

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

CORAM:

THE HON'BLE MR.JUSTICE D. HARIPARANTHAMAN

W.P.No.21067 of 2015

A.Sugumaran

...Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai - 600 009.
2. Director of Rural Development and
Panchayat Raj Department,
Panagal Buildings, No.1, Jeenais Road,
Saidapet, Chennai - 600 015.
3. The District Collector,
Collectorate,
Thiruvannamalai District.
4. The Accountant General,
Accounts and Entitlement,
Nandanam, Chennai - 600 018.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondents to count half of the service rendered by the petitioner as Panchayat Clerk from 01.08.1982 till 04.07.2012 along with the regular service rendered by the petitioner as Junior Assistant / Rural Welfare Officer Grade II from 05.07.2012 till 31.12.2013 as qualifying service for the purpose of sanctioning pension and to send pension proposal to the fourth respondent and grant pension to the petitioner with all consequential benefits.

For Petitioner : Mr.V.Ravikumar
For Respondents : Mr.S.Navaneethan
Addl. Govt. Pleader for RR1 to 3
Mr.Vijayashankar for R4

O R D E R

Heard both sides.

2.0. The background facts leading to the filing of this writ petition run thus :

2.1. The petitioner was appointed as Panchayat Clerk on Part Time basis on 01.08.1982 for four panchayats, namely, Vakkadai, Thirumani, Melnagarampattu and Kazhanipakkam.

2.2. While so, he was brought to full time employment as Panchayat Clerk by the order in the proceedings Na.Ka.No.7586/90 Thi.4, dated 29.12.1990, issued by the Commissioner of Panchayats, Cheyyar, and he was granted honorarium of Rs.400/- p.m. with effect from 01.01.1991.

2.3. Thereafter, he was granted time scale of pay of Rs.1300-20-1500-25-2000/-. The same was also revised subsequently pursuant to the recommendations of the Official Committee appointed by the Tamil Nadu Government to give recommendations based on the VI Pay Commission of the Central Government and the scale was revised to Rs.2500-5000 with Grade Pay of Rs.500/-.

2.4. He was appointed as Panchayat Clerk in Thozhupedu Panchayat on Full Time basis.

2.5. While so, though the Government issued G.O.Ms.N.963, Rural Development (E.7) Department, dated 28.11.1990, brining the Panchayat Clerks to regular establishment and to grant them time scale of pay by appointing them as Junior Assistants/Rural Welfare Officers Grade II and Cashiers, he was appointed to the post of Junior Assistant only with effect from 05.07.2012.

2.6. He retired from service on 31.12.2013, on reaching the age of superannuation.

2.7. Since he is not paid pension and other terminal benefits, in spite of his representation dated 17.07.2013 to the first respondent/Government, the petitioner filed this writ petition seeking for a direction to the respondents to count

half of the service rendered by him as Part Time Panchayat Clerk/Full Time Panchayat Clerk from 01.08.1982 to 04.07.2012 along with regular service for the purpose of pension.

3.1. The petitioner relies on G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011, to count half of the service rendered as Part Time Panchayat Clerk from 01.08.1982 to 31.12.1990 along with regular service for pension.

3.2. According to the learned counsel for the petitioner, in view of Rule 11(4) of the Tamil Nadu Pension Rules read with the judgment of this Court in Chinniyan V. State of Tamil Nadu, reported in (2014) 6 MLJ 316, half of the service rendered in whole time employment as Panchayat Clerk from 01.01.1991 to 04.07.2012 has also to be counted for pension.

3.3. The learned counsel submitted that in the cases of hundreds of Plot Watchers in the Forest Department, who served on daily wages basis and brought to regular service after 01.04.2003, the benefit of counting of half of their service as Plot Watcher on consolidated pay along with regular service was given.

3.4. The learned counsel brought to my notice the judgment of the Division Bench of this Court in W.A.Nos.27 and 28 of 2012 dated 13.02.2012 (Government of Tamil Nadu rep. by its Secretary to Government Vs. M.Gopal), which was confirmed by the Hon'ble Apex Court in SLP Nos.14838-14839 of 2012 on 10.05.2012 and the same was implemented by the Government in G.O.Ms.No.183, Environment and Forests (FR-2) Department, dated 18.07.2012. He also relied on the judgments, that are enclosed in the typed set of papers and submitted that in those cases, Government Orders were issued implementing the orders of this Court granting pension to those Plot Watchers in the Forest Department, who were brought to regular establishment after 01.04.2003.

