

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.09.2016

Coram

The Hon'ble Mr. Justice R.SUBBIAH

W.P. No.32548 of 2016

R.Govindan

... Petitioner

Vs

1.Government of Tamilnadu
rep. by its Principal Secretary to Government
Environment and Forest Department
Fort St.George, Chennai 600 009.

2.The Principal Chief Conservator of Forests,
Head of Forest Force
No.1, Jeenis Road
Panagal Building
Saidapet, Chennai 15.

3.The District Forest Officer/
Thiruvannamalai North Forest Division,
Polur, Thiruvannamalai District.

4.The Accountant General of Tamilnadu
Office of the Accountant General
Anna Salai, Teynampet, Chennai 18.

...Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, to direct the respondents to count half of the service rendered by the petitioner as Social Forestry Worker/Plot Watcher from 01.03.1979 till 06.08.2009 along with regular service rendered by the petitioner as Plot Watcher in the supernumerary post from 07.08.2009 to 31.03.2016 as qualifying service for pensionary benefits and send the proposal to the 4th respondent for grant of pension with all consequential monetary benefits.

For petitioner .. Mr.M.R.Jothimanian

For Respondent .. Mr.N.Inbanathan,
Government Advocate (Forests)

O R D E R

This Writ Petition is filed praying for issuance of a writ of mandamus to direct the respondents to count half of the service rendered by the petitioner as Social Forestry Worker/Plot Watcher from 01.03.1979 till 06.08.2009 along with regular service rendered by the petitioner as Plot Watcher in the supernumerary post from 07.08.2009 to 31.03.2016 as qualifying service for pensionary benefits and send the proposal to the 4th respondent for grant of pension with all consequential monetary benefits.

2(a) The petitioner joined as a Social Forestry Worker/Plot Watcher in third respondent Division on 01.03.1979 on daily wage basis and he continued to work there without any remarks. By virtue of G.O.64, the respondents 1 to 3 have drawn State-wide seniority list, as per the initial date of appointment of the daily wage workers in the Forest Department for the purpose of bringing them under regular time scale of pay and the petitioner was assigned with Sl.No.570 in the State-wide Seniority List of Plot Watchers/Social Village Forest Workers and he was conferred with all benefits as that of a Government Servant as on 29.08.2009 by order dated 29.08.2009 of the third respondent.

(b) On 31.03.2016, the petitioner was permitted to retire from service, without any pensionary benefits under the Tamil Nadu Pension Rules, 1978, on the ground that he was not having ten years of qualifying service for grant of pension. The first respondent also issued a letter to the second respondent stating that all persons who were recruited on or after 01.04.2003 are not eligible to get old pension scheme as per G.O.Ms.No.259 dated 06.08.2003 and according to the petitioner the Government Order may not be applied to him, as he was appointed on 01.03.1979 and he was in service till his retirement viz. 31.03.2016, without any break in service and as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, for calculating qualifying service, half of the service rendered by the petitioner as daily wage worker shall be counted and if that service was counted, the petitioner served more than ten years and therefore, the petitioner is entitled to pensionary benefits. Therefore, the petitioner has come forward with the present Writ Petition for the aforesaid relief.

3. The learned counsel for the petitioner submitted that the issue relating to this case is squarely covered by the decisions of this Court and in batch of Writ Petitions, this Court directed the respondents to count half of the service rendered by the workers who were employed on daily wage basis for the purpose of calculating qualifying service for grant of pension and relied upon the orders passed in W.P.Nos.2185 of 2012 etc. batch dated 13.6.2016 and another order dated 11.11.2003 passed in W.P.No.11857 of 2010 and the Writ Appeal Nos.27 & 28 of 2012 by the Hon'ble First Bench on the Appeals

filed by the respondents. The learned counsel also relied upon the Judgment rendered in W.P.Nos.11857 of 2010 etc. batch dated 11.11.2013, by Justice N.Kirubakaran, and various other Writ Petitions and Writ Appeal orders passed by the Hon'ble First Bench.

4.The learned Government Advocate appearing for the Forest Department submitted that though this Court allowed various Writ Petitions by invoking Rule 11(2) of the Tamil Nadu Pension Rules and directed the respondents to count 50% of the period during which a person was employed on daily wage basis for calculating pension, the relevant provision is 11(4) of the Pension Rules, which is subject to certain conditions and as the petitioner has not satisfied those conditions, his past service as Plot Watcher cannot be considered.

