IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

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

W.P.Nos.25182 & 25183 of 2017

N.Kannu ..Petitioner
in WP.No.25182 of 2017

P.A.Duraisamy ..Petitioner
in WP.No.25183 of 2017

Vs

1.The Government of Tamil Nadu
Rep. by its Secretary
Environment & Forest Department
Fort St.George, Chennai-600 009.

2.The Principal Chief Conservator of Forest
having office at Panagal Building
Saidapet, Chennai-600 015. ... Respondents 1 & 2
in both W.Ps.

3.The District Forest Officer
Ariyaloor. ...3rd respondent
in WP.No.25182 of 2017

3.The District Forest Officer
Salem. ...3rd respondent
in WP.No.25183 of 2017

4.The Accountant General of Tamil Nadu
Office at DMS Compound
Teynampet, Chennai-600 018. ...4th Respondent
in both W.Ps.

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Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to count half of the service rendered by the petitioners as Plot Watcher on daily wage basis from 03.10.1983 to 06.08.2009 and 01.07.1983 to 06.08.2009 along with the regular service rendered by him as Plot Watcher (Supernumerary Post) from 07.08.2009 to till the date of their retirement namely 31.07.2017 and 31.08.2017 as qualifying

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service, send the revised proposal to the 4th respondent, grant pension to the petitioners with all consequential monetary benefits, respectively.

For Petitioners : Mr.S.Mani
(in both W.Ps.)
For Respondents: Mr.M.Santhana Raman
Additional Government Pleader (Forest)
For R1 to R3 (in both W.Ps.)
Mr.V.Vijay Shankar for R4
(in both W.Ps.)

C O M M O N O R D E R

The common relief sought for in both the writ petitions is to calculate 50% of the services rendered by the writ petitioners in the respective post as part time/temporary/casual in Government Departments for the purpose of counting the qualifying services in order to grant pension under Tamil Nadu Pension Rules, 1978.

2. The grievances advanced in these writ petitions are that the Government amended Rule 11 of the Tamil Nadu Pension Rules in respect of qualifying service 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.

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- 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.

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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 te 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.

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[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.] '

3. 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".

4. Thus, an employee who worked on temporary basis prior to 01.04.2003 and in case of his regularisation after 01.04.2003, he was held ineligible to avail the benefit of 50% services rendered on temporary basis. The object of fixing the cut-off date as 01.04.2003 was to modify the pension scheme with effect from 01.04.2003, to one that of Contributory Pension Scheme. The writ petitioners claim that since they were initially appointed on temporary basis prior to 01.04.2003, the same had resulted in confirmation of their appointment after 01.04.2003. Thus, they should not be denied the benefit of regular old Pension scheme of GPF under the Tamil Nadu Pension Rules, 1978. When a similar issue was raised by the employees of Central Government, the Hon'ble Division Bench of this Court in the case of Union of India Vs. K.Punniyakotti reported in 2014 [2] CTC 777 has held as follows:-

"10. The only issue arises for consideration in this Writ Petition is as to whether new Pension Scheme, which came into force from 01.01.2004, applicable to persons, who were already in employment either on daily wages or as temporary employees and whether, they are entitled to get pension under CCS (Pension) Rules, 1972 on being absorbed in permanent establishment after 01.01.2004.

11. It is not in dispute that the private Respondents, the Respondents 1 to 16 herein were appointed as Casual Labourers in daily wage basis for cleaning and assisting the Technicians and Scientists carrying out the task in various Laboratories of IGCAR. Government of India has introduced a scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme , 1993", with effect from 01.09.1993. According to the said scheme, the Casual Labourers employed as on the date of the order, that was as on 01.09.1993, who have rendered one year of continuous service in IGCAR are bound to be conferred temporary employee status and, they are to be regularly selected under Group 'D' after selection for permanent absorption.

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13. It is also not in dispute that under the scheme above referred , which came into effect from 01.09.1993, 50% if the service rendered under temporary status would be counted for the purpose of retirement benefits, after their absorption in regular post. The same is made clear in Para 5(iv) of IGCAR' s Office Order dated 13.01.2000. Para 5(iv) reads as follows:

14. Thus, it is to be noted at this juncture that Respondents 1 to 16 having been granted temporary status from 13.01.2000, they are entitled to get more than 21/2 years of temporary status service as qualifying service for pension purpose, prior to absorption in the year 2005 in permanent establishment , viz., Group 'D' post. The said more than 2 ½ years of service cannot be wiped out or cannot be denied merely because new Pension Scheme was introduced by the Government of India from 01.01.2004. It is inequitable on the part of the Petitioners to contend that Respondents 1 to 16 having been absorbed in permanent establishment after the new Pension Scheme introduced, which came into force with effect from 01.01.2004, they are not entitled to get retirement benefits under GRF Rules/CCS (Pension) Rules , 1972.

17. The word "new entrant" has got a definite meaning , ä person, who enters recently" . A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004 cannot be termed as "new entrant' into service . The new Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004.

18. Similar issue was considered by one of us (N.P.V., J.) in W.P. Nos.26933 & 26934 of 2007, order dated 23.04.2008. In the said case, the order of the Government of Tamil Nadu dated 06.08.2004 introducing new Pension Scheme with effect from 01.04.2003 came up for consideration and it was held that persons appointed /recruited after 01.04.2003 are not governed under the Tamil Nadu Pension Rules, 1978 and the persons appointed prior to the said date even in consolidated salary, or whose appointments as Secondary Grade Teachers were approved subsequently with time scale pay after passing Child Psychology Training, whose earlier services were ordered to be counted by the Division Bench of this Court. In the said case the Teachers were not paid salary before passing of Child Psychology Training, and

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they were ordered to be treated under the Tamil Nadu Pensions Rules, 1978 as their initial appointment was prior to 01.04.2003, and the said order was implemented.