3.5. According to the learned counsel, the petitioner stands in a better footing as he was in time scale of pay from 01.01.1991, while the Plot Watchers in the Forest Department were on daily wages / consolidated pay.

4.1. On the other hand, learned Additional Government Pleader submitted that since the petitioner was brought to regular establishment after 01.04.2003, G.O.Ms.No.408, Finance Department, dated 25.08.2009, or Rule 11(4) of the Tamil Nadu Pension Rules could not be applied to the case of the petitioner and therefore, the petitioner could not seek to count half of

the service rendered by him on while time basis in consolidated pay and also in special time scale of pay from 01.01.1991 to 04.07.2012. In that event, the petitioner has not rendered the eligible service for pension.

4.2. According to the learned Government Advocate, G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011, is also not helpful to him, as G.O.Ms.No.39, fixes a cut off date as 01.04.2003 and only those persons, who are absorbed as Junior Assistant before 01.04.2003, could seek the benefit of that G.O.

4.3. Since, the petitioner was brought to regular establishment on 04.07.2012, much after 01.04.2003, according to the learned Government Advocate, G.O.Ms.No.39, is of no use to the petitioner.

5. I have considered the submissions made by either side.

6. The petitioner, in the typed-set of papers, enclosed the order of the Commissioner of Panchayats, Cheyyar, dated 29.12.1990 in Na.Ka.No.7586/90, Thi.4, appointing him in Thozhupedu Panchayat Union as Full Time Panchayat Clerk with honorarium of Rs.400/- p.m.

7.1. At this juncture, it is useful to refer to certain provisions of the Tamil Nadu Pensions Rules, 1978 (hereinafter referred to as "the Rules").

7.2. Rule 2 deals with the applicability of the Rules. Rule 2 states that the Rules shall not apply to the persons in casual and daily rated employment and the persons paid from contingencies etc.,. That is, these categories of employees are not entitled to pension. Rule 2 of the Tamil Nadu Pension Rules is usefully extracted hereunder:

"2. Application - Save as otherwise provided in these rules, these rules shall apply to all Government Servants appointed to services and posts in connection with the affairs of the State which are borne on pensionable establishments whether temporary or permanent, but shall not apply to -

- (a) persons in casual and daily rated employment ;
- (b) persons paid from contingencies ;
- (c) persons employed on contract except when the contract provides otherwise ;
- (d) members of the All-India Service ;
- (e) persons entitled to the benefit of a Contributory

Provident Fund ;

- (f) persons who are entitled to the benefit under the Factories Act, 1948 and the Employees' Provident Fund Act, 1952, excluding those who are governed by Statutory Service Rules and belong to pensionable service."

7.3. However, Rule 11(2) of the Rules grants the benefit of counting of half of the service rendered in contingent or non-pensionable establishment followed with regular service for pension. It is better to extract Rule 11(2) of the Rules as hereunder :

11. Commencement of qualifying service -

...

(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

- (i). Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.
- (ii). Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.
- (iii). Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.
- (iv). Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.
- (v). Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.
- (vi). Pension or revised pension admissible as the case shall be paid from the 23rd June 1988.

Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

- (a) Service under non-pensionable establishment should have been in a job involving whole time employment.
- (b) The service under non-pensionable establishment should have been on time scale of pay.
- (c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break."

7.4. Rule 11(4) of the Rules provides for counting of half of the service rendered in non-provincialised service/consolidated pay/honourarium/ daily wages basis in a job in whole time employment along with regular service for pension. Rule 11(4) of the Rules is usefully extracted hereunder :

"11. (4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April shall be counted for retirement benefit along with regular service, subject to the following conditions, namely :-

- (i). Service rendered in non-provinciased service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment ;
- (ii). Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government ;
- (iii). Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2002 without a break ;

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that whether there was a break in service before their absorption in regular service before 1st April 2003, the same shall be specially condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

8.1. As stated above, Rule 11(2) of the Rules grants the benefit of counting of half of the service rendered in contingent service or non-pensionable establishment along with regular service. That is, if persons paid from contingencies or in non-pensionable establishments are brought to regular establishment, then half of the service in contingent establishment or in non-pensionable establishment shall be counted along with regular service for pension.

