

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP.Nos.28035 to 28046 of 2013

and

W.P.No.21915 of 2013

M.Lakshmi .. Petitioner in WP.No.28035 of 2013
M.Babu .. Petitioner in WP.No.28036 of 2013
R. Jaisankar .. Petitioner in WP.No.28037 of 2013
G. Radhakrishnan .. Petitioner in WP.No.28038 of 2013
R. Bharathidasan .. Petitioner in WP.No.28039 of 2013
R. Kumarasamy .. Petitioner in WP.No.28040 of 2013
M. Dharuman .. Petitioner in WP.No.28041 of 2013
M. Anbazhakan .. Petitioner in WP.No.28042 of 2013
V. Baskaran .. Petitioner in WP.No.28043 of 2013
V. Sivakumar .. Petitioner in WP.No.28044 of 2013
K. Subba Reddy .. Petitioner in WP.No.28045 of 2013
K. Thanusu .. Petitioner in WP.No.28046 of 2013

1. A. Thagarajan
2. A. Rathinam
3. A. Velu
4. B. Santhi
5. S. Sivaraman
6. S. Thangavelu
7. S. Nagarajan
8. S. Vijayalakshmi
9. M. Damodaran

..Petitioner in WP.21915/13

Vs.

1.The State of Tamil Nadu
rep. by the Secretary to Government,
School Education Department,
Fort St. George, Chennai - 09.

2.The Director of Public Libraries,
Anna Saalai,
Chennai.

..RR 1&2 in all WPs.

3.The District Library Officer,
Collectorate Compound,
Villupuram.

..R3 in WPs.28035 to 28046/13

4. The District Library Officer,
Fort Main Road,
Namakkal

.. R3 in WP.21915/13

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to count the services of petitioner from the date of his initial appointment with effect from 10.01.1995, 24.7.1995, 5.11.93, 11.3.95, 30.5.96, 1.6.95, 1.8.91, 12.6.95, 30.8.90, 13.5.96, 29.4.91, 19.1.93 respectively (in WPs.28035 to 28046/2013) as qualifying service under Rule 11 of the Tamil Nadu Pension Rules 1978 and to issue GPF Account Numbers to the petitioner under the old pension scheme for his pensionary benefits.

W.P.No.21915 of 2013: Prayer: Writ of Mandamus, to direct the respondents to count the services of petitioners from their respective date of initial appointment in the post of Village Librarian as qualifying service under Rules 11 of the Tamilnadu Pension Rules 1978 and to issue GPF Account Numbers to all the petitioners under the old pension scheme for their pensionary benefits;

(In all the Writ Petitions)

Petitioners : Mr.R.Prem Narayan
Respondents : Mr.R.Govindasamy,
Special Government Pleader

COMMON ORDER

I have heard the submissions of Mr.R.Prem Narayan, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents.

2.Grant of pension has been often disputed area in service jurisprudence which has paved way for several litigations which have in their own way settled the questions regarding the eligibility, the manner and the quantum in which the pension ought to be given. The present batch of writ petitions are yet another case where the petitioners have approached this Court seeking to set right an anomaly that has arisen due to the fixation of the pension by the respondents.

3.The relief sought for by the writ petitioners in the writ petition No.28035 to 28046 of 2013 is to direct the respondents to count the service of the petitioner from the date of his initial appointment with effect from the date of jointing service as qualifying service under Rule 11 of the Tamil Nadu Pension Rules 1978 and to issue CPF Account Numbers to the petitioner under the old pension scheme for his pensionary benefits and the relief sought in the Writ Petition No.21915 of 2013 is to direct the respondents to count the services of the petitioners from their respective date of initial appointment in the post of Village Librarian as qualifying service under Rules 11 of the Tamil Nadu Pension Rules 1978 and to issue GPF Account Numbers to all the petitioners under the old pension scheme for their pensionary benefits.

4.The learned counsel appearing for the petitioner would submit that all the petitioners have initially joined service prior to 01.04.2003 as part time Librarians and subsequently appointed as Village Librarians and they were regularized in service in the years 2006, 2010, 2011 and 2012. It is the case of the petitioners that they have all initially joined service as Part time Librarians/Village Librarians and have rendered service for the past several years and once they requested the Government to count the service that they have rendered prior to getting regularized as qualifying service under Rule 11 of Tamil Nadu Pension Rules 1978 was not considered by the Government despite several requests and since the same has not been done they have approached this Court by filing the above writ petitions with the prayer mentioned above.

