

W.P. No. 8887 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2025

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THE HONOURABLE MRS JUSTICE N. MALA

WP No. 8887 of 2021

and

WMP.No.9420 of 2021

D.Mohan

...Petitioner

Vs

1. The Secretary to Government
Department for Welfare of the Differently Abled,
Secretariat,
Chennai.
2. The Director for Welfare of the Differently Abled,
O/o.The State Commissionerate for the Differently Abled,
No.5, Kamarajar Salai, Chennai 5

3. The Secretary to Government,
Social Welfare and Nutritious Meal Programme Department,
Secretariat, Chennai.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of writ of certiorarified mandamus, calling for the records relating to the first respondent herein in letter No. 3774/ MaThi Na.1/ 2020-2 dated 17.11.2020 communicated by the 2nd respondent through the letter bearing Na. Ka. No. 8360/ Nir-1/ 2018 dated 23.2.2021 and quash the same is concerned and direct the 1st respondent herein to usher with the benefit of calculation of the services rendered in the Tamil Nadu Ceramics Limited (TACEL) with the services rendered in the Social Welfare Department for the purpose of pension to the petitioner with the brief intermittent period of non-employment before joining the Department of Social Welfare.

For Petitioner: Mr. S.P.Patel

For Respondents: Mr.L.S.M.Hasan Fazil, AGP



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ORDER

Aggrieved by the order passed by the first respondent in letter No. 3774/ MaThi Na.1/ 2020-2 dated 17.11.2020, the present writ petition has been filed.

2. The case of the petitioner is that he was employed in regular time scale of pay in the Tamil Nadu Ceramics Limited (TACEL), a Government of Tamil Nadu undertaking from 02.01.1975 to 14.01.1991. He was retrenched from service and after a break in service of 1 year, 4 months and 12 days, he joined as Junior Assistant in the Department of Social Welfare on 26.05.1992. Thereafter, while he was serving as Superintendent in the Commissionarate for the Differently Abled, Chennai, he retired from service on attaining the age of superannuation on 31.01.2011.

3. It is the further case of the petitioner that similarly placed person namely K.Ananthanarayan, Junior Assistant (Retired) by order in G.O.(D) No.1, Social Welfare & Nutritious Meal Programme (SW.1) Department, dated 04.01.2018, was granted benefit of counting of 50% of the service rendered by him in the Tamil Nadu Ceramic Limited (TACL) for the purpose of calculation of pension, ignoring the short intermittent gap of non-employment before his



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joining the Social Welfare Department. Subsequently, another person namely,

R.Kesavan, who was also similarly placed was also granted same benefit vide

G.O.(MS).No. 206, Social Welfare & Nutritious Meal Programme (SW1)

Department, dated 09.10.2019. Hence, the petitioner submitted a

representation to the respondents on 31.08.2018, to extend the same benefits to

him. Though, the 2nd respondent recommended the petitioner's case, the 1st

respondent rejected the same by the impugned order dated 17.11.2020.

Aggrieved by the same, this writ petition has been filed.

4. Counter affidavit was filed by the respondents 1 & 2, wherein it was stated that petitioner was working in Tamil Nadu Ceramics Limited (TACEL) as a temporary staff from 02.01.1975 to 13.01.1991, and he was retrenched from the service on 13.01.1991. Thereafter he was appointed as junior assistant in the Social Welfare Department on 26.05.1992. The Social Welfare Department was bifurcated as State Commissionerate for Differently Abled and the petitioner was retained in the State Commissionerate for Differently Abled. The respondents stated that in the absence of any provisions in the Tamil Nadu Pension Service Rules, to treat the break-in service as duty period and count the same for the purpose of calculation of pension, the break in service period from 14.01.1991 to 25.05.1992 of the petitioner could not be counted for



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pensionary service. The respondents therefore stated that the rejection order

