



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.13032 of 2015

WEB COPY

P.Manickavasagam

..Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary
to Government, Revenue Department,
Secretariat,
Chennai - 600 009.

2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.

3.The District Collector,
Madurai District,
Madurai.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the first and third respondents ie., the Principal Secretary to Government, Revenue Department, Chennai and the District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai including half of the services put in by the petitioner as Thalayari for the period from 05.03.1979 to 31.05.1995 ie., for a period of 16 years under Rule 11(4)(iii) of the Tamil Nadu Pension Rules, within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingham
For Respondents : Mr.M.Murugan,
Government Advocate

ORDER

The Petitioner Mr.P.Manickavasagam, has filed this Writ Petition seeking for issuance of a Writ of Mandamus, directing the first and third respondents ie., the Principal Secretary to Government, Revenue Department, Chennai and the District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai, including half of the services put in by the petitioner as Thalayari for the period from 05.03.1979 to 31.05.1995 ie., for a period of 16 years, under Rule 11(4)(iii) of the Tamil Nadu Pension Rules, within a specified time frame that may be fixed by this Court.



2. The learned counsel for the petitioner has submitted that the Division Bench of this Court has already given a quietus to the issue in question in W.A.(MD).No.204 to 211 of 2011, vide judgment dated 14.02.2011. The said judgment has also attained finality.

3. Heard the submissions made on behalf of the respondents.

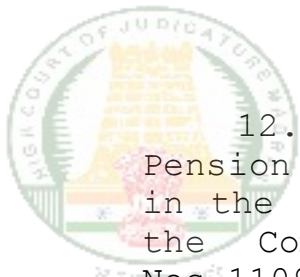
4. . As rightly pointed out by learned counsel for the petitioner, the issue involved in this Writ Petition is extensively discussed by the Division Bench of this Court in W.A.(MD).No.204 to 211 of 2011 dated 14.02.2011. Therefore, this Court deems it appropriate to extract the order passed in W.A.(MD).No.204 to 211 of 2011 dated 14.02.2011. In the said judgment, the claim of the respondents therein was negated by the Division Bench of this Court, which is extracted below:-

"9. It is useful to refer to Rule 11 of the Tamil Nadu Pension Rules, 1978, which deals with commencement of qualifying service for pensionary benefits, which reads as follows:-

"11. Commencement of qualifying service - Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he 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."

10. A cursory reading of the above rule makes it manifestly clear that the qualifying service of a Government servant commences from the date on which he takes charge of the post, to which he is first appointed either substantively or in an officiating or in temporary capacity.

11. A similar issue came up for consideration before a Division Bench of this Court in W.A.(MD).No.363 of 2010 [The Tahsildar, Vs. Esakki and others] and by Judgment dated 20.08.2010, the Division Bench, following the Judgment of the Supreme Court in the case of A.P.Srivastava v. Union of India and ors., reported in 1996 (1) LLJ 241 and also the order of this Court in Chinna Alagi, O.A. v. State of Tamil Nadu reported in 2006 (5) CTC 320, dismissed the Writ Appeal



12. In view of the said settled position of law and the Pension Rules, as stated supra, we do not find any infirmity in the order passed by the learned Single Judge. Therefore, the Common Order dated 06.03.2009 made in W.P.(MD). Nos.11094, 11095, 11096, 11097, 11098, 11099, 11100 and 11101 of 2008 is confirmed and these Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed."

5. Following the Division Bench order of this Court, I have also allowed a batch of Writ Petitions in W.P(MD).Nos.6905 to 6908 of 2016 dated 12.07.2016. Therefore, having lost before the learned Single Judge as well as before the Division Bench of this Court, it is not open to the respondents to deny the benefits to the petitioner too. It is pertinent to point out that when the respondents had already complied with the orders passed by this Court, in certain cases, in my considered view, the case of the petitioner, is also squarely covered by the observation made by the Honourable Division Bench of this Court in the above mentioned batch of W.A(MD)Nos.204 to 211 of 2011, dated 14.02.2011 and he is also entitled to get the benefit of G.O.Ms.No.173 Revenue (Ser8(1) Department, dated 29.05.2014.

6. In view of the above, the respondents are directed to give the benefit of G.O.Ms.No.173 Revenue (Ser8(1) Department, dated 29.05.2014. In other words, the respondents are directed to sanction and pay pension to the petitioner herein by taking into account the service rendered by him prior to 01.06.1995 in the post of Village Assistant/Thalaiyari. Such exercise shall be done, within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is disposed of. No Costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
to Government, Revenue Department,
State of Tamil Nadu,
Secretariat,
Chennai - 600 009.



2. The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.

WEB COPY

3. The District Collector,
Madurai District,
Madurai.

+1cc to M/S.S.Visvalingam, Advocate SR.No.36583

W.P (MD) No.13032 of 2015

14.07.2016

pm

SD/DB/23.08.2016/4P/5C