

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Appeal No.1270 of 2017

1. The Government of Tamil Nadu
rep. by its Principal Secretary to Government
Rural Development and
Panchayat Raj Department
Fort St. George
Chennai 600 009.
 2. The Principal Secretary to
Government of Tamil Nadu
Finance Department
Fort St. George
Chennai 600 009.
 3. The Commissioner of Rural Development
and Panchayat Raj
Panagal Building
Saidapet
Chennai 600 015.
 4. The District Collector
Coimbatore District
Coimbatore.
- Appellants/Respondents

Vs

R. Gopalsamy ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.2743 of 2014, dated 27/8/2014.

Writ Petition No.2697 & 2743/14:

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to paragraph 4(b) of G.O.Ms.No.77 Rural Development and Panchayat Raj (PA4) department dated 12.7.2013 of the first respondent and quash the same and further direct the respondents to count 50% of the services rendered by the petitioners in the post of part time Panchayat clerk along with regular service for the purpose of pension in accordance with G.O.Ms.No.39 Rural Development Department and Panchayat Raj dated 13.06.2011.

For appellants ... Mr.M.Elumalai
Government Advocate

For respondent ... Mr.V.Suthakar

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J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J)

Challenge in this writ appeal, is to an order made in W.P.No.2743 of 2014, dated 27/8/2014, wherein the writ Court, following an earlier order of this Court, made in W.P.No.19624 of 2014, setting aside paragraph No.4 (b) of G.O.(Ms) No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12/7/2013, directed the appellants herein, to calculate and issue orders, granting pension and other benefits, within a period of eight weeks, from the date of receipt of the order, made in W.P.No.2743 of 2014.

2. Order, made in W.P.No.2743 of 2014, dated 27/8/2014, is impugned on the following grounds:-

(i). When the pensionary benefits of all employees of the Government are governed by the Tamil Nadu Pension Rules, 1978, if any change or modification in pension related matters is made, the same should be approved by the Legislature and the amendment incorporated in the Rules.

(ii). G.O.(Ms) No.39, Rural Development and Panchayat Raj (E5) Department, dated 13/6/2011, ordering that 50% of service period of Panchayat Assistant Grade - I or Grade II, both full time and part time clerks, absorbed in regular Government service before 1/4/2003 should be counted for pensionary benefits, is applicable only to the employees of Rural Development and Panchayat Raj Department, but the pensionary benefits was not approved by legislature, and was not incorporated in the Tamil Nadu Pension Rules, 1978.

(iii). Implementing G.O.(Ms) No.39, Rural Development and Panchayat Raj Department, dated 13/6/2011 would entail huge financial outlay and result in financial burden for the Government.

3. Though the order, made in W.P.No.2743 of 2014, dated 27/8/2014, is impugned on the above grounds, perusal of the supporting affidavit to the writ petition, shows that the respondent was initially appointed as Part-time Panchayat Clerk at Kanakampalayam Panchayat, with effect from 1/9/1968. Subsequently, on 3/6/1975, the District Collector, Coimbatore,

appointed the respondent herein, as full time Panchayat Clerk. On 27/12/1990, he has been promoted as Rural Welfare Officer, Grade II (in the cadre of Junior Assistant) against 10% vacancy reserved for them. On 23/2/2000, he has been promoted as Assistant, at Udumalpet Panchayat Union and thereafter, as Accountant (in the cadre of Assistant), on 15/9/2003, in the same Panchayat.

4. Though the appellants have opposed the prayer, to quash paragraph 4 (b) of G.O.Ms.No.77, Rural Development and Panchayat Raj (E4) Department, dated 12/7/2013, in so far as it relates to the petitioner and the consequential prayer, directing the appellants, to grant 50% of the services rendered by the respondent, in the post of Part Time Panchayat Clerk, along with regular services, for the purpose of pension in accordance with G.O.Ms.No.39 Rural Development Department and Panchayat Raj, dated 13/6/2011, perusal of counter affidavit, filed in W.P.No.2743 of 2014, makes it clear that the appellants themselves have admitted that the respondent was appointed, as Junior Assistant, on 31/12/1990. Subsequently, promoted as Assistant, on 22/2/2000 and retired from services, on 31/1/2008. While testing the correctness of the order, setting aside paragraph No.4 (b) of G.O.(Ms) No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12/7/2013, a Hon'ble Division Bench of this Court, in W.A.No.431 of 2016, dated 11/4/2016, taking note of the date of appointment of the respondent/Junior Assistant therein, before i.e., 1/4/2003, and the subsequent promotion, at paragraph Nos.4 to 6, held as follows:-

"4. The State Government took a policy decision by G.O.Ms.No.39, Rural Development and Panchayat (E5) Department dated 13th June 2011, (for short "G.O.Ms.No.39") whereunder, it was clearly observed that an employee, working in Panchayat as Full Time Clerk or Part Time Clerk and having been absorbed by the Government prior to 01 April 2003, will be entitled to counting 50% of the service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. Subsequently, the said Government Order, as pleaded by the learned Special Government Pleader appearing for the appellants, was amended by G.O.Ms.No.77, Rural Development and Panchayat Raj Department, dated 12th July 2013 (for short "G.O.Ms.No.77"), whereunder counting of 50% of service in case of Part Time Clerks was withdrawn.

5. In the case on hand, indisputably, the respondents 1 and 2 were absorbed as Junior Assistant before 01 April 2003, subsequent to which the first respondent was promoted as Assistant and retired from service on 31st December 2009 and the second respondent retired as Cashier on 30th June 2007. Thus, the respondents 1 and 2 are entitled to the benefit as granted in G.O.Ms.No.39 and the subsequent Government Order in G.O.Ms.No.77 would not be applicable to those employees, who were entitled to the benefit before issuance of the said Government Order.

6. The learned single Judge has rightly come to the conclusion that 50% of the service period put in by the respondents 1 and 2 under the consolidated pay by way of part time employment will be computed for pensionary benefits. We do not find any reason to take a view contrary to the one taken by the learned Single Judge."

5. Writ Appeal No.431 of 2016, filed by the State has been dismissed. Similarly, Writ Appeal No.612 of 2016 filed by the Government of Tamil Nadu and two others, has been dismissed, on 24/6/2016 and following the same, recently, on 1/6/2017, Writ Appeal No.571 of 2017 has been dismissed. Perusal of the order made in W.A.No.571 of 2017, dated 1/6/2017, shows that both the counsel appearing for the parties therein, submitted that matter is squarely covered by an order of Writ Appeal No.612 of 2016, dated 24/6/2017. In Paragraph No.3 of the order made in W.A.No.571 of 2017, a Hon'ble Division Bench, ordered as hereunder:-

"After perusing the records, we hold that 50% of the services rendered by the writ petitioner as Part Time Panchayat Clerk should be taken into account while calculating pension and directing the concerned authority to calculate and issue order granting pension and other benefits, within a period of three months and to implement the same, within a period of one month thereafter."

6. There is a similarity of facts and circumstances. Orders made in W.A.Nos.431 of 2016 and 571 of 2017 are squarely applicable, to the case on hand. Accordingly, the instant Writ Appeal is dismissed. Directions issued by the

writ Court should be implemented, within a period of four weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To:

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rep. by its Principal Secretary to Government
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4. The District Collector
Coimbatore District
Coimbatore.

+1cc to Mr.V.Suthakar, Advocate sr.74196

+1cc to Government Pleader sr.74414

Writ Appeal No.1270 of 2017

VGII(co)
ss(24/10/2017)