5.I am unable to accept the contentions of the learned Additional Government Pleader. In the Judgments referred to above, this Court consistently held that half of the service rendered by the daily rated worker shall be counted for grant of pension and following the same, the petitioner is also entitled to claim family pension. Admittedly, the petitioner joined service on 01.03.1979 as Plot Watcher on daily wage basis and his name was also included in the seniority list on the basis of G.O.64, for the purpose of regularising the service.

6.In the aforesaid decisions, the persons who were employed on daily wage basis and later brought into regular service were considered and their services on daily wage basis was taken into consideration for calculating pension and therefore, the petitioner is also entitled to claim that his service as a daily rated employee should be considered for calculating the pension.

7.Hence, the Writ Petition is allowed as prayed for. The respondents are directed to count half of the service rendered by the petitioner as Plot Watcher on daily wage basis along with regular service rendered by him as Forest Watcher from 01.03.1979 till 06.08.2009 as qualifying service for calculating pensionary benefits and send proposal to the fourth respondent, within a period of eight weeks from the date of receipt of a copy of this order and the 4th respondent is directed to consider the same and pass orders, within a period of six weeks thereafter. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Principal Secretary to Government,
Government of Tamilnadu,
Environment and Forest Department
Fort St.George, Chennai 600 009.

2.The Principal Chief Conservator of Forests,
Head of Forest Force, No.1, Jeenis Road
Panagal Building, Saidapet, Chennai 15.

3.The District Forest Officer/
Thiruvannamalai North Forest Division,
Polur, Thiruvannamalai District.

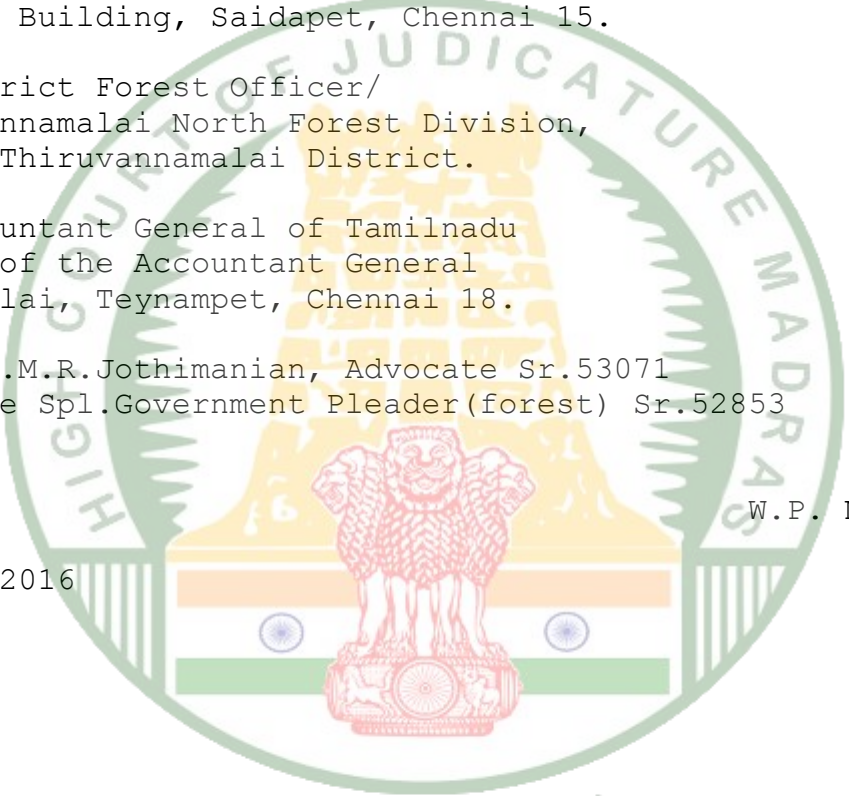
4.The Accountant General of Tamilnadu
Office of the Accountant General
Anna Salai, Teynampet, Chennai 18.

1 cc to Mr.M.R.Jothimanian, Advocate Sr.53071

1 cc to The Spl.Government Pleader(forest) Sr.52853

cp(co)
pmk.22.10.2016

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