



W.P.(MD) No.19779 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 28.02.2024

ORDERS PRONOUNCED ON : 26.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.19779 of 2020

and

W.M.P.(MD) No.4853 of 2021

R.Ponnappan

... Petitioner

Vs.

1.The Secretary to Government,
Rural Development and
Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The Director of Rural Development
and Panchayat Raj,
Panagal Buildings,
Saidapet,
Chennai-600 015.

3.The Director of Local Fund Audit Department,
Integrated Finance Offices Complex,
Back Side of Veterinary Hospital,
Nandanam,
Chennai-600 035.



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4.The District Collector,
Kanyakumari District at
Nagercoil-629 001.

5.The Commissioner of Melpuram Panchayat Union,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling the records of the second respondent i.e., the Director of Rural Development and Panchayat Raj, Chennai relating to ந.க.எண்.38631/2020/இ1, நாள்: 07.12.2020 communicated by the fifth respondent i.e., the Commissioner, Melpuram Panchayat Union in Endorsement No.A1/3147/2019 dated 11.12.2020 and quash the same and consequently direct the first and second respondents i.e., the Secretary to Government, Rural Development and Panchayat Raj Department, Chennai and the Director of Rural Development and Panchayat Raj, Chennai to sanction pension under Old Pension Scheme counting 50% of services put in by the petitioner on daily wage i.e., from 10.11.1979 to 14.06.1992 and condoning the break period of 4 years and 11 months and 28 days along with regular service put in by him from 17.06.1992 to 31.05.2011 within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.D.Sasikumar
Additional Government Pleader



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ORDER

This writ petition has been filed aggrieved by the proceedings in Pro.No.38631/2020/E1, dated 07.12.2020 issued by Respondent No.2 rejecting the proposal submitted by Respondent No.4 for condoning the break in service of the petitioner while he was working as Cholera Mazdoor on the ground that the post of Cholera Mazdoor is a seasonal post and it is a daily wage base service. Consequently, the main claim of the petitioner for counting the 50% of service rendered by him as Cholera Mazdoor for the purpose of pensionary benefits in terms of G.O.No.41, Finance (Pension) Department, dated 09.02.2010 was also rejected.

2.1. The brief facts, that are relevant for the disposal of the writ petition, are as under:

2.2. The petitioner herein was appointed as Cholera Mazdoor on 09.11.1979 on temporary basis by dispensing with the procedure of obtaining the seniority list from the District Employment Office concerned, in view of the emergency at the relevant point of time. The said



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appointment was initially for a period of two months or till the period of end of cholera. However, the petitioner was continued in service and subsequently, he was posted as Group Clerk-cum-Bill Collector with effect from 17.06.1992 in the time scale of pay, i.e., after working for a period of 12 years 7 months and 7 days as Cholera Mazdoor. The services of the petitioner were also regularised in the post of Bill Collector and on attaining the age of superannuation, he was permitted to retire from service on 31.05.2011 and his pensionary benefits were also released. At that stage, the petitioner, having come to know about the Government Order in G.O.No.41, dated 09.02.2010, made a claim for counting 50% of service rendered by him as Cholera Mazdoor for the purpose of fixing his pensionary benefits in terms of the said Government Order in G.O.No.41, dated 09.02.2010. Accordingly, proposals were submitted to the 2nd respondent through letter in R.C.No.V3/4628/2013, dated 30.07.2013 to include 50% of the contingent service period rendered by the petitioner as Cholera Mazdoor for the pensionary benefits of the petitioner. However, the said proposal was rejected by the 3rd respondent on the ground that there was break of service in the contingencies service, through a letter in



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R.Dis.No.38535/PUPV3/12, dated 18.12.2012. Thereafter, the petitioner pursued the matter further and finally the 4th respondent herein submitted proposals through letter in R.C.V3/4628/2013, dated 08.03.2017 to the 2nd respondent herein for condonation of the break in service of the petitioner in the post of Cholera Mazdoor for a period of 4 years 11 months and 28 days. As the 2nd respondent has not considered the said proposal, the petitioner approached this Court by filing W.P.(MD) No.19768 of 2019 and this Court by an order dated 14.10.2019, directed the 2nd respondent to pass appropriate orders on the proposal submitted by the 4th respondent. It is pursuant to the said direction, the 2nd respondent having considered the proposal submitted by the 4th respondent, rejected the proposal as noted above. It is aggrieved by the said proceedings, dated 07.12.2020 as communicated through Endorsement No.A1/3147/2019, dated 11.12.2020, the petitioner approached this Court by filing the present writ petition.

