

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.672 of 2016

T.S.Mohan

.. Petitioner

vs.

1.The Principal Accountant General,  
(Accounts & Entitlements),  
Tamil Nadu,  
361, Anna Salai,  
Chennai-600 018.

2.The Director of Rural Development and  
Panchayat Raj,  
Panagal Buildings,  
Saidapet,  
Chennai-600 015.

3.The Block Development Officer,  
Madurantakam Block,  
Madurantakam,  
Kancheepuram District.

.. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to apply the old pension scheme (Tamil Nadu Liberalised Pension Rules, 1960) to the petitioner and grant him pension and other retirement benefits as per the said rules and refund the amounts deducted from his monthly salary towards subscriptions to the Contributory Pension Scheme in CPS No.7012926/GA with interest.

For Petitioner : Mr.P.Manojkumar

For Respondent-1 : Mr.V.Vijayshankar

For Respondents-2 : Mr.K.Dhananjayan,  
Special Government Pleader.

For Respondent-3 : Mr.A.Kumar

### O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to apply the old pension scheme (Tamil Nadu Liberalised Pension Rules, 1960) to the petitioner and grant him pension and other retirement benefits as per the rules.

2. The learned counsel appearing for the writ petitioner contended that the writ petitioner is now working as Zonal Deputy Block Development Officer, Madurantakam Block, Kancheepuram District. The writ petitioner was initially appointed as Part-Time Clerk on 3.12.1985 and as Full Time Panchayat Assistant on 1.10.1991. Further, the writ petitioner was appointed by way of transfer of service to the post of Rural Welfare Officer-II on 6.6.2005 and promoted to the post of Assistant on 7.9.2011. Further promotion was granted to the writ petitioner to the post of Deputy Block Development Officer on 16.11.2014. However, the writ petitioner was allotted CPS No.7012926/GA on the ground that he was appointed in the Regular Government Service only with effect from 5.6.2005. Persons appointed on or after 1.4.2003 are not entitled to be included in the old Pension Scheme.

3. The learned counsel appearing for the respondents reiterated that the new Pension Scheme was introduced with effect from 1.4.2003 and the persons regularly appointed after 1.4.2003, cannot be granted General Provident Fund Account and they are covered only under Contributory Pension Scheme.

4. Thus, there is no infirmity in including the writ petitioner in the Contributory Pension Scheme (CPS), in view of the fact that he was appointed into the regular Government Service only after 1.4.2003.

5. The learned counsel appearing for the writ petitioner contended that though the writ petitioner was regularly appointed in the Government Service on 5.6.2005, his initial appointment as Part-Time Clerk was of the year 1985 and he was subsequently absorbed as Full Time Panchayat Assistant with effect from 1.10.1991. Thus, initial appointment falls well before the cut off date of 1.4.2003.

6. However, this Court is of the opinion that regularisation from the date of initial appointment, cannot be granted and counting of half of the services pursuant to the amended Rule 11 of the Tamil Nadu Pension Rules, 1978, is to be considered in favour of the writ petitioner. In this regard, in a batch of writ petitions in W.P.No.7217 of 2015 etc., batch, dated 2.8.2017, this Court held as follows:-

"6. The grievances advanced in this writ petition is the non-consideration of the amended Rule 11 of the Tamil Nadu Pension Rules, in respect of qualifying the services 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 1<sup>st</sup> 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.*
  - *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 1<sup>st</sup> January 1961 for which authenticated records of service may be available.*
- *Pension or revised pension admissible as the case shall be paid from the 23<sup>rd</sup> 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.*

*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 16<sup>th</sup> of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1<sup>st</sup> 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 1<sