



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

CORAM:

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THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.21786 of 2016

and

W.M.P (MD) No.15569 of 2016

Gnana Kumari

: Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.

2.The Accountant General,
361, Anna Salai, Chennai.

3.The Revenue Divisional Officer,
Usilampatti, Madurai District.

4.The Tahsildar,
Office of Tahsildar,
Peraiyur, Madurai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to count the 50% of prior service of regularization as qualified service along with regular service of petitioner's husband for grant of enhanced family pension at the rate of 50% last pay drawn and to refix the pension on the basis of total service rendered by her husband, revised pension, arrears, pensionary and other monetary benefits accrued thereon to the petitioner from the date of family pension within a short dated that may be fixed by this Court.

For Petitioner : M/s.K.Abiya

For Respondents : Mr.V.R.Shanmuganathan,
1, 3 and 4 Special Government Pleader.

For Respondent No.2 : Mr.P.Gunasekaran

O R D E R

<https://hcservices.courts.gov.in/hcservices/> This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents to count the 50% of prior service as qualified service along with regular service of the



petitioner's husband for grant of enhanced family pension at the rate of 50% last pay drawn and to refix the pension on the basis of total service rendered by her husband and to direct the respondents to pay revised pension, arrears, pensionary and other monetary benefits accrued thereon to the petitioner from the date of family pension.

2. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader, who took notice for the respondents 1, 3 and 4 and the learned counsel, who took notice for the second respondent. By consent, the writ petition itself is taken up for final disposal.

3. The brief facts leading to the filing of this writ petition are as follows:

The petitioner's husband namely, T. Mohankumar, was appointed as Village Assistant in Thullukuttinayakanur Village, Peraiyur Taluk, Madurai District, on 13.06.1990. His service was regularised on 01.06.1995 in the very same post. Due to harness, he died on 04.11.2002, while in service. After regularisation, he got 7 ½ years of regular service in the post of Village Assistant, before which, he had 5 years of service. Thus, he got 12 ½ years of service in the post of Village Assistant. Though, he has got 10 years of service, the respondents have denied the enhanced family pension at the rate of 50% of the last pay drawn, because of non-compliance of 10 years in regular service. The respondents fixed a sum of Rs.150/- as monthly family pension from the year 2002 to till 2009. Thereafter, a sum of Rs.560/- was given till June, 2013. After July, 2013, it has been enhanced upto Rs.1000/-. Thereafter, she received a sum of Rs.1,500/- per month till September, 2015. Thereafter, all of a sudden, without giving any notice, the respondents refixed and reduced the family pension as Rs.560/- in the month of October, 2015 and ordered recovery of Rs.300/-. The respondents stated that the enhanced family pension is only for Village Administrators family and not for Village Assistant family pensioners. In the petition filed by a similarly placed person, this Court directed the respondents to count the 50% of the service rendered by him prior to regularisation. Therefore, she made a representation to the respondent on 18.12.2015, praying to grant the enhanced family pension at the rate of 50% of the last pay drawn by her husband in service. The respondents have also not acted according to Rule 49(3)(a) of Tamil Nadu Pension Rules, 1978 as well as Rule 4(a) of Tamil Nadu Village Assistant Pension Rules. Since the representation has not been considered, this writ petition has been filed.

4. The learned counsel for the petitioner would submit that the petitioner is squarely covered by the decision of the Division Bench of this Court, dated 16.02.2009, made in W.A (MD) No.16 of 2009, wherein it has been held as follows:



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

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"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 jointing time or leave not subsequently regularized and periods of breaks shall not be reckoned as qualifying service.

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 yers 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 as per the Special Rules and the General Rules, more particularly Rule 11 of the Tamil Nadu Pension Rules, 1978.



11. In view of our above finding, we uphold the order passed by the learned Single Judge and dismiss the writ appeal. We make it clear that the respondents should pay pension in favour of the writ petitioner (respondent herein) within one month from today, if not yet paid, failing which they will be liable to pay 12% interest per annum from the date of retirement of the writ petitioner (respondent herein)".

5. The learned Special Government Pleader would submit that it is agreeable for the third respondent to consider the representation of the petitioner in the light of the decision of the Division Bench of this Court, dated 16.02.2009, made in W.A (MD) No.16 of 2009, and to pass appropriate orders within a period of four weeks.

6. Recording the submission made by the learned Special Government Pleader for the respondents 1, 3 and 4, the third respondent is directed to consider the representation of the petitioner dated 18.12.2015 in the light of the decision of the Division Bench of this Court, dated 16.02.2009, made in W.A (MD) No.16 of 2009 and to pass appropriate orders on merits and in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order. Until the disposal of the representation of the petitioner dated 18.12.2015, the respondents are directed not to make any recovery from the monthly pension of the petitioner.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS I)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.

2. The Accountant General,
361, Anna Salai, Chennai.

3. The Revenue Divisional Officer,
Usilampatti, Madurai District.



4.The Tahsildar,
Office of Tahsildar,
Peraiyur, Madurai District.

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+1cc to MR.K.Abiya, Advocate SR.No.68933
+1cc to special Government Pleader SR.No.69283
+1cc to Mr.P.Gunasekaran, Advocate SR.NO.69949

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ORDER MADE IN
W.P (MD) No.21786 of 2016
and
W.M.P (MD) No.15569 of 2016