8.2. It is relevant to note that Rule 11(2) of the Rules does not prescribe any cut off date for counting of half of the service in contingent employment or in non-pensionable establishment along with regular service. That is, irrespective of their date of absorption in regular employment, half of the service in contingent employment or in non-pensionable establishment would be counted along with regular service. I like to make it clear that in their cases, the Rules make it clear that if the persons in contingent employment or in non-pensionable establishment are brought to regular establishment even after 01.04.2003, they are entitled to count half of the service in contingent employment / non-pensionable establishment along with regular service. Of course, such employees in contingent service or in non-pensionable establishment, should have joined in contingent employment / non-pensionsable establishment prior to 01.04.2003.

8.3. Obviously, it is on the reason that New Pension Scheme (Contributory Pension Scheme - CPS), brought into effect from 01.04.2003, is applicable to new recruits to Government service. I am of the view that the persons, who are brought to regular establishment from non-pensionable service, are not new recruits and they are regularised in service based on the past service rendered in the Government. Hence, no cut off date at

01.04.2003 could be fixed in respect of them.

8.4. However, though the Government thought to extend the benefit of counting of half of the service rendered in non-provincialised service / consolidated pay / honourarium / daily wages basis in whole time basis along with regular service for pension, by issuing G.O.Ms.No.408, Finance Department, dated 25.08.2009, placed restriction therein by fixing the cut off date at 01.04.2003. That is, those employees in non-provincialised service / consolidated pay / honourarium / daily wages basis on while time employment, on absorption into regular establishment after 01.04.2003, is not entitled to count half of the service along with regular service for pension, even though such employees rendered long service before 01.04.2003.

8.5. This G.O.Ms.No.408, dated 25.08.2009, was incorporated as Rule 11(4) of the Rules.

8.6. Hence, discriminatory treatment is meted out between the whole time employees in non-provincialised service / consolidated pay / honourarium / daily wages basis, who are brought to regular establishment on the one hand AND the employees in contingent service and non-pensionable establishment, who are brought to regular establishment on the other hand.

8.7. The aforesaid narration would make it clear that while Rule 11(2) of the Rules provides the benefit of counting of half of the service in contingent employment and in non-pensionable establishment along with regular service irrespective of the date of absorption as regular employee, Rule 11(4) of the Rules sought to introduce the cut off date as 01.04.2003 in the case of persons employed in non-provincialised service / consolidated pay / honourarium / daily wages basis on while time employment and subsequently brought to regular service.

8.8. Therefore, in those circumstances, this Court granted innumeral orders directing to count half of the service in the post of Plot Watcher along with regular service for pension in the case of various Plot Watchers in the Forest Department on daily wages basis, who are brought to regular establishment, after 01.04.2003.

9. For the aforesaid reasons, this Court in Chinniyan V. State of Tamil Nadu, reported in (2014) 6 MLJ 316 struck down the cut-off date as 01.04.2003 in Rule 11(4) of the Tamil Nadu Pension Rules and hundreds of Plot Watchers, who were absorbed after 01.04.2003 into regular service, were granted pension.

10.1. It is also relevant to take into account the case of the Secondary Grade Teachers in Private Aided Schools governed by G.O.Ms.No.155, School Education Department, dated 03.10.2002, who are brought to regular service after 01.04.2003 and granted pension by counting their service rendered before their regular service.

10.2. That is, the Private Aided Schools appointed B.Ed. Qualified persons in Secondary Grade Teacher post and the Government refused to give grant to those teachers on the ground that they did not possess the requisite qualification to hold the post of Secondary Grade Teacher.

10.3. When the matter came up before this Court, this Court by the order dated 19.05.1998, upheld the Government Order and held that the teachers did not possess qualification to hold the post of Secondary Grade Teacher, as the B.Ed. Qualification is not higher qualification than the Secondary Grade Teacher qualification and it is a different qualification.

10.4. A Division Bench of this Court in Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School V. The State of Tamil Nadu, 2002 WLR 173, held that such appointments of B.Ed. qualified candidates as Secondary Grade Teachers made upto 19.05.1998 in aided schools have to be approved by giving special training.