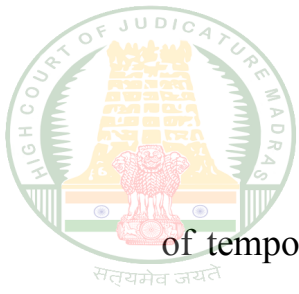
passed by the 1st respondent was in accordance with the rules in force, and

hence did not require any interference by this Court.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the petitioner had worked in the Tamil Nadu Ceramics Limited (TACEL), a Government of Tamil Nadu undertaking from 02.01.1975 to 14.01.1991, which is almost 16 years. Later with a break in service from 13.01.1991 to 25.05.1992 (1 year, 4 months and 12 days), the petitioner joined as Junior Assistant in the Department of Social Welfare on 26.05.1992. After periodical promotions, the petitioner retired from service on attaining the age of superannuation, on 31.01.2011, as Superintendent. The petitioner submitted a representation on 31.08.2018, to the respondents to extend the benefit of counting the past service in TACL along with his service in the Social Welfare Department by ignoring the break in service period for pensionary benefits, as was done for similarly placed persons, but the same was rejected by the 1st respondent vide the impugned order dated 17.11.2020.

7. Though the respondent in the counter affidavit, took a categorical stand that there were no rules in the Tamil Nadu Pension Rules to include 50%



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of temporary services rendered by the petitioner in the Tamil Nadu Ceramics Limited (TACEL), for the purpose of calculating pension, ignoring the intermittent period of non-employment, the respondents, however, did not whisper about the extention of the said benefit to similarly placed persons namely K.Ananthanarayanan and R.Kesavan. It is seen that the said K.Ananthanarayanan filed a writ petition in W.P.No. 11265 of 2006 for counting 50% of the service rendered by him in the Tamil Nadu Ceramics Limited (TACEL) along with the service rendered in the Social Welfare Department, for calculating pension, ignoring the brief intermittent gap of non employment before joining the Social Welfare Department. This Court allowed the said writ petition by directing the respondent-authorities, to grant benefits in light of the order passed by this Court in W.P.No. 8415 of 2009 dated 03.12.2009. Based on the directions issued by this Court, the respondent passed order granting benefits vide G.O.(D).No. 1, Social Welfare & Nutritious Meal Programme (SW1) Department, dated 04.01.2018. Subsequently, R.Kesavan was also granted similar relief vide G.O.(Ms) No. 206, Social Welfare & Nutritious Meal Programme (SW 1) Department, dated 09.10.2019.

8. Under the facts and circumstances of the case and in the light of the fact that the respondents do not deny that the petitioner is similarly placed as



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R.Kesavan and K.Aanthanarayanan, who were extended the benefit of

including the services under TACL, by ignoring the intermittent gap before joining the 2nd respondent department, for calculating pensionary benefits, albeit by virtue of order of this Court, I am of the view that similar benefit deserves to be extended to the petitioner, more so, when no specific reasons are assigned for not extending the same benefit to the petitioner in the counter affidavit. I am therefore of the view that the petitioner herein is also entitled to extension of the same benefits.

9. Accordingly, I am inclined to issue the following directions;

- i. The petitioner shall repay the amount already received towards gratuity, retrenchment compensation and Government contribution towards EPF, along with the interest at the rate of 8% per annum, and submit the receipt in proof of such payment to the respondents, within a period of four weeks from the date of receipt of a copy of this order.
- ii. On receipt of the same, the 1st respondent is directed to revise the benefits (Gratuity, retrenchment compensation and Government contribution towards EPF) on par with the similarly placed persons, namely, K.Anantharayanan and R.Kesavan, and in tune with the order passed by this Court in W.P. No. 8415 of 2019, dated 05.12.2009.



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iii. The respondents are directed to disburse the benefits to the petitioner, within a period of eight (8) weeks from the date of compliance of directions (i) of this order.

10. With the above directions, the writ petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

18-03-2025

Index : Yes/No

Internet : Yes/ No

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To

1. The Secretary to Government

Department for Welfare of the Differently Abled, Secretariat, Chennai.

2. The Director for Welfare of the

Differently Abled, O/o. The State Commissionerate
for the Differently Abled, No.5, Kamarajar Salai, Chennai

3. The Secretary to Government,

Social Welfare and Nutritious Meal Programme Department,
Secretariat, Chennai 9



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N. MALA, J.

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