BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.06.2016
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD)No.15473 of 2014

V.Karuppiah .. Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Secretariat, Chennai.

2.The Revenue Divisional Officer,
Usilampatti Division,
Usilampatti,
Madurai District.

3.The Tahsildar,
Tirumangalam Taluk,
Tirumangalam,
Madurai District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Certiorarified Mandamus, to call for the records of the third respondent relating to his orders issued in memo. No.ROC.355/2014/A2 dated 08.07.2014 and quash the same and consequently direct the respondents to count the services put in by the petitioner in the cadre of Thalaiyari on consolidated pay as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978 along with regular time scale of pay in the cadre of Village Assistant for the purpose of calculation of pension and send pension proposals within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.M.Murugan, Government Advocate

O R D E R

This writ petition has been filed by one Karuppiah, a retired Village Assistant, challenging the order issued by the third respondent/Tahsildar of Tirumangalam Taluk, Madurai District, in Memo No.ROC.355/2014/A2, dated 08.07.2014 in and by which, the third respondent has refused to consider his request for payment of pension on the ground that he has not rendered the minimum pensionable service of 10 years.

2.Heard both sides.

3. Assailing the impugned order, learned counsel for the petitioner would submit that the order dated 29.09.1958 of appointing the petitioner as miras talayasri, issued by the second respondent/Revenue Divisional Officer, Usilampatti, itself clearly shows that even on the date of his appointment, he was working on regular basis, on a consolidated pay till 31.05.1995. Thereafter, the respondents have given the benefit of regularisation to the petitioner from 01.06.1995. However, on reaching the age of superannuation within a short period of 4 years, he retired from service with effect from 30.06.1999, therefore, the respondents have taken a hard stand, denying the benefit of pension on the sole ground that the petitioner has not put in minimum pensionable service of 10 years.

4. Placing reliance on Rule11(4) of the Tamil Nadu Pension Rules, 1978, learned counsel for the petitioner contended that when Rule 11 (4) is very clear that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 01.01.1961 in respect of Government employees absorbed in regular services before 01.04.2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely,

"(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April, 2003 without a break, the impugned order passed contrary to Rule 11(4), he further pleaded that the impugned order is liable to be set aside.

5. Again taking support from the order, dated 04.11.2013, passed in W.P.(MD).No.5059 of 2009 *(S.Subbiah Maniyakar v. The Director of Pension, Chennai and three others)*, he would submit that in similar circumstances, when similar objection was taken by the respondents therein, this Court by applying Rule 11(4) of the Tamil Nadu Pension Rules, 1978 has held that while calculating the period of service for the purpose of pension, half of the service rendered while the Government servant was paid out of contingencies shall be allowed. On this basis, he pleaded the relief as prayed for, may be issued to the respondents, to pay pension to the petitioner as per the Tamil Nadu Pension Rules, 1978, by taking into account the half of the service rendered by the petitioner prior to 01.06.1995 as miras talayasri.

6. Mr.M.Murugan, learned Government Advocate opposing the contentions made by the learned counsel for the petitioner, has submitted that the petitioner was appointed as a miras talayasri/Village Assistant from 29.09.1958 till 31.05.1995 only as a part time employee. However, he was absorbed into service from 01.06.1995, and retired on 30.06.1999, hence, he is not entitled to get the benefit of Rule 11(4) of the Tamil Nadu Pension Rules, 1978. I do not find any merit in his submission.

7. In the present case, the order dated 29.09.1958 passed by the second respondent clearly shows that the petitioner was appointed as miras talayasri, on regular basis that too, on a consolidated scale of pay, therefore, when he was serving as a regular Village Assistant from 29.09.1958 till 31.05.1995 on consolidated scale of pay, subsequently absorbed on 01.06.1995 in a regular time scale of pay and on attaining the age of superannuation, retired on 30.06.1999, the petitioner is entitled to get the benefit of Rule 11(4), which says that half of the service rendered by the petitioner on or after 01.01.1961 should be taken into account, for the purpose of pension.

8. Perusal of the extracts of the Service Register of the petitioner enclosed in the typeset of papers clearly shows that the petitioner was appointed as a Village Assistant on 29.09.1958 on regular basis with a consolidated pay. Secondly, his services were regularised from 01.06.1995, therefore, as held by this Court in the order dated 04.11.2013, passed in W.P.(MD).No.5059 of 2009 that under Rule 11 of the Tamil Nadu Pension Rules, while calculating the period of service for the purpose of pension, half of the service rendered, while the Government Servant was paid out of contingencies shall be allowed. From the date of appointment on 29.09.1958 till 31.05.1995, the petitioner has put in 37 years of service, besides his regular service of 4 years from 01.06.1995. If half of the services rendered by the petitioner from 29.09.1958 to 31.05.1995 is added as per Rule 11(4)of Tamilnadu Pension Rules, 1978, along with his regular service of 4 years from 01.06.1995 to 30.06.1999, the petitioner has put in more than 20 years of service, hence, he becomes eligible for pension. Therefore, the respondents are directed to count half of the service rendered by the petitioner from 29.09.1958 to 31.05.1995 as per Rule 11(4) of the Tamilnadu Pension Rules, 1978, along with the regular service of 4 years from 01.06.1995 to 30.06.1969 and calculate pension accordingly.

9. In the result, the impugned order is set aside and the writ petition stands allowed. The third respondent shall forthwith work out the pension proposal of the petitioner and forward the same to the Accountant General, Chennai, preferably within a period of four weeks from the date of receipt of a copy of this order. The Accountant General, Chennai, in turn, shall pass appropriate orders on the pension proposal within two weeks from the date of

receipt of the pension proposal. No Costs.

Sd/-
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Revenue Department,Secretariat,Chennai.

2.The Revenue Divisional Officer,
Usilampatti Division, Usilampatti,Madurai District.

3.The Tahsildar,
Tirumangalam Taluk, Tirumangalam, Madurai District.

+1 CC to Mr.S.VISWALINGAM, Advocate, SR No.33830
+1 CC to THE SPECIAL GOVERNMENT PLEADER , SR No.33907

W.P.(MD)No.15473 of 2014
28.06.2016

PJL
SH/GSV-PM/SAR-I:22.07.2016:4P/6C