

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2015

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.21510 of 2015

And

M.P.Nos.1 and 2 of 2015

1 Shelly
2 Samu
3 Muniammal
4 Narashimman
5 Babu
6 Pappammal
7 S.Pitchandi
8 C.Jeganathan
9 G.Vijaykumar
10 C.Murugan
11 K.Mangammal
12 Kondiah
13 V.Gangadharan

... Petitioner

Vs.

1 The Home Secretary
Government of Tamil Nadu
Fort St. George
Chennai-9.
2 The Director General of Police
Chennai-4.
3 The Superintendent of Prisons
Vellore.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records relating to the proceeding of the 1st respondent dated 17.5.2011 issued in his Letter No.65841/ Police-15/ 2010-3 and quash the same and consequently to direct the 1 to 3 respondents to count the 50% of Daily Wages/ Contingency Services of the petitioner prior to their regularization along with regular service for the purpose of calculating pension and take steps to pay the regular pension along with all consequential benefits.

For Petitioner : Mr.P.I.Thirumoorthy
For Respondents: Mrs.M.E.Rani Selvam
Additional Government Pleader

O R D E R

Heard both sides. By consent the writ petition is taken up for final disposal.

2.The learned counsel appearing for the petitioners seek the permission of this Court to withdraw this writ petition in respect of the petitioners 1 to 7 and 9 to 13 and has also made an endorsement to that effect in the petition. Recording the endorsement made by the learned counsel appearing for the petitioners, this writ petition is dismissed as withdrawn as against the petitioners 1 to 7 and 9 to 13.

3.1. Insofar as the petitioner No.8, namely, C.Jeganathan (hereinafter referred to as the petitioner) is concerned, he joined as a Scavenger in the Police Department on 15.04.1983, pursuant to the order dated 08.04.1983 in D.O.1212/83, B7/44091/83, issued by the Superintendent of Police, North Arcot, Vellore. The appointment order dated 08.04.1983 made it clear that the petitioner along with six others were appointed on Full-Time basis, but on daily wages basis. At the time of appointment, he was given wages of Rs.8.95 per day. It is useful to extract the appointment order of the Superintendent of Police, North Arcot, Vellore, as hereunder :

Appointment of full time Sweepers on Daily Wages / Scavengers

The following persons are appointed as daily wage full time sweepers/Scavengers on a daily wages of Rs.8.95. (Rupees Eight and paise ninety five only) per day and posted to the Places noted again teach :

1.
2.
3.
4. C.Jegannathan Full time Scavenger
(Daily wages to A.R., Vellore.
5.
6.
7.

2. The Reserve Inspector, Armed Reserve, Vellore, the Inspector, Vellore South and W.S.I. Vellore South Women PC will report the date of their joining to District Police Office at once."

3.2. While so, based on G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, the petitioner and 40 others were regularised in service, in G.O.Ms.No.1426, Home (Pol.XV) Department, dated 11.10.2007. Though G.O.Ms.No.22, as well as headlines of G.O.Ms.No.1426 contemplates regularisation, on completion of ten years of

service, the petitioner and 40 others were regularised from the date of issuance of G.O.Ms.No.1426, dated 11.10.2007. Paragraph 3 of G.O.Ms.No.1426 states that the regularisation is from the date of issuance of the orders.

3.3. While so, the petitioner retired from service on 30.06.2015. He was denied pension by the first respondent in the proceedings dated 17.05.2011 in Letter No.65841/Police.15/2010-3, on the ground that 50% of service rendered prior to 11.10.2007 could not be taken into account along with regular service, since the petitioner was brought to regular establishment only after 01.04.2003.

3.4. The petitioner filed this writ petition seeking to quash the aforesaid impugned order and for a direction to grant him pension by counting 50% of daily wages service along with regular service.

4.1. The petitioner relies on the case of one Dhanapal, who also retired from service on 30.06.2007, i.e., after 01.04.2003, and was granted pension by counting 50% of his daily wages service along with regular service. The said Dhanapal joined as a daily wages Sweeper in the Police Department on 30.11.1982 and he was regularised in service on 30.06.2007, the date of his retirement.

4.2. While so, the Government issued G.O.Ms.No.719, Home (Pol.XV) Department, dated 20.06.2008, to count 50% of his services before regularisation and granted him pension. The Government relied on G.O.Ms.No.437, Finance Department, dated 23.06.1988, for counting 50% of service rendered before regularisation of his service on 30.06.2007. The said G.O.Ms.No.719, is enclosed at page No.5 of the typed-set of papers.

