

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.32346 of 2012

P.Panchavarnam

...Petitioner

vs.

1. The Tahsildar,
Cheyyur Taluk Office,
Cheyyur,
Kanchipuram District.

2.The Accountant General/(A&E),
O/o the Principal Accountant General,
Anna Salai,
Taynampet,
Chennai-600 018.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Certiorarified Mandamus, to call for the records passed by the 2nd respondent in letter Ref. No.AG (A&E)/Legal Cell/590/AN/2011-12/822 dated 02.09.2011 and quash the same and consequently direct the respondents to calculate 50% of petitioner's service period of 8 years for pension (i.e from 01.07.1987 to 31.05.1995) in the light of G.O.No.408 dated 25.08.2009 and sanction pension payable to the petitioner alongwith arrears.

For Petitioner : Mr.A.Ramalingam for

Mr.P.Murali.

For R1 : Mr.T.M.Pappiah, Spl. GP

For R2 : Mr.Balaji

ORDER

Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records passed by the 2nd respondent in letter in Ref. No.AG(A&E)/Legal Cell/590/AN/2011-12/822 dated 02.09.2011 and quash the same and consequently direct the respondents to calculate 50% of petitioner's service period of 8 years for pension (i.e from 01.07.1987 to 31.05.1995) in the light of G.O.No.408, Finance (Pension) Department dated 25.08.2009 along with arrears.

2. According to the petitioner, she was appointed as a Village Assistant on 01.07.1987 on temporary basis by order dated 30.06.1987. Thereafter, she was given a permanent post by the first respondent on 28.01.1991. However, her services came to be regularized as a Village Assistant only on 01.06.1995 and the petitioner stood retired from service on attaining the age of superannuation on 31.05.2010. After retirement, the petitioner had applied for grant of pension and the pension proposal was forwarded to the second respondent. Thereafter, the second respondent has also sanctioned the pension to the petitioner, vide proceedings dated 11.01.2011. While granting the pension, the respondents had not taken into account the earlier service rendered by the petitioner prior to the date of regularization of her services with effect from 01.06.1995. According to the petitioner, the Government has issued G.O.408, Finance (Pension) Department dated 25.08.2009, in and by which 50% of temporary period has to be taken into account for calculation and sanction of the pension. If the principle laid down in the said Government order is extended to the petitioner, she would be entitled to avail four years of service, as she had put in 8 years of temporary period from 01.07.1987 to 31.05.1995, for which, the petitioner would be entitled to additional pension.

3. The learned counsel for the petitioner would submit that de hors the Government order issued, the issue is also covered by a series of orders passed by this Court in a number of writ petitions and confirmed in writ appeal. One such writ petition is the order dated 10.02.2014 in W.P.No.10244 of 2012, wherein, a similar claim was allowed by this Court following the earlier directions. The operative portion of the order dated 10.02.2014 is extracted hereunder:

'8. In my considered view, whatever may be the reason, the first respondent being a party to the above earlier proceedings prior to 01.06.1995 also, is not entitled to take a different stand contrary to the direction issued by this court in W.P.No.27577 of 2008 dated 09.11.2009. Therefore, the first respondent is bound to obey the said order and consequently, has to pass necessary orders as per the earlier direction issued by this Court in W.P.No.27577 of 2008 dated 09.11.2009. The first respondent shall pass such an order within a period of four weeks from the date of receipt of a copy of this order. The necessary pension proposal shall be sent by the fourth respondent within a period of four weeks thereafter. Once the pension proposal is received from the fourth

respondent as directed supra, the sixth respondent shall pass appropriate orders within a period of three weeks thereafter. The writ petition is ordered accordingly. No costs.'

An appeal was preferred against the order passed in the said writ petition and the Division Bench in W.A.821 of 2015, by its judgment dated 23.06.2015, has dismissed the appeal, by confirming the order passed by the learned Single Judge in the said writ petition.

4. In the said circumstances, the learned counsel for the petitioner would submit that in all force the claim of the petitioner is covered in her favour and therefore, she requested the Court to allow the writ petition as prayed for.

5. Upon notice, Mr. T.M. Pappiah, learned Special Government Pleader, entered appearance for the first respondent and Mr. S. Balaji, learned Central Government Standing Counsel appeared for the second respondent and objected for grant of any relief in the writ petition and they would submit that G.O.408, Finance (Pension) Department dated 25.08.2009 would not be applicable to the Village Assistants and that it would apply to the other Government servants.

6. However, as regards the above said decision in W.P.No.10244 of 2012, relied upon by the learned counsel for the petitioner, the same has not been disputed, as the issue raised in the present writ petition is squarely covered by the above said decision of the learned Single Judge as well as the Division Bench of this Court. In any event, the principles laid down in G.O.No.408, Finance (Pension) Department dated 25.08.2009 is to be extended to the petitioner also.

7. Taking into consideration, the arguments put forth by the learned counsel for both the parties, and after perusing the records and materials placed on record, this Court is of the view that the petitioner herein cannot be treated differently for the purpose of granting pension and in the said circumstances, this Court has no hesitation in allowing the writ

petition. Accordingly, the writ petition is allowed and the respondents are directed to calculate the pension payable to the petitioner by counting 50% of service rendered by the petitioner on a temporary basis from 01.07.1987 to 31.05.1995 and pay the re-calculated pension to the petitioner with all the arrears that accrues on such calculation. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dn
To:

1. The Tahsildar,
Cheyyur Taluk Office,
Cheyyur,
Kanchipuram District.
- 2.The Accountant General/(A&E),
O/o the Principal Accountant General,
Anna Salai,
Taynampet,
Chennai-600 018.

+1 cc to the Government PLeader sr 60209
+1 cc to M/s.A.Ramalingam Advocate sr 59878
+1 cc to M/s.S.Balaji Advocate sr 59738

W.P.No.32346 of 2012

rr(co)
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