BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :14.06.2016
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD)No.11807 of 2014
and
M.P.(MD)No.1 of 2014

K.Gopinathan .. Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Revenue Department,
St.George fort,
Chennai-600 009.

2.The District Collector,
Nagercoil,
Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to refix the pension of the petitioner, by considering the petitioner's entire period of service , i.e., from 21.07.1975 to 31.08.2010, on par with the various judgments made by this Court and further direct the respondents to sanction all pensionary benefits to the petitioner.

For Petitioner :Mr.C.Kishore

For Respondents : T.R.Janarthanan
Additional Government Pleader

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ORDER

The petitioner, Mr.K.Gopinathan, who was temporarily appointed as "Thalayari", by the order passed by the Tahsildar, Kalkulam Taluk, Thuckalay, Kanyakumari District vide A2/18736/75/(i) by the third respondent on 21.07.1975, on the basis of G.O.Ms.No.1914 Rev. dated 19.04.1973 and was given the benefit of regularisation on 01.06.1995, in the light of G.O.Ms.NO.625, Revenue Department, dated 06.07.1995, has come to this Court seeking Writ of Mandamus directing the respondents to refix the pension of the petitioner, by considering the petitioner's entire period of service , i.e., from 21.07.1975 to 31.08.2010, on par with the various judgments passed by this Court viz., W.P.(MD)No.1716 of 2005, dated 24.08.2007 in *K.Raman Nair Vs. The District Collector, Nagercoil and another*, which was confirmed by the Hon'ble Division Bench in W.A.(MD)No.16 of 2009, dated 16.02.2009 and also another order passed by me in W.P.(MD)No.12953 of 2014, dated 17.11.2014 in *N.Madhavan Nair Vs. The State of Tamil Nadu, represented by its Secretary, Revenue Department, Chennai and Others.*

2. A short counter affidavit has been filed by the third respondent.

3. Heard the submissions made by the learned Counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. The petitioner was temporarily appointed as "Thalayari" by the proceedings issued by the Tahsildar, Kalkulam Taluk, Thuckalay, Kanyakumari District vide A2/18736/75/(i) by the third respondent on 21.07.1975, on the basis of G.O.Ms.No.1914 Rev. dated 19.04.1973, he has been paid at the scale of pay fixed for the Thalayari under the Tamil Nadu pattern. After serving 35 years of service, he has taken Voluntary Retirement on 31.08.2010 citing certain family problems. After his retirement, the third respondent has sent pension proposals to the Principal Accountant General's Office at Chennai through proper channel. The Principal Accountant General also sanctioned pension in favour of the petitioner from 01.06.1995 to 31.08.2010. The same is being received by the petitioner. Since his services were regularised on the basis of G.O.Ms.NO.625, Revenue Department, dated 06.07.1995 with effect from 01.06.1995 stating that his appointment was made as part time one as Thalayari in the year 1975, the respondents have not taken into account his initial appointment from 21.07.1975. Hence it is pleaded that he is entitled to get his pension from the date of his initial appointment. In this regard, he has placed reliance on an order passed by this Court in W.P.(MD)No.1716 of 2005, dated 24.08.2007 in *K.Raman Nair Vs. The District Collector, Nagercoil and another,* wherein similar objection raised by the respondents was repelled by this Court, in the light of Rule 11 of the Tamil Nadu Pension Rules as contained in Chapter-III and also in the light of the order passed by the learned Single Judge of this Court in W.P.(MD)No.15258 and 15468 of 2006, dated 18.07.2007. I find full merits in his submission for in the said decision, the learned Single Judge applying the provisions contained in Rule 11 of the Tamil Nadu Pension Rules has held that the past services, even in temporary capacity has to be taken into account. On that basis, the learned Single Judge therein has held that pension should be paid taking into account the entire period of service with initial appointment i.e., with

effect from 21.07.1975. That was the original date of appointment of Mr.K.Raman Nair. On that basis, Mandamus was issued to the respondents therein to calculate the entire pension and further direction was also given to pay arrears of pension payable thereon. This order of the learned Single Judge is also confirmed in W.A.(MD)No.16 of 2009, dated 16.02.2009. It is therefore pertinent to extract paragraphs 8, 9 and 10 the above judgment which are extracted hereunder:

"8. Rule 11 of the Tamil Nadu Pension Rules, 1978, of which reference has been given by the learned Single Judge, relates to commencement of qualifying service for payment of pension. The relevant portion of which is quoted hereunder:

"11.Commencement of qualifying service.-(1) subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date of takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation."