20. Number of similar cases were considered in respect of the State Government employee under the Tamil Nadu Pension Rules, 1978, wherein also Rule 11(2) of the Tamil Nadu Pension Rules, 1978 provides counting of 50% of the contingency service on similar terms and conditions as enumerated under the above Rule 14(2) of CCS (Pension) Rules, 1972. In the said case Plot Watcher of 'Forest Department, appointed on daily wage basis from 01.09.1982, without interruption was absorbed in regular service from 24.08.2005 and he retired on 31.07.2011. Applying Rule 11(2) of Tamil Nadu Pension and Rules 1978, 50% of the service from 01.09.1982 till 23.08.2005 was ordered to be counted along with the regular service from 24.08.2005 till 31.07.2011 and ordered sanction of eligible pension and other benefits . In the said case also, regularisation was granted after the new Pension Scheme was introduced with effect from 01.04.2003 by the State Government . The said Order was made in W.P.No. 8205 of 2011 dated 19.04.2011, which was confirmed in W.A.No.27 of 2012 dated 13.02.2012 as well as in S.L.P.No.16119 of 2012 dated 10.05.2012 and in W.P.No.14987 of 2012 dated 14.06.2012 .

22. Similar issue regarding fixing of Pension by adding dearness pay by giving cut-off date was held arbitrary and violative of Articles 14 & 16 of the Constitution of India by the Supreme Court in the decision reported in Kallakkurichi Taluk Retired Officials Association v.State of Tamil Nadu, 2013 (1) LLN 360 (SC). The discriminatory treatment meted out to retired persons while granting Pension was not approved by the Honourable Supreme Court in the decision reported in D.S. Nakara v. Union of India, AIR 1983 SC 130."

5. The Hon'ble Division Bench after discussing the similar issue had dismissed the writ petition filed by the Union of India, confirming the order passed by the Central Administrative Tribunal in respect of the Central Government employees. During the course of discussion, the Hon'ble Division Bench has discussed the very same issue in respect of the Tamil Nadu Pension Rules also and the learned single Judge (NPVJ) has decided the issue in respect of the Tamil Nadu State Pensioners with relevance to the Tamil Nadu Pension Rules. Thus, the writ petitioners in these batch of writ petitions are also entitled for the same benefit of counting of 50% of the temporary

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services as per the amended Rule 11 of the Tamil Nadu Pension Rules. Even in case of petitioners appointed on temporary basis prior to 01.04.2003 and confirmation of service was done after 01.04.2003, they are still entitled to avail the benefit of 50% of the counting of past services rendered on temporary basis as per the conditions stipulated in the Rule 11 of the Tamil Nadu Pension Rules, 1978.

6. The respective respondents in all these writ petitions have to consider the case of these writ petitioners in accordance with the terms and conditions stipulated in the amended Rule 11 of the Tamil Nadu Pension Rules,1978. Accordingly, the benefit of extension of 50% of the services shall be extended, if the writ petitioners are qualified and eligible, based on the findings in this judgment (cited supra) as well as amended Rule 11 of the Tamil Nadu pension Rules.

7. In respect of the Rule 11(iv) prescribing cut of date of 01.04.2003, this Court vide order dated 18.06.2014 made in W.P.No.24236 of 2013, had quashed Rule 11(iv) only in respect of the cut off date of 01.04.2003. Thus, the Rule 11(iv) is not in existence.

8. The learned Additional Government Pleader (Forest) also confirmed that the State has not preferred any appeal against the said judgment. Thus, the case of the writ petitioners has to be considered without reference to the cut off date of 01.04.2003 and Rule 11(iv) of the Pension Rules. However, the writ petitioners have to fulfill all other conditions stipulated in Rule 11(i,ii, and iii) of the Tamil Nadu Pension Rules, 1978 as applicable to the respective writ petitioners in these writ petitions.

9. Accordingly, the respondents are directed to reconsider the case of the writ petitioners, in the light of the observations made in this order, for the purpose of granting the relief of counting of service of 50% of the services rendered on temporary basis and pass appropriate orders after verifying the service records and based on Rule 11 of the Tamil Nadu Pension Rules, 1978 and communicate the decision taken to the writ petitioners as early as possible, preferably within a period of four months from the date of receipt of a copy of this order.

10. In the event of counting 50% of the past services, the GPF Account has to be opened after closing the CPF Account, opened on account of the cut of date of 01.04.2003, since, the cut of date was already quashed by this Court and there was no appeal against the order.

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11. Accordingly, the writ petitions stand disposed of. However, no order as to costs.

Sd/-
Asst.Registrar (CS VI)

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Sub Asst. Registrar

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To

1.The Secretary
The Government of Tamil Nadu
Environment & Forest Department
Fort St.George, Chennai-600 009.

2.The Principal Chief Conservator of Forest
having office at Panagal Building
Saidapet, Chennai-600 015.

3.The District Forest Officer
Ariyaloor.

4.The District Forest Officer,
Salem.

5.The Accountant General of Tamil Nadu
Office at DMS Compound
Teynampet, Chennai-600 018.

+2cc to Mr.S.Mani, Advocate sr.68690

+1cc to Special Government Pleader sr.68610

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