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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal(MD) No.1028 of 2015

AND

M.P.(MD) 2 of 2015

1. The Principal Accountant General,
(Accountant & Entitlments)
No.361, Anna Salai, Teynampet,
Chennai.

2. The State of Tamil Nadu,
Rep by Secretary,
Rural Development and Panchayat Raj
Department, Fort St.George, Secretariat,
Chennai 600 009.

3. The Commissioner,
Directorate of Rural Development & Panchayat Raj,
Panagal Building, Saidapet,
Chennai.

4. The District Collector,
Pudukottai District.

... Appellants/Respondents 1 to 4

Vs.

Rahamathullah

... Respondent / Petitioner

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 25.07.2014 made in W.P.(MD)No.14770 of 2012.

Prayer in WP(MD)14770 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Mandamus, directing the respondents to take into account half of the service of the petitioner from 16.09.1982 to 05.02.1995 for the purpose of revised pension, pension arrears and all attendant terminal benefits with 18% of interest per annum and pass such further or other orders as this Honourable Court.

For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader.

For Respondent : Mr.P.Ganapathi Subramanian



JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J)

The writ appeal is directed against the order passed by the learned single Judge in W.P(MD)No.14770 of 2012, dated 25.07.2014.

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2.The respondent who retired on 31.05.2007 as Rural Welfare Officer, Grade-I sought pensionary benefit and was granted except the benefit that would accrue to him as part time Panchayat Clerk. On denial of such pensionary benefit in relation to the services rendered by him as part time Panchayat Clerk, he made a request to the Principal Accountant General, the first appellant herein and that did not evoke any response. Therefore, he filed W.P(MD)No.14770 of 2012 seeking for a direction to the appellants to take into account half of the service of the respondent from 16.09.1982 to 05.02.1995 for the purpose of revised pension, pension arrears and all attendant terminal benefits with 18% interest per annum.

3.After hearing the submissions made on either side, the learned single Judge allowed the writ petition with the following observation:-

"12.In the result, the writ petition is allowed. The respondents are directed to process the application by taking into account 50% of the services rendered by the petitioner as part time Panchayat Clerk and the subsequent service rendered by him as full time regular employee and revise the pension accordingly. Such exercise shall be completed within a period of eight weeks. No costs".

4.The learned single Judge while deciding the issue drew strength from the order passed by this Court in W.P.No.22461 of 2008, dated 21.02.2013 wherein similarly placed employees like that of the respondent claimed same relief for sanction of pension and that writ petition came to be allowed directing the Government to sanction pension by taking into account 50% of the services rendered as part time Panchayat Clerks. The relevant portion of the said order is extracted hereunder:

"13.On consideration, I find that this writ petition deserves to succeed. The averments made in the writ petition go un rebutted. The specific stand of the petitioners is that Part-Time Panchayat Clerks or Full-Time Panchayat Clerks were performing the same duties, whereas nomenclature of Panchayat Clerks were given based on the income of Village Panchayat and population of the Village. If that is the case, the petitioners cannot be said to be Part-Time employees, not doing regular services, as it was merely a designation. It is for this reason, that the State Government issued G.O.(Rt)No.39 of the Rural Development and Panchayat (E5) Department, dated 13.06.2011 for counting 50% of the services rendered as Part-Time Panchayat Clerks, for being added to the Government service for the purpose of pensionary benefits."

5.It is further observed by the learned single Judge that having the said order was implemented by the Government and those similarly placed persons like that of the respondent have been benefitted, the Department ought not to have denied similar benefit to the respondent



herein.

6. The plea of the learned Special Government Pleader that after coming into effect G.O.Ms.No.79, dated 12.07.2013, there is no question of granting benefit in relation to Part Time Panchayat Clerk. That contention has also been repelled by the learned Single Judge at paragraph 12 of the order by placing reliance on clause 4(c) of the Government Order stating that benefits given to the pensioners in accordance with G.O.Ms.No.39, Rural Development and Panchayat Raj Department, dated 10.06.2011 need not be disturbed. The learned Single Judge further held that G.O.Ms.No.39 has accrued a right to those employees who have retired when it was in force and that cannot be taken away because of delay in sanctioning or for administrative reasons. Therefore, there is no conflict between G.O.Ms.No.39 dated 10.06.2011 and G.O.Ms.No.77 dated 12.07.2013. We are inclined to accept the view of the learned single Judge that saving clause 4 (c) of the Government Order in G.O.Ms.No.77 shall apply in all force to the employees who have retired when G.O.Ms.No.39 was in force and that is the tenor of the order passed by the learned single Judge.

7. In view of the above, we find no illegality or perversity in the order passed by the learned single Judge warranting interference by this Court. Hence, the writ appeal is dismissed. No costs. Consequently, M.P(MD)No.2 of 2015 is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Accountant General,
(Accountant & Entitlements)
No.361, Anna Salai, Teynampet,
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2. The Secretary,
State of Tamil Nadu,
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3. The Commissioner,
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Panagal Building, Saidapet,
Chennai.
4. The District Collector,
Pudukottai District.

+1 cc to MR.P.Ganapathi Subramanian, ADVOCATE, SR No.57658

+1 cc to Special Government Pleader , SR No.58126.

SH/SKS-RR:19.10.15/4P-7C