

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.10252 of 2012

D.Anbalagan

... Petitioner

-Vs-

- 1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.
 2. The Commissioner for
Revenue Administration,
Chepauk, Chennai-5.
 3. The District Collector,
Cuddalore District, Cuddalore.
 4. The Accountant General of Tamil Nadu,
Teynampet, Chennai-18.
- ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceeding Na.Ka.A5/909/2012 dated 14.03.2012 and quash the same and consequently direct the Respondents to count half of the services rendered by the Petitioner as Village Karnam from 01.12.1978 to 06.07.1982 and accordingly count that services as qualifying service for the purpose of pensionary benefits and revise the pension and pensionary benefits and pay the arrears within a stipulated period .

For Petitioner : Mr.R.Prem Narayan
For Respondents : Mr.S.Gunasekaran,
Addl. Government Pleader for RR1 -3
: Mrs.T.S.Selvarani for R4

O R D E R

Heard Mr.R.Prem Narayan, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 3rd respondent in proceeding Na.Ka.A5/909/2012 dated 14.03.2012 and quash the same and consequently direct the Respondents to count half of the services rendered by the Petitioner as Village Karnam from 01.12.1978 to 06.07.1982 and accordingly count that services as qualifying service for the purpose of pensionary benefits and revise the pension and pensionary benefits and pay the arrears within a stipulated period."

3. The case of the petitioner is as follows:

The petitioner was initially appointed as Village Karnam on 01.12.1978 and continued in service till 06.07.1982. Consequent to the abolition of the post of Village Karnam, the petitioner was terminated from service. Subsequently, he was re-appointed as Village Administrative Officer (hereinafter referred to as VAO) and joined on 11.07.1982 and continuously worked thereafter for about 28 years and retired from service on 31.01.2010.

4. According to the petitioner, since he had not completed 30 years of service as VAO, he was not in receipt of full pension. In this connection, he had made a representation on 10.04.2010, seeking to count half of the services rendered by him as Village Karnam from 01.12.1978 till 06.07.1982. Since, there was no reply to the representation, the petitioner filed W.P.No.25010 of 2011 and this Court passed an order on 31.10.2011, directing the first respondent to consider his representation and pass orders.

5. In pursuance of the direction passed by this court, the third respondent passed an order vide proceedings dated 14.03.2011, rejecting the claim of the petitioner on the ground that he was employed only as part time basis and therefore he was not entitled to count half of the services rendered by him as Village karnam. As against the said proceedings, the present writ petition is filed.

6. The learned counsel for the petitioner would contend that the issue raised in the writ petition is squarely covered by two decisions of this court. One, reported in (2012) 3 MLJ 12, in the matter of Mr.R.Ragupathy Vs. State of Tamil Nadu, rep. by its Secretary to Government, School Education Department, Chennai - 9 and others and another, reported in 2014 Writ L.R.687, in the matter of V.Ramar Vs. The State of Tamil Nadu, Rep by its Secretary to Government, Fort St.George, Chennai - 9 & others. The learned counsel for the petitioner

would draw the attention of this Court in paragraph 16 of the order passed by a learned Single Judge of this Court in the judgment (referred first above) which reads as follows:-

"16. Admittedly, in this case, the petitioner rendered 34 years of unblemished service therefore, he cannot be denied the benefit of pension, in the light of G.O.No.39, referred to above. When 50% service of part-time employees in Rural Development Department is calculated for the purpose of payment of pension, the same yardstick shall be applied to part time employees in the third respondent department also, as required by Article 14 of the Constitution. Therefore, in my view, the first respondent shall also issue an appropriate order like G.O.Ms.No.39, dated 13.06.2011."

7. The learned counsel for the petitioner would also draw the attention of this Court to paragraph 37 of the judgment of another Single Judge of this Court (referred second above) which reads as follows:-

"37. When the Government has chosen to extend the benefit in respect of part time Panchayat Clerks as found in G.O.39, the respondents herein cannot deny the same benefit to the part time vocational instructors by saying that the said G.O is applicable only to the Panchayat Clerks and not to the vocational instructors. Needless to say that the Government having taken a decision to extend certain benefit to its employees, it cannot discriminate between similarly situated persons, though they are rendering their service in different departments. What is to be seen is as to whether the part time services is to be counted or not. Such consideration cannot be made by pick and choose and extended only to a particular department by excluding all other similarly situated persons of other departments of the same Government. If it is done, certainly it amounts to discrimination, thus violating Article 14 of the Constitution of India."

8. The learned counsel for the petitioner would contend that in both the cases, this Court extended the benefit of G.O.No.39, for extension of benefit of counting half of the services rendered by the employee on part time basis to other departments, though originally the said G.O. was passed only in respect of Rural Development Department. Therefore, he would submit that the present petitioner who is also similarly placed like the petitioners in the aforesaid decisions, also extend the same benefits of extending the G.O.

9. Upon notice, the learned Additional Government Pleader appearing for the respondents has entered appearance and filed a detailed counter affidavit. The learned counsel for the respondents would submit that the G.O. referred to above, was only in respect of Rural Development Department and the same cannot be applied in the case of the petitioner who was employed in the Revenue Department. He would also submit that the petitioner was only employed on part time basis, therefore, he is not entitled to the benefit of counting of half of the services as claimed by him.

10. This Court having considered the rival submissions of the counsel and having perused the pleadings and materials placed on record, is of the view that there is a force in the contention put forth by the learned counsel for the petitioner that earlier this Court in respect of two decisions as referred to above, have passed orders extending the benefit of G.O.No.39 to other Departments. When such is a case, how the employee of the Revenue Department can be treated differently in the matter of extension of benefit as contemplated in G.O.No.39? Since admittedly, the petitioner is similarly placed as that of the other employees who got the benefit of orders passed by this Court, this Court cannot take a different view except to follow the decision passed by this Court in the earlier decision.

11. In view of the above discussion and narration, this Court has no hesitation in allowing the writ petition. In the said circumstances, the impugned order in proceeding Na.Ka.A5/909/2012 dated 14.03.2012, passed by the third respondent is set aside. The respondents are directed to count the half of the services rendered by the petitioner as Village Karnam from 01.12.1978 till 06.07.1982 and accordingly, calculate his pension and pay the pensional benefits as admissible to the petitioner. The above direction shall be complied with by the respondent within a period of two months from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gsk

To

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

2. The Commissioner for
Revenue Administration,
Chepauk, Chennai-5.

3. The District Collector,
Cuddalore District, Cuddalore.

4. The Accountant General of Tamil Nadu,
Teynampet, Chennai-18.

+ 1 cc to Mr.R.Prem Narayan Advocate,SR.81420

+ 1 cc to The Govt.Pleader, SR.81729

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NR 27/11/2017



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