

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.19876 of 2017 and
W.M.P.No.21473 of 2017

E.Madasamy ... Petitioner
Vs.

- 1.The Government of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of Rural Development & Panchayat Raj,
Panagal Building, Saidapet, Chennai - 600 015.
- 3.The Principal Accountant General(A&E)Tamil Nadu,
No.361, Anna Salai,Chennai - 600 018.
- 4.The District Collector, (PD Section)
Tirunelveli District,
Tirunelveli. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, 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 Department dated 12.07.2013 of the first respondent and quash the same in so far relates to not counting the services rendered by the petitioner in part time Panchayat clerk along with regular service for the purpose of pension and direct the respondents to count 50% services rendered in the post of panchayat clerk from 07.01.1982 till 28.08.2001 along with regular service for the purpose of granting pension.

For Petitioner : Mr.V.Suthakar

For Respondents : Mr.K.Dhananjayan
Special Government Pleader
for R1,R2 and R4

Mr.V.Vijayshankar for R3

O R D E R

This writ petition has been filed challenging the first paragraph 4(b) of G.O.Ms.No.77 Rural Development and Panchayat Raj (PA4) Department dated 12.07.2013, issued by the 1st Respondent. A direction is also sought to count 50% of the services rendered by the petitioner in the post of part time Panchayat Clerk along with regular services for the purpose of granting pensionary benefits.

2. The learned counsel appearing for the writ petitioner contended that the issue involved in the Writ Petition has been considered by two different Hon'ble Division Benches of this Court, on the same line. The first Judgement was pronounced on 11th April, 2016 in W.A.No.431 of 2016 and the following paragraphs of the Judgement are relevant for the purpose of deciding this Writ Petition:

"4 The State Government took a policy decision by G.O.Ms.No.39, Rural Development and Panchayat (E5) Department dated 13 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 12 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 31 4 December 2009 and the second respondent retired as Cashier on 30 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.

With the aforesaid observations, the writ appeal stands dismissed. No costs. Consequently, connected C.M.P. is closed. "

3. Another Hon'ble Division Bench of this Court passed a Judgment on 24th June 2016 in W.A.No.612 of 2016, and the relevant paragraphs are extracted hereunder:

"3. The grievance of the first respondent is that the services rendered by him as Part Time Panchayat Clerk was not taken into consideration while calculating pension. Therefore, he filed a writ petition and the same was allowed on 27.6.2014, along with similar writ petitions, holding that 50% of the services rendered by the writ petitioners as Part Time Panchayat Clerk should be taken into account while calculating pension and directing the concerned authority to calculate and issue orders granting pension and other benefits within a period of three months and to implement the same within a period of one month thereafter. Aggrieved by the same, the appellants have come up with this appeal.

4. As against the order of the learned single Judge dated 27.6.2014 3 passed in a batch of writ petitions, one of the writ petitioner, filed W.A.No.431 of 2016. A Division Bench of this Court, by judgment dated 11.4.2016, dismissed the appeal, holding that the learned single Judge had rightly concluded that the 50% of the services rendered by the petitioners therein under the consolidated pay by way of part time employment has to be taken into account for pensionary benefits.

5. In view of the decision of the Division Bench of this Court dated 11.4.2016 made in W.A.No.431 of 2016, this writ appeal is also dismissed in terms of the above judgment. There shall be no order as to costs. Consequently, CMP No.8080 of 2016 is closed. "

4. The learned counsel appearing for the petitioner contended that the Judgments of the Hon'ble Division Benches were implemented by the respondents in G.O.(P) No.111 RD &

Panchayat Raj (PA5) Department dated 14.03.2016. Thus, the writ petitioner herein is also eligible to get the same benefits extended to other similarly placed employees who worked as part time employees and absorbed as regular employees in the cadre of Junior Assistant.

5. The learned Special Government Pleader opposed the contentions raised by the writ petitioner by stating that the writ petitioner is not eligible to get the benefits, as contended by the learned counsel for the writ petitioner.

6. Since the issue has been decided by two different Hon'ble Division Benches of this Court on the same line, no exception can be drawn, by considering the arguments advanced by the learned Special Government Pleader in this regard.

7. In this view of the matter, this writ petition stands disposed of and the benefits granted by the two different Division Benches of this Court in W.A.No.431 of 2016 dated 11th April, 2016 and in W.A.No.612 of 2016, dated 24th June 2016, respectively are directed to be extended to this writ petitioner, if he is otherwise qualified. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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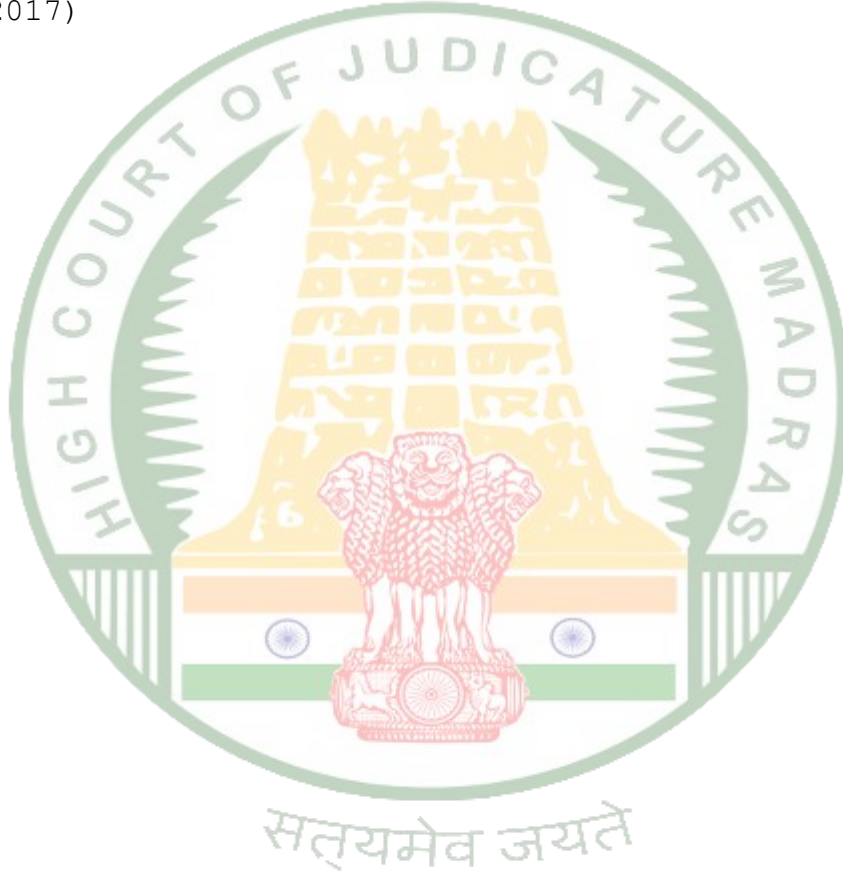
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Tirunelveli.

+1cc to Mr.V.Suthakar, Advocate, S.R.No.55526
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.55896
+1cc to the Government Pleader, S.R.No.56319

W.P.No.19876 of 2017

RR (CO)
GN (30/08/2017)



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