It will be evident from the above rule that for payment of pension not only the appointment in the substantive capacity to be looked into but the appointment in an officiating or temporary capacity is also to be counted for commencement of qualifying service.

So far as the Village Assistants are concerned, they are guided by Special Rules known as Tamilnadu Village Assistants Pension Rules, 1996. Chapter-II of the said Rules deals with Pension and Gratuity and relevant portions of which are quoted hereunder:

"CHAPTER-I GENERAL

(1)(i) These rules shall be called the Tamil Nadu Village Assistants Pension Rules 1996.

(ii) They shall be deemed to have come into force on 1st June 1995.

(2) These rules shall apply to the full time Village Assistants employed in the Revenue Department.

CHAPTER -II. PENSION AND GRATUITY

3) The age of retirement shall be 60 years.

4) (a) In computing the length of service for calculation of pension and gratuity temporary, officiating and permanent (full time) service shall be reckoned as qualifying service.

(b) If there are breaks in service on account of any reason, such breaks shall not have the effect of forfeiting the past service, provided the Village

Assistants had been discharged or retired as per rules and orders.

(c) Leave without pay, suspension allowed to stand as a specific penalty, overstayal of joining time or leave not subsequently regularized and periods of breaks shall not be reckoned as qualifying service.

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7(i) A Village Assistant shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per rules and orders.

(i) Pension shall be calculated at 50% of average emoluments drawn in the last 10 months before retirement for qualifying service of 66 half years and proportionate pension shall be paid for a qualifying service of less than 66 half years subject to a minimum of Rs.990/-".

9. From the aforesaid Special Rules relating to Village Assistants, it would be evident that not only the permanent (full time) service to be counted for reckoning the period of qualifying service but, the period of service rendered as temporary (full time) or officiating (full time) shall also be counted for reckoning the period of qualifying service.

10. The writ petitioner (respondent herein) having completed more than 10 years of service on temporary basis, since 21st July 1975, the entire period of service has to be counted for the purpose of granting pension, both as per the Special Rules and the General Rules, more particularly Rule 11 of the Tamil Nadu Pension Rules, 1978."

5. Following the above order, I have also, while facing the similar issue, has allowed the similar prayer in W.P.(MD)No.12953 of 2014, dated 17.11.2014 holding that Thalayari who was appointed after completing more than 10 years is entitled to count his entire period of service from the initial appointment for the purpose of granting pension as per the Special Rules and General rules more particularly, Rule 11 of the Tamil Nadu Pension Rules 1978. Therefore, the claim of the petitioner, in the light of the above orders, deserves to be allowed, because admittedly the petitioner has, as on today, received the pension only from the date of regularisation and not from the date of original appointment in the post of Thalayari in the year 1975. Therefore, his original appointment as "Thalayari" given to him on temporarily basis by the Tahsildar, Kalkulam Taluk, Thuckalay, Kanyakumari District vide A2/18736/75/(i) by the third respondent on 21.07.1975, on the basis of G.O.Ms.No.1914 Rev. dated 19.04.1973, shall also be deserved to be counted, along with his subsequent services. Accordingly, this Writ Petition stands

allowed and a Mandamus is issued to the respondent to refix his pension by counting his initial temporary appointment as Thalayari from 21.07.1975 to 31.08.2010 and disburse his arrears of salary and pension within a period of ten weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary,
The State of Tamil Nadu,
Revenue Department,
St.George fort,
Chennai-600 009.

2.The District Collector,
Nagercoil, Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk, Thuckalay,
Kanyakumari District.

+One cc to M/s.C.Kishore , Advocate, SR.No.30211
+One cc to The Special Government Pleader, SR.no.30503
ssl
RL/6C/5P/ARK/PV/28/6/2016

W.P.(MD)No.11807 of 2014 and
MP(MD)No.1 of 2014

14.06.2016