BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.14912 of 2023
and
W.M.P(MD) No.12585 of 2023

V.Durairaj ... Petitioner

Vs.

1. The Treasury Officer,
Collectorate Campus,
Korampallam,
Thoothukudi – 628 101.

2. The Accountant General,
AG's Office (Audit) Complex,
Anna Salai, Rostrever Garden,
Teynampet, Chennai – 600 018.

3. The Secretary to Government,
Finance Department,
Government of Tamil Nadu,
Chennai.

4. The Commissioner of Treasuries
and Accounts,
Panagal Building,
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in Na.Ka.No. 6332/2021/அ2, dated 05.05.2023 on the file of the first respondent and quash the same and further directing the respondents to revise the pay and other pensionary benefits of the petitioner in the light of G.O.(Ms) No.89, personnel and Administrative Reforms (P) Department, dated 28.07.2020.

For Petitioner : Mr.K.Vinoharan

For R1, R3 and R4 : Mr. A.Baskaran
Additional Government Pleader

For R2 : Mr.P.Gunasekaran
Standing Counsel

ORDER

The instant Writ Petition has been filed by a retired Bill Collector, challenging the order passed by the first respondent herein on 05.05.2023, wherein the request of the petitioner for sanction of pension has been rejected on the ground that the petitioner has not completed qualifying service of 10 years.

2. The petitioner herein was originally appointed as a Junior Assistant on 01.07.1989 and he was ousted from service on 16.04.1991. The

Government had taken a policy decision to absorb them by conducting a special qualifying examination through the Tamil Nadu Public Service Commission. Accordingly, a special qualifying examination was conducted on 24.06.1995. The petitioner herein had applied for the said examination and passed the said examination. However, appointment orders were issued to the writ petitioner only on 03.02.1997, as Bill Collector. The petitioner had attained superannuation on 31.05.2005. It is the grievance of the writ petitioner that the period during which he was out of employment, for no fault on his part, should have been taken into consideration as a qualifying service for the purposes of calculating pension. If that period is taken into consideration he would have crossed the qualifying service of 10 years. To the said extent, the petitioner has sent a representation to the first respondent, which was rejected under the impugned order dated 05.05.2023. Challenging the same, the present writ petition has been filed.

3. According to the learned counsel appearing for the writ petitioner, the entire period between 17.04.1991 and 06.02.1997 have been treated as break in service and it has been completely excluded. The learned counsel appearing for the petitioner had relied upon G.O.(Ms) No.89, Personnel and

Administrative Reforms (P) Department, dated 28.07.2020 and contended that as per the said Government Order, the services have to be regularized from the date of their initial appointment and any break in service prior to ousting, should also be regularized as per Rule 25 of Tamil Nadu Pension Rules.

4. The learned counsel appearing for the petitioner has also relied upon the judgment of the learned Single Judge of this court in a batch of writ petitions in W.P.Nos.34752 of 2022 etc., batch cases, dated 18.03.2024, wherein this Court has considered the case of a similarly placed employee wherein a direction has been issued to sanction retirement benefits by counting the period of service rendered by the petitioner therein, including the period of break in service with payment of revised pension and other retirement benefits.

5. Per contra, the learned Additional Government Pleader appearing for the respondents 1, 3 and 4 relied upon G.O.(Ms) No.89, Personnel and Administrative Reforms (P) Department, dated 28.07.2020 and contended that the period of interruption shall not be counted as a qualifying service. He

further contended that the petitioner was appointed as a Bill Collector only after two years from the date of conducting special examination. Therefore, the services of the petitioner can be calculated only from the date of his appointment as a Bill Collector and not from the date of the special examination. Hence, he prayed for dismissal of the writ petition.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is not in dispute that the petitioner who was temporarily appointed as a Junior Assistant in the year 1989 was ousted from service in the year 1991. The petitioner appeared in the special examination conducted by the Tamil Nadu Public Service Commission on 24.06.1995 and he had cleared the said examination. However, appointment orders were issued to the writ petitioner only on 03.02.1997. Therefore, there is no fault on the part of the writ petitioner for the non employment period between 24.06.1995 and 03.02.1997.

8. In such circumstances, this Court is of the considered opinion that as per G.O.(Ms) No.89, Personnel and Administrative Reforms (P) Department, dated 28.07.2020, in Clause 9 (c), the said period should be taken into consideration for the calculation of pensionable service. The learned Single Judge of this Court in W.P.Nos.34752 of 2022 etc., batch cases, dated 18.03.2024, had passed orders in favour of similarly placed persons. This Court is inclined to follow the said order.

9. In view of the above said deliberations, the order impugned in the writ petition is set aside and the respondents are directed to treat the period between 24.06.1995 to 03.02.1997 as pensionable service and sanction pension to the writ petitioner and disburse the pension benefits along with arrears within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above said observations, this Writ Petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

14.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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R.VIJAYAKUMAR,J.

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