4.3. The impugned order nowhere has taken into account the G.O.Ms.No.437, Finance (Pension) Department, dated 23.06.1988, that was relied on in the case of one Dhanapal, to count 50% of his daily wages service. Hence, I am of the view that the impugned order itself is discriminatory in refusing to grant the similar relief, that was given to Thiru.Dhanapal, to the petitioner.

4.4. It is stated that G.O.Ms.No.719, Home Department, dated 20.06.2008, was issued pursuant to the direction issued by this Court to count 50% of his service on daily basis before regularisation. But a reading of G.O.Ms.No.719, Home Department, dated 20.06.2008 does not state so. G.O.Ms.No.719, was issued pursuant to the order dated 25.06.2007 in W.P.No.21440 of 2007. In fact, this Court simply gave direction to dispose of the representation of the petitioner dated 10.04.2007 regarding regularisation of service from the date of

his initial appointment and absorption and accord him regular scale of pay in accordance with law.

4.5. But the Government chose to count 50% of service in the case of Dhanapal by issuing G.O.Ms.No.719, dated 20.06.2008, relying on G.O.Ms.No.437, Finance Department, dated 23.06.1988, but refused to extend the benefit to the petitioner in the impugned order dated 17.05.2011. Hence, on this ground alone, the impugned order is liable to be interfered with.

5.0. It is useful to consider Rules 2, 11(2) and 11(4) of the Tamil Nadu Pension Rules, 1978 (for short "the Rules").

5.1. Rule 2 deals with the applicability of the Rules. As per Rule 2, the Rules shall not apply to the persons in casual and daily rated employment and also the persons paid from contingencies etc. 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."

5.2. 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."

5.3. 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-provincliased 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."

6.1. 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.

6.2. 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. 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 and the Tamil Nadu Pension Rules are not applicable to those employees.

6.3. 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.

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

6.5. 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.

6.6. 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.

6.7. Hence, in my view, G.O.Ms.No.408, dated 25.08.2009, as well as Rule 11(4) of the Rules insofar as fixing the cut off date as 01.04.2003, are arbitrary and also discriminatory.

7. 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 the Forest Department of the Tamil Nadu Government granted pension to hundreds of Plot Watchers, who were absorbed after 01.04.2003 into regular service, based on various judgments of this Court, including the judgment in Chinniyan's case.

8.1. The fixation of cut off date as 01.04.2003 has no basis. Obviously, it is on the reason that New Pension Scheme (Contributory Pension Scheme - CPS) came into effect from 01.04.2003, and the same is applicable to new recruits to Government service after 01.04.2003 and they are not governed by the Tamil Nadu Pension Rules.

8.2. In the case of petitioner and other employees already serving as whole time employees in the departments, the question of prescription of the cut off date at 01.04.2003 would not arise for the aforesaid reason, since they are brought to regular establishment and they are not recruited directly. As stated above, the petitioner is not recruited as a fresh entrant, but he was regularised in service. Hence, I am of the view that the first respondent is not correct in refusing to grant the benefit of counting 50% of service past service before regularisation along with regular service for pension to the petitioner on the ground that he was brought to regular establishment after 01.04.2003.

9. Furthermore, the petitioner joined in whole time employment on daily wages basis on 15.04.1983. But he was brought to scale of pay from 11.10.2007, pursuant to the order in G.O.Ms.No.1426, dated 11.10.2007, from the date of issuance of that order. As per G.O.Ms.No.22, dated 28.02.2006, referred to in that order, regularisation should have been given effect to, on completion of 10 years of service. There is no reason given for not regularising the service of the petitioner for 24 years and keeping him as daily wages employee for more than two decades.

10. For all the aforesaid reasons, the first respondent - Government shall, at least, count 50% of the daily wages service along with regular service and the same is in consonance with Rule 11(2) read with Rule 11(4) of the Tamil Nadu Pension Rules and also the judgment of this Court in Chinniyan V. State of Tamil Nadu, reported in (2014) 6 MLJ 316.

11. In the result, the impugned order is quashed and this writ petition is allowed and a direction is issued to the first respondent to count half of the service of the petitioner before regularisation along with regular service for the purpose of pension and to pay pension and other benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pri/gg

To

- 1 The Home Secretary,
Home Department,
Government of Tamil Nadu,
Fort St. George
Chennai-600 009.
- 2 The Director General of Police
Chennai-4.
- 3 The Superintendent of Prisons,
Vellore.

+1cc to Mr.P. I. Thirumoorthy, Advocate, S.R.No.37272

+1cc to the Government Pleader, S.R.No.36684

EV(CO)
EU(06/11/2015)

W.P.No.21510 of 2015
And
M.P.Nos.1 and 2 of 2015

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