5.To canvass his case, the learned counsel appearing for the petitioners would rely upon the Judgments reported in (2014) 6 MLJ 316, (2012) 3 MLJ 12 and (2012) 2 CTC 777, whereby this Court has granted relief to persons who have sought counting of the part time service rendered for computation of pension.

6.Per contra, the Special Government Pleader appearing for the State would submit that the claim of the petitioners could not be acceded to for several reasons. Primarily, the petitioner has not worked as full time employee but as part time employee and they have not satisfied the conditions set out in the Pension Rule in Government Order and even for claiming the half of the service rendered under non-pensionable establishment has certain stipulations which are also not satisfied by the petitioners herein. He would also rely upon two judgments of the Madurai Bench of this Court in W.P.(MD)No.6348 of 2012 dated 03.11.2016 and W.P.(MD)No.553 to 565 of 2012 dated 26.03.2013.

7.The Special Government Pleader would submit that the petitioners have no right to claim the right they are seeking in these writ petition since their appointment in the service itself is not proper and they have no vested right to claim that they ought to be paid pension on par with other similar persons who have been granted pension.

8.The main issue that arises here is whether the petitioners have crossed the line before the crucial date or not. It is an admitted fact that the petitioners have joined as part time employees prior to 01.04.2003, which is the date from which the new pension scheme was introduced and the Pension Rules are not applicable to persons who have joined service after 01.04.2003.

9.In the instant case, the petitioners have all joined prior to the above said date as part time employees and it is only their orders of absorption/regularization was passed after 2003. This Court in P.Chinnayan v. State of Tamil Nadu (2014) 6 MLJ 316 while considering the issue of whether half of the service rendered in part time shall be counted for computation of pension has given a detailed finding. It was held that persons who joined service after 01.04.2003 and persons who have been regularized/absorbed in service after 01.04.2003 cannot be equated since the pensionary benefit cannot be denied for beated regularization of the petitioners.

10.Though the learned Special Government Pleader would rely upon two decisions to counter the submissions of the petitioner, I find that these judgments vary in facts and hence would not address the issue raised in the present writ petitions.

11.Now coming to the main issue in the present matter, it has to be seen whether the petitioners are entitled for their claim or not. If the part time services are not taken into consideration, then it is quite natural that the petitioners would not be entitled to pension. However if the part time service is taken into account, the petitioners would be in a position to enjoy the benefit of pension.

12.Though the State has objected stating that the service rendered by the petitioners is only part time service prior to absorption and hence no benefit can be granted, this Court is unable to subscribe to this submission.

13.The petitioners have joined in service (whether full time or part time) prior to 01.04.2003. They have also been regularized in service in different years from 2006 to 2012. Hence, they are naturally entitled to get their 50% of their part time services counted for the grant of pension in light of the judgments referred to by the petitioner.

14.Thus in the light of the above discussions, this Court finds substance in the submissions made by the petitioner and passes the following order:

(i)The petitioners who have joined service prior to 2003 and rendered services as part time employees are entitled for getting 50% of the services they have rendered for the purpose of computation of pension.

(ii)The petitioners shall submit to the respondents a detailed tabulation of the dates in which they have joined as part time employee, the date in which they have been absorbed into regular service, the pay that they were receiving in different dates within a period of four weeks. The respondents shall in turn verify these particulars and pass appropriate orders for grant of pension to the petitioners within a period of four weeks thereafter.

(iii)It is made clear that the petitioners are entitled to pension if they have joined in service prior to 01.04.2003 and the respondents cannot deny their request citing any reasons.

15.With the above directions, all these writ petitions stand allowed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vs
To

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 09.
 - 2.The Director of Public Libraries,
Anna Saalai,Chennai.
 - 3.The District Library Officer,
Collectorate Compound, Villupuram.
 4. The District Library Officer,
Fort Main Road, Namakkal.
- + 3 ccs to M/s. R. Prem Narayan, Advocate SR.82570

WP.Nos.28035 to 28046 of 2013
and
W.P.No.21915 of 2013

RV(CO)
EU(12/12/2017)