3. G.O.No.41, dated 09.02.2010 provides for counting of service rendered by the employees prior to absorption/regularisation of their services to be taken into consideration for the purpose of pensionary



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benefits by including 50% of the service rendered by them on temporary basis/daily wage basis and to treat the same as the service eligible for the purpose of pensionary benefits. Respondent No.4 has duly taken into account the service rendered by the petitioner as Cholera Mazdoor, submitted a proposal for condonation of the break in service of the petitioner while he was working as Cholera Mazdoor.

4. From the perusal of the entire material on record, at no point of time, it is the case of the respondents that the post of Cholera Mazdoor is a seasonal post. On the other hand, the petitioner, who was appointed as early as in the year 1979 on emergency basis, was continued till the year 1992 when his services were regularised as Bill Collector. Even in the proposal dated 08.03.2017, submitted by the 4th respondent also, there is nothing to suggest that the post of Cholera Mazdoor is a seasonal post, nor to suggest that the petitioner has not worked on regular basis as full time employee during the relevant period. But surprisingly, Respondent No.2 herein while passing the impugned order invented a new theory stating that the post of Cholera Mazdoor is a seasonal post and therefore, the service rendered by



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the petitioner as Cholera Mazdoor cannot be taken into consideration for the purpose of pensionary benefits, in terms of G.O.No.41, dated 09.02.2010. Thus, the finding recorded by Respondent No.2 in the impugned order dated 07.12.2020 is based on no material and without application of mind, just to deny the benefit of G.O.No.41, dated 09.02.2010 to the petitioner.

5. The proposal that was submitted by Respondent No.4 to Respondent No.2 is only for condonation of the break in service for a period of 4 years 11 months and 28 days. But Respondent No.2 instead of considering as to whether the said break in service can be condoned, as to whether the reasons for such break are beyond the control of the petitioner or not etc., erroneously adopted a wrong approach and thereby, rejected the proposal submitted by Respondent No.4.

6. As contended by the learned counsel for the petitioner, the break in service on different intervals for a period of 4 years 11 months and 28 days is only for want of availability of vacancy at the relevant time, which is beyond the control of the petitioner and therefore, the petitioner is



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entitled for condonation of the said break in service and also for the benefit of G.O.No.41, dated 09.02.2010.

7. Through G.O.No.41, dated 09.02.2010, the relevant rules were amended thereby providing for counting of the temporary/contingent/daily wage services rendered by the employees, whose services were subsequently regularised/absorbed as permanent employees for the purpose of pensionary benefits. The same is a beneficial provision provided under the relevant rules. In such circumstances, the endeavour of the respondents should always be to see that the said benefit is extended to all the eligible employees. But, in the instant case, the approach of Respondent No.2 appears to be with a view to reject the claim of the petitioner on some ground or the other.

8. The manner in which the impugned order came to be passed by the 2nd respondent makes this Court to accept the contention of the learned counsel for the petitioner that filing of the contempt case by the petitioner before this Court, prompted the 2nd respondent to pass the impugned order.



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9. In the light of the above, the reasoning given by the 2nd respondent in the impugned order is wholly unsustainable and the same is accordingly, set aside duly remanding the matter back to Respondent No.2 for considering the proposals submitted by Respondent No.4 through letter in R.C.V3/4628/2013, dated 08.03.2017 to pass appropriate orders in accordance with law as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this order.

10. Accordingly, this Writ Petition is disposed of. No costs.

26.03.2024

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

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MUMMINENI SUDHEER KUMAR, J.

abr

To

1.The Secretary to Government,
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Secretariat, Chennai-600 009.

2.The Director of Rural Development and Panchayat Raj,
Panagal Buildings,
Saidapet, Chennai-600 015.

3.The Director of Local Fund Audit Department,
Integrated Finance Offices Complex,
Back Side of Veterinary Hospital,
Nandanam, Chennai-600 035.

Pre-delivery Order made in
W.P.(MD) No.19779 of 2020

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5.The Commissioner of Melpuram Panchayat Union,
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