IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.10.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.5208 of 2014

T.Pappathi .. Petitioner

Vs

1.The State of Tamil Nadu
rep. by its Secretary to Government
Social Welfare Department
Fort St.George, Chennai 600 009.

2.The Commissioner
Social Welfare Department
Chinthathiri Pettai
Chennai 2.

3.The District Social Welfare Officer
O/o The District Social Welfare Officer
Erode, Erode District.

4.The Principal Accountant General
(Accounts and Entitlements)
Tamilnadu,
No.361 Anna Salai,
Chennai 18.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records of the proceeding of the second respondent in Na.Ka.No.22388/Nir 3(2)/2013 dated 07.06.2013 and quash the same with the consequential direction, directing the respondents to sanction pension and other terminal benefits by taking into consideration of 50% services rendered by the petitioner as Child Welfare Organizer for the period from 01.02.1980 to 16.05.2007 along with regular services rendered by the petitioner in the post of Rural Welfare Officer (woman) for the period from 17.05.2007 to till the date of retirement (i.e) 31.03.2012, as per various orders of this Court.

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.R.Vijaya Kumar
Addl.Govt. Pleader

ORDER

The petitioner has come forward with this Writ Petition for quashing the order passed by the second respondent in Na.Ka.No.22388/Nir 3(2)/2013 dated 07.06.2013 and to direct the respondents to sanction pension and other terminal benefits by taking into consideration of 50% services rendered by her petitioner as Child Welfare Organizer for the period from 01.02.1980 to 16.05.2007 along with regular services rendered by her in the post of Rural Welfare Officer (woman) for the period from 17.05.2007 to till the date of retirement (i.e) 31.03.2012.

2.The petitioner was appointed as Child Welfare Organiser on a consolidated pay in the Chennimalai Panchayat Union, Ammapalayam on 01.02.1980 and promoted as Rural Welfare Officer (Woman) on 17.05.2007. The writ petitioner was permitted to retire from service on attaining the age of superannuation on 31.03.2012. Thus, the writ petitioner moved this writ petition to count her temporary services of 13 years along with regular service so as to get full pension.

3. As per the petitioner's stand, the said service of 27 years on casual basis and thereafter 4 years on permanent basis and accordingly, she is entitled for 31 years of qualifying service for the purpose of calculation of her pension and pensionary benefits.

4. The respondents have omitted to calculate the casual labour service in accord with G.O.No.408, Finance (Pension) Department, dated 25.8.2009. The learned counsel appearing for the writ petitioner contended that as per the said G.O.No.408 dated 25.8.2009, half of the service ought to have been taken into account for calculation as qualifying service along with the services rendered by the writ petitioner for the purpose of fixation of pension. But the respondents have failed to do so.

5. The learned Additional Government Pleader appearing on behalf of the respondents, opposed the contentions by stating that the persons who have absorbed into regular post prior to 01.04.2013, alone are eligible for pension and such service cannot be counted for

the purpose of pension. Thus the writ petition filed by the writ petitioner deserves no further consideration.

6. The grievances advanced in this writ petition is the non-consideration of the amended Rule 11 of the Tamil Nadu Pension Rules, in respect of qualifying the services and the amended Rule is extracted hereunder:

Rule 11

QUALIFYING SERVICE

1. *"Commencement of qualifying service – {(1}) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he taken 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. 1969,2{.....} 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.*

   (2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

- *service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.*

- *Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.*

- *Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.*

- *Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.*

- *Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st Januarty 1961 for which authenticated records of service may be available.*

- *Pension or revised pension admissible as the case shall be paid from the 23rd June 1988.]*

[Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break.

(3) These orders shall take effect from the date of this Government Order. In respect of those who retired prior to the

date of this order, eligible pension or revised pension, as the case may be, shall be paid from the date of this order, and that there can be no claim for arrears in any case for the period upto the date of this order.

Note: In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore-Cochin State consequent on the reorganisation of State temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore-Cochin State shall count in full for purposes of pension:

Provided that-
(a) in the case of a Government Servant, service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity;

(b) in the case of a Government Servant whose year and month of birth are known, but not the exact date the 16th of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1st July if the year shall be taken.

(c) in the case of a Government Servant with no military service who gives on recruitment only his age, but not the year of his birth the year should be arrived at by deducting from the year of recruitment the given age and then the date of birth should be taken as the 1st July of that year:

Provided further that in the case of a Government servant with previous military service the date of birth is fixed as laid down below:

When a military employee is transferred to a civil department under the Government and assumes a civilian status, the date of birth to be entered in his service book should be the date stated by him at the time of attestation.

When the documents referring to the previous military service of an individual do not give the definite date of birth but only the age stated at the time of attestation, he should be assumed to have completed the stated age on the date of attestation e.g., if one ex-soldier was enrolled on 1st January 1910 and if, on that date, his age was stated to be 18, his date of birth should be taken as 1st January 1892. This procedure will apply to cases arising on or after 27th June 1938.

Notwithstanding anything contained above in cases where S.S.L.C. Or any other school certificate is available, the date of birth, as entered therein should be taken into account.

[Explanation.--For the purpose of date of birth, the word 'attestation' refers only to the initial records kept by the Defence Department at the time of appointment of the individual and not in the discharge certificate on discharge from the Defence Department.] '

7. While amending Rule 11(4)(iii), the Government imposed the cut-off date as 01.04.2003. It is stated that "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".

8. In view of the amended Rule 11 of the Tamil Nadu Pension Rules, which was already adapted by the third respondent, the writ petitioner is eligible for counting of the half of the services rendered by him as casual labour if he satisfies the conditions stipulated in the said

amended Rules. If the writ petitioner falls within the categories mentioned in Rule 11 as well as the order of the Commissioner, then the writ petitioner's case is to be considered.

9. Accordingly, the writ petition filed by the writ petitioner deserves to be considered and the writ petition stands allowed. The respondents are directed to consider the case of the writ petitioner for counting half of the services rendered by her on consolidated pay in the Social Welfare Department in accord with Rule 11 of the Tamil Nadu Pension Rules, 1978 and pass appropriate orders in this regard, within a period of twelve weeks from the date of receipt of a copy of this order and communicate the same to the writ petitioner. However, there shall be no order as to costs.

09.10.2017

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To

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