10.5. Pursuant to the Division Bench judgment, G.O.Ms.No.155, School Education Department, dated 03.10.2002, and those teachers would be imparted Child Psychology Training for a period of a month and thereafter, they would be absorbed as full time teachers. Accordingly, Child Psychology training was imparted and thereafter, all those teachers were brought to regular establishment, much after 01.04.2003.

10.6. They were denied pension on the ground that they were appointed after 01.04.2003. When they questioned the same, a Division Bench of this Court in the decision in State of Tamil Nadu V. Pallivasal Primary School, 2004 (2) LW 591, held that services rendered by the Teachers prior to regular service shall be counted along with regular service for pension.

10.7. Placing reliance on the aforesaid facts, this Court issued various orders in the case of daily wage Plot Watchers in Forest Department, that are enclosed in the typed-set of papers, directing to count half of the daily wages service along with regular service, when these persons brought to regular employment after 01.04.2003.

11. It is worthwhile to note that in the case of those Teachers in Private Aided Schools, the benefit of counting the entire service rendered before regularisation was granted. But the petitioner in the case on hand, who rendered full time service, seeks to count only half of the service on full time employment basis before 04.07.2012.

12. In view of the aforesaid reasons, I am of the view that the petitioner is also entitled to count half of the Full time service from 01.01.1991 to 04.07.2012 along with his regular service for pension.

13. The only issue that remains for consideration is as to whether the petitioner is entitled to count 50% of service rendered on part time basis from 01.08.1982 to 31.12.1990, in view of G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011.

14. The learned counsel for the petitioner relies on G.O.Ms.No.39, Rural Welfare and Panchayat Raj Department, dated 13.06.2011, to count half of the service rendered on part-time basis from 01.08.1982 to 31.12.1990.

15. While the Rule 11(2) and 11(4) of the Tamil Nadu Pension Rules seek to count half of the service rendered on whole time employment in Government departments with regular service for pension, whatever be the nomenclature of such service before regular service, the Rules do not confer any benefit of counting of half of service rendered on part time basis along with regular service.

16. That is, if a part time employee in Government Department has become regular employee, the Rules do not provide the benefit of counting any portion of the service rendered in part time basis along with regular service for the purpose of pension.

17. But the Government thought to extend the benefit of counting half of the service of part time Panchayat Clerks in Rural Development Department along with their regular service in G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011, and prescribes that such part time employee should have come to regular establishment before 01.04.2003 to count the half of the service in part time employment.

18. This Court in various decisions held that counting of half of the service in Part Time employment along with regular service in Rural Development Department alone, in view of G.O.Ms.No.39, referred to above, is not correct and such benefit shall be extended to part time employees in other Departments as well, otherwise, the action of the State would amount to discrimination hit by Article 14 of the Constitution.

19. Further, if half of the service of the part time employees along with regular service is counted, the fixation of 01.04.2003 as cut off date also has no rationale.

20. The cut off date 01.04.2003 is prescribed in G.O.Ms.No.39, since the New Pension Scheme (CPS) came into effect from 01.04.2003 and the new recruits in Government service after 01.04.2003 are not governed by the Tamil Nadu Pension Rules.

21. But the part time employees are not directly recruited new recruits and they are already serving in the Government departments and they are brought to regular establishment. Hence, the question of prescription of the cut off date at 01.04.2003 would not arise in their case. Hence, this Court issued directions in many cases to count half of the service of such Part time employees, who are brought to regular establishment, without reference to 01.04.2003, along with regular service for pension and also to extend the benefit to all Departments.

22. While so, the Accountant General sought a clarification from the Government as to whether the Government wants to extend the counting of half of the service along with regular service to the part time employees as per G.O.Ms.No.39, dated 13.6.2011, when the Rules do not provide for the same.

23. In those circumstances, the Government issued G.O.Ms.No.77, Rural Development and Panchayat Raj Department, dated 12.07.2013, stating that the benefit of counting half of the service granted to the part time employees in G.O.Ms.No.39 is withdrawn with effect from the date of issuance of G.O.Ms.No.77.

