.Ka.No.F.4 / 4734 / 2000 dated 02.04.2000 after a period of one year. The petitioner was duly placed at serial



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No.3 in the aforesaid seniority list. However, the first to third respondents did not pass any further order for more than one and a half years, that is, from 02.04.2000 to 29.11.2001 to regularize the petitioner's service in the entry level post as per his qualification and as per G.O.Ms.No.125 dated 27.05.1999.

8. In the meanwhile, a ban was imposed from 29.11.2001 to 07.02.2006 for fresh appointments and delay occurred in regularization of service only due to the administrative reasons on the part of the respondents for which the petitioner was penalized by not being considered for 17 years and 8 months for making him eligible for regularizing his service in the entry level post, thereby making him eligible for pension under old pension scheme.

9. Immediately on rising of ban on 07.02.2006, vide G.O.Ms.No.21, Municipality Administration and Water Supply Department, dated 23.02.2006, the employees on consolidated pay and NMRs on daily wages on roll as on 01.10.1996 in the vacant post were regularized in service from the date of issue of order, as a result of which the petitioner was also regularized from 23.03.2006 in the post of Turn Cock in the regular time scale of pay.



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10. Thus, the NMR employees including the petitioner were not regularized as per G.O.D.No.125 dated 27.05.1999, even after the preparation of seniority list dated 20.04.2000 till 29.11.2000, that is, till the date of imposing the ban on appointments and such a delay occurred in regularizing the petitioner service from 1999 to 22.03.2006, which is not the fault of the petitioner, but a clear case of administrative lapse on the side of the respondents, for which the petitioner cannot be denied with his legal right of getting pension benefit under the old pension scheme for his 17 years 8 months and 19 days of service.

11. The Honourable Division Bench of this Court in the case of ***Union of India vs. K. Punniyakoti and others reported in 2014(2) CTC 777*** has dealt with a similar case and the relevant portion of which is extracted as follows:

“17. The word “new entrant”, has got a definite meaning, “ a person, who enters recently”. A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004, cannot be termed as



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“new entrant” into service. The New Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004”.

12. In yet another case, this Court in ***P. Chinnaiyan vs. State of Tamil Nadu represented by its Secretary to Government, Forest and Environment, (FR-2) Department, Chennai-9 and others reported in (2014) 6 MLJ 316*** has dealt with a similar case and the relevant portion of which is extracted as follows:

“The cut off date fixed by the Government as on 01.04.2003 was illegal and arbitrary”.

13. In yet another case, the Honourable Division Bench of this Court in ***W.A.(MD)No. 51 of 2018 and etc., batch, that is, in the case of The Government of Tamil Nadu represented by its Principal Secretary to Government, Forest and Environment Department, Chennai vs. K. Sakthivel and another*** has dealt with a similar case and the relevant portion is extracted as follows:



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*“29. As noticed above, the decision to bring the writ petitioners into regular time scale of pay was taken in the year 1999 and the writ petitioners were extended the benefits in the year 2009. By then, several of them had completed more than 30 years of service, as daily wagers. The past service was reckoned for the purpose of justifying their absorption into regular time scale of pay. **Therefore, it will be a misnomer to state that the appointments made to the post of Forest Watchers is a fresh appointment.** The stand taken by the appellants in this regard is to be rejected by merely referring to the preamble portion of G.O.(MS)No.64 dated 08.03.1999 and G.O.Ms.No.95 dated 07.08.2009. Therefore, the said contention raised by the appellants required to be out rightly rejected.*

31. In the result,

(i) W.A.(MD)No.51 of 2018, 1431 and 1432 of 2017 are dismissed confirming the order passed in W.P.(MD)No.22833 of 2016, 15903 of 2012 and 22832 of 2016.

(ii) All other writ petitions filed by the Plot Watchers are allowed as prayed for.

(iii) The appellants / respondents are directed to verify the service particulars of all the writ petitioners and count 50% of the services rendered by them on temporary basis and consequently, refix their pension within a period of four months from the date of receipt of a copy of that judgment / order.”



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14. In the instant case, in G.O.D.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, the Government has taken the decision to regularize those NMRs on daily wage rate appointed through employment office up to 01.10.1996, in the Entry Level Post with regular timescale of pay and the seniority list of the said NMR - Daily Wage Workers were published on 20.04.2000, but regularization order was not issued till 29.11.2001 only because of the delay on the part of the respondents and after the completion of ban on new appointments from 29.11.2001 to 07.02.2006, the petitioner was regularized from 23.03.2006. Hence, the petitioner cannot be considered as a fresh appointee / entered into service on 23.03.2006. The cases extracted supra would squarely apply to the facts and circumstances of this case and hence, the petitioner definitely cannot be considered as a fresh entrant and since it is a settled proposition of law that the cut-off date fixed by the Government as 01.04.2003 as illegal and arbitrary, taking into consideration that the respondents had considered the case of the writ petitioner and the other NMRs on daily wage rate to be brought into regular timescale of pay as early as on 27.05.1999 vide G.O.D.No.125, Municipal Administration and Water



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Supply Department, the fact that the petitioner was extended with the said benefit only with effect from 23.03.2006 would not disqualify him from the benefit of old pension scheme considering him as a new entrant who was appointed after the aforesaid cut-off date of 01.04.2003.

15. The principal seat of this Court in W.P.Nos.22741, 6027, 13585, 13927 of 2015 in the batch of ***V. Gnanavel vs. the Secretary to Government, Municipal Administration and Water Supply Department, Chennai***, and others has dealt with a similar case and the relevant portion of the same is extracted as follows:

“19.since it has been repeatedly considered and decided by this Court in more than one judgment that 50% of the past service rendered in non-provincialised service, consolidated pay, honorarium, daily wage basis has to be counted along with the regularised service for the purpose of pension in respect of the employees who have retired in various departments viz., Education, Forest, Municipalities etc. Hence, this Court has no hesitation to allow all the writ petitions.



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20. In the result, all the Writ Petitions are bound to be allowed. Accordingly, they are all allowed and the respondents are directed to count 50% of the petitioners services rendered on daily wage basis along with their regular service and to allot GPF Account Number for grant of pension to the petitioners under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme). The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”

16. Fully fortified by the order passed by this Court in the aforesaid case, I am of the considered view that, the petitioner is entitled for the same benefit, that is, to count 50% of the NMR service along with their regular service for grant of pensionary benefits as well, under the Tamil Nadu Pension Rules, 1978. But it has emerged clear that, without considering all these aspects the impugned order came to be passed which is absolutely discriminatory and illegal and hence the impugned order is hereby set aside.

17. Accordingly, the writ petition is allowed directing the first respondent to pass appropriate orders declaring that the petitioner is entitled for the pensionary benefits under the Tamil Nadu Pension Rules, 1978, duly



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counting 50% of petitioner service on NMR - daily wage rate from 05.05.1988 to 22.03.2006 along with the regular service from 23.03.2006 to the date of retirement, that is, 31.08.2022 within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

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L.VICTORIA GOWRI, J.

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