

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32985 of 2016

P.M.Selvan

... Petitioner

Vs.

- 1 Government of Tamil Nadu
Rep by Principal Secretary to Government,
Forest and Environment 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
Interfaced Forestry Division (IFF)
Krishnagiri,
Krishnagiri District.
- 4 The District Forest Officer
Hosur Forest Division,
Hosur,
Krishnagiri District.
- 5 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 to issue a Writ of Mandamus directing the respondents to count half of the service rendered by the petitioner as plot watcher from 01.01.1981 to till 08.05.2003 along with regular service rendered by him as Forest Watcher and Forest Guard on from 09.05.2003 to 31.12.2015 as qualifying service for pensionary benefits and send revised proposal to the 5th Respondent for grant pension with all consequential monetary benefits.

For Petitioner : Mr.M.R.Jothimanian
For Respondents : Mr.N.Inbanathan
Government Advocate (Forests)

ORDER

By consent, the writ petition is taken up for final disposal.

2.The present writ petition has been filed seeking a Mandamus directing the respondents to count half of the service rendered by the petitioner as plot watcher from 01.01.1981 to till 08.05.2003 along with regular service rendered by him as Forest Watcher and Forest Guard on from 09.05.2003 to 31.12.2015 as qualifying service for pensionary benefits and send revised proposal to the fifth Respondent for grant pension with all consequential monetary benefits.

3. In the affidavit filed in support of this petition, it has been stated that the petitioner was appointed as Plot Watcher in the third respondent forest division on 01.01.1981 on daily wages and from that date, he was continuously engaged by the respondents 1 to 4 without any unblemished service. It is further stated that based on a Government Order, the respondents 1 to 4 draw 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 to confer all other consequential service benefits and the petitioner was assigned serial no.79 in the State-wide Seniority List of Plot Watchers/ Social Village Forest Workers and his service has been regularized after 22 years as Forest Watcher and was conferred with all benefits as that of the Government servant as on 14.05.2003 vide order dated 09.05.2003 and further promoted as Forest Guard vide order dated 14.09.2010 and was allotted to the fourth respondent division and was working there till his retirement.

4. It is further stated that 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 regularized on or before 01.04.2003. It is further stated that the Government Order in

G.O.Ms.259 dated 06.08.2003, stating that the persons recruited on or after 01.04.2003 are not eligible to get old pension scheme, is not applicable to the petitioner, since he was initially appointed on 01.01.1981 and was in service in the department till 08.05.2003 without any break in service.

5.It is further stated that Rule 11(2) of the Tamil Nadu Pension Rules, states that for calculating the qualifying service, half of the service paid from contingencies shall be allowed to be counted and further stated that he is eligible for pension as per the Rules, as he was appointed on daily wage basis from 01.01.1981 and was regularized on 09.05.2003. The petitioner in this regard, submitted representation dated 17.06.2016 to the respondents 1 and 2, but the same has not been considered so far. Hence, this petition.

6.The learned counsel appearing for the petitioner would submit that the issue relating to this case is squarely covered by the decisions of this Court and would also submit that 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. In support of his contentions, he relied upon the orders of this Court, made in

W.P.Nos.6040 to 6048 of 2014 dated 28.02.2014, W.P.No.12656 of 2013 dated 18.06.2014, W.P.No.18139 of 2014 dated 05.08.2014 and prayed for appropriate orders.

7.The learned Additional Government Pleader who takes notice for the respondents would submit 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.

8.This Court is 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 pension. Admittedly, the petitioner joined the service on 01.01.1981 as Plot Watcher and his services were also regularised on 09.05.2003.

9. 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.

10. Hence, this 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 from 01.01.1981 to 08.05.2003, along with regular service rendered by him, as qualifying service for calculating pensionary benefits and send proposal to the fifth respondent, within a period of eight weeks from the date of receipt of a copy of this order and the fifth respondent is directed to consider the same and pass orders, within a period of six weeks thereafter. No costs.

21.09.2016

pri
Index: Yes / No
Internet: Yes / No

To

- 1 Government of Tamil Nadu
Rep by Principal Secretary to Government,
Forest and Environment 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
Interfaced Forestry Division (IFF)
Krishnagiri,
Krishnagiri District.
- 4 The District Forest Officer
Hosur Forest Division,
Hosur,
Krishnagiri District.
- 5 The Accountant General of Tamilnadu,
Office of the Accountant General,
Anna Salai, Teynampet, Chennai – 18.

R.SUBBIAH,J.

pri

W.P.No.32985 of 2016

21.09.2016