24. Considering the above G.O.Ms.No.77, this Court in the order dated 19.11.2013 in W.P.(MD)No.16711 of 2013 has held

that since the Government granted the benefit of counting 50% of the part time service along with regular service, in view of G.O.Ms.No.39, the same benefit shall be extended to everybody, who were absorbed to regular establishment from part time establishment in all the Departments and retired upto the date of issuance of G.O.Ms.No.77.

25. Applying the said order dated 19.11.2013 in W.P. (MD)No.16711 of 2013, the petitioner is not entitled to count 50% of the past service in part time employment, since he retired from service on 31.12.2013. The order of this Court dated 19.11.2013 in W.P.(MD)No.16711 of 2013, referred to above, states that 50% service of the part time employees, who retired prior to issuance of G.O.Ms.No.77, i.e. 12.07.2013, shall be taken into account along with regular service for pension.

26. Accordingly, the petitioner is entitled to count 50% of the service rendered from 01.01.1991 to 04.07.2012 as Full Time Panchayat Clerk along with regular service for pension. Hence, a direction is issued to the respondents to count 50% of the service of the petitioner as Full time Panchayat Clerk along with regular service for the purpose of pension and to pay pension and other terminal benefits to the petitioner, with arrears, within a period of six weeks from the date of receipt of a copy of this order.

27. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Rural Development and Panchayat Raj Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

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2. The Director of Rural Development and
Panchayat Raj Department,
Panagal Buildings, No.1, Jeenisi Road,
Saidapet, Chennai - 600 015.

3. The District Collector,
Collectorate,
Thiruvannamalai District.

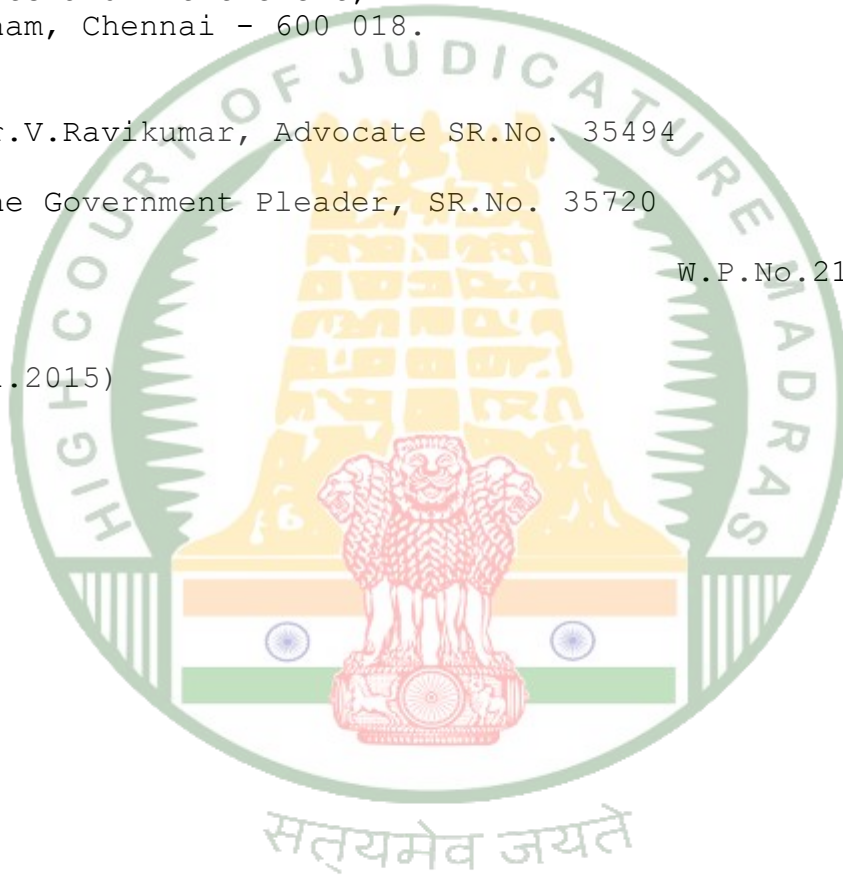
4. The Accountant General,
Accounts and Entitlement,
Nandanam, Chennai - 600 018.

1 CC to Mr.V.Ravikumar, Advocate SR.No. 35494

1 CC to the Government Pleader, SR.No. 35720

W.P.No.21067 of 2015

TEJ (CO)
PSI (17.11.2015)



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