

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.11.2017

CORAM

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

W.P. No.11746 of 2014 &

M.P.No.2 of 2014

- 1 R.PANEERSELVAM
- 2 G.L.HARIHARAN
- 3 N.RANGASAMY
- 4 M.PAUL PANDI
- 5 M.MUTHIAN
- 6 S.K.GOMATHINAYAGAM
- 7 S.A.RAMASWAMY
- 8 D.MANI
- 9 J.RAGHUNATHAN
- 10 N.ANNAMALAI
- 11 P.MAHENDRAN
- 12 R.SETHURAMAN
- 13 S.PERUMAL
- 14 N.GUNASEKARAN
- 15 R.SETHUMADHAVAN
- 16 C.GOVINDASAMY
- 17 P.PITCHAIKANI
- 18 J.SEKAR
- 19 T.SRIRAMASELVAN
- 20 A.VAIKUNTA PERUMAL
- 21 A.PARAMASIVAM
- 22 V.PALANISAMI

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[PETITIONERS]

Vs

- 1 GOVERNMENT OF TAMILNADU
REP BY ITS SECRETARY
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
FORT ST.GEORGE, CHENNAI 600 009

2 TAMILNADU HOUSING BOARD
REP BY ITS MANAGING DIRECTOR
NANDANAM, CHENNAI 600 035

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records pertaining to the order bearing No. 12805/Vee Va 1 (2) 2013 - 2 dt 31.7.2013 issued by the 1st respondent quash the same and consequently direct the respondents to pay pension to the petitioners by taking into account 50% of their service rendered before their regularization as pensionable service for calculation of pension with arrears from the date of their retirement.

For Petitioners : Mrs.S.Meenakshi
for Mrs.Vaigai

For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

ORDER

The petitioners have come forward with this Writ Petition to quash the order issued by the first respondent dated 31.7.2013 and to direct the respondents to pay pension to the petitioners by taking into account 50% of their service rendered before their regularization as pensionable service for calculation of pension with arrears from the date of their retirement.

2.The learned counsel appearing for the petitioners submits that the initial appointment of the writ petitioners were made on consolidated pay and those services were not taken into account as qualifying service for the purpose of calculating the pensionary benefits.

3.The respondents have omitted to calculate the casual labour services of the writ petitioners in accord with G.O.No.408, Finance (Pension) Department, dated 25.8.2009. The learned counsel appearing for the writ petitioners 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 petitioners for the purpose of fixation of pension. But the respondents have failed to do so.

4. The learned Government Advocate appearing on behalf of the respondents, opposed the contentions by stating that the persons, who have absorbed into regular post prior to 01.04.2003, alone are eligible for pension under the Tamil Nadu Pension Rules. Thus, the writ petition filed by the writ petitioners deserves no further consideration.

5. 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 January 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.] '

6. 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.

7. In view of the amended Rule 11 of the Tamil Nadu Pension Rules, which was already adapted by the authorities concerned, the writ petitioners are eligible for counting of the half of the services rendered by them as casual labours, if they satisfy the conditions stipulated in the said amended Rules. If the writ petitioners fall within the categories mentioned

under Rule 11 as well as the order of the competent authorities, then the writ petitioners case has to be considered.

8. In this view of the matter, the respondents are directed to re-consider the case of the writ petitioners for counting half of the services rendered by them on consolidated pay, in accordance 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 petitioners.

The Writ Petition stands allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

03.11.2017

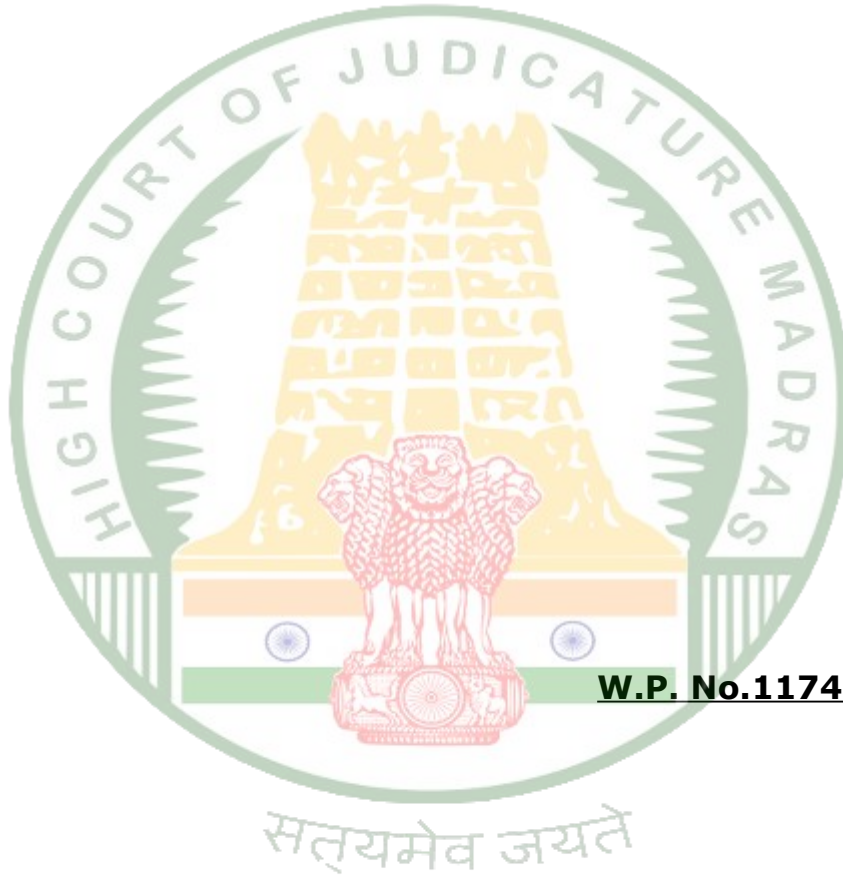
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To

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