BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.01.2024

PRONOUNCED ON : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.80 of 2024
and C.M.P(MD).No.769 of 2024

1.The Assistant Director
Department of Animal Husbandry
Srivilliputhur
Viruthunagar District

2.The Managing Director
Tamil Nadu Poultry Development Corporation Ltd.,
Madras- 17 ....Appellants/Respondents

Vs

A.Vellaichamy ....Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 06.12.2022 passed in W.P(MD).No.2425 of 2020 on the file of this Court.

For Appellants : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.N.Satheeshkumar
Additional Government Pleader

For Respondent : Mr.C.Sundaravaidvel

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The respondents in the writ petition are the appellants herein. The petitioner therein had challenged an order passed by the first appellant herein wherein the services of the petitioner between 16.06.1976 to 31.12.1988 were not taken into consideration for fixing the petitioner's pension.

2.Facts leading to the filing of this present appeal are as follows:

(i)The writ petitioner was originally appointed as a Casual Mazdoor in Tamil Nadu Poultry Development Corporation Limited (TAPCO) on 16.06.1976. On completion of three years of service, the petitioner was brought into regular cadre and he was paid consolidated monthly salary of Rs.200/- per month with effect from 01.06.1979. The petitioner was brought under the time scale with effect from 01.01.1989.

(ii)By way of G.O.Ms.No.91, Animal Husbandry & Fisheries Department, dated 06.06.2000, the second appellant/second respondent Corporation was wound up and 139 employees working in the said Corporation were absorbed into Animal Husbandry Department. The petitioner joined as a Helper in the Government service on 12.06.2000 and on superannuation, he retired from service on 31.12.2017.

(iii)At the time of sending pension proposal, the services rendered by the petitioner in TAPCO from 01.01.1989 to 11.06.2000 were taken into consideration after excluding the period of suspension. Out of the said period, 50% of the services were reckoned for the purpose of pensionable service. Challenging the said proposal, the petitioner had filed the writ petition.

(iv)The petitioner had contended that he had served in TAPCO between 16.06.1976 to 31.12.1988 as a Casual Mazdoor and the said period should also be reckoned for the purpose of calculating pension. The Appellants have contended that the petitioner was brought into the time scale of pay only from 01.01.1989 onwards and therefore, any services prior to the said date, cannot be taken into consideration for the purpose of calculating pension.

(v)The writ Court found that the petitioner's services have been regularised with effect from 02.08.1978 onwards and not from 01.01.1989 and directed the authorities to calculate the pensionable service of the writ petitioner from 02.08.1979 onwards. This order is under challenge by the State in the present appeal.

3.Contentions of the counsels appearing for the parties are as follows:

(i)The learned Additional Advocate General appearing for the appellants had contended that the petitioner was receiving the daily wages from 16.06.1976 till 15.06.1979. From 16.06.1979 onwards, the petitioner was receiving the consolidated monthly salary of Rs.200/- as a Casual Mazdoor. The petitioner was brought under time scale of pay only with effect from 01.01.1989. Only the date from which the petitioner had received time scale of pay in an non pensionary service, should be reckoned for the purpose of computing pensionary benefits. In the present case, admittedly, the petitioner was receiving consolidated salary from 16.06.1979 till 31.12.1988. Therefore, the said period cannot be taken into consideration in view of Rule 11(4) of the Tamil Nadu Pension Rules 1978. Hence, he prayed for allowing the writ appeal.

4.Per contra, the learned counsel appearing for the writ petitioner had relied upon G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988 and contended that even the services rendered wherein the salary was paid from contingency should be taken into account for payment of pension. Hence, he prayed for dismissal of the writ appeal.

5.We have carefully considered the submissions made on either side and perused the material records.

Discussion

6.The petitioner has been appointed as a Casual Mazdoor in TAPCO with effect from 16.06.1976 by proceedings dated 02.08.1979. The petitioner has been brought under the regular cadre of Casual Mazdoor on a monthly consolidated pay of Rs.200/- with effect from 16.06.1979. By proceedings dated 09.12.1988, the petitioner has been brought within the time scale with effect from 01.01.1989. The petitioner was absorbed into Government service namely the Animal Husbandry Department with effect from 12.06.2000.

7.The petitioner was in a full time employment and there was no break in service before he was absorbed into the Government department. The petitioner was placed under suspension between 24.07.1995 and 24.05.1999 while he as serving in TAPCO. This suspension period was treated as leave without salary. These facts are not in dispute.

8.The only issue that arises for consideration is whether the period between 16.06.1979 (the date on which the petitioner was brought on a monthly consolidated salary) and 31.12.1988 during which the petitioner was working on a consolidated salary could be reckoned for the purpose of pensionary benefits or not.

9.It is an admitted fact that the services of the petitioner in TAPCO are non-pensionary service. However, the services rendered by the petitioner in TAPCO between 01.01.1989 to 11.06.2000 have been taken into account under the impugned order for the purpose of calculating pension. Therefore, it is clear that the services rendered in a non-pensionable service before being absorbed into Government service can also be taken into account for the purpose of calculating pension. Hence, the contention of the learned Additional Advocate General that the services of the petitioner in a non pensionable service rendered in TAPCO cannot be reckoned for the purpose of calculating pension is not legally sustainable.

10.Though the petitioner was originally appointed on daily wages on 16.06.1979, he was brought under monthly consolidated pay with effect from 16.06.1979. Therefore, the services of the petitioner in TAPCO between 16.06.1979 and 31.12.1988 are under consolidated monthly salary. According to the learned Additional Advocate General unless the petitioner is brought within the time scale of pay, the services cannot be taken into consideration for calculating the pension.

11.A perusal of Rule 11(4) of Tamil Nadu Pension Rule 1978 reveals that half of the services rendered under the State Government in a non-provincialised service, even on a consolidated pay or daily wages, shall be counted for retirement benefits along with regular service, in case, if the consolidated pay service is a whole time employment and it was paid on a monthly basis and the employee was absorbed in regular service before 01.04.2003 without a break.

12.In the present case, the writ petitioner was on a consolidated pay monthly salary from 16.06.1979 onwards and he was absorbed before 01.04.2003 without a break. Therefore, the services rendered between the said period shall be reckoned for the purpose of calculating pension. The writ Court had rightly directed the appellants to calculate the said services of the petitioner in TAPCO. The writ Court had further clarified that the suspension between 24.07.1995 to 24.05.1999 shall stand excluded. We are of the considered opinion that 50% of the service rendered by the petitioner in TAPCO between 16.06.1979 to 31.12.1988 shall be taken into consideration for fixing the petitioner's pension.

13.Since the writ Court has rightly directed the authorities to take into consideration the consolidated pay period, we do not find any merit in the writ appeal. The writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,) **(R.V.J.,)**

15.02.2024

Index :yes
Internet :yes
NCC :Yes/No
msa

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in

W.A(MD).No.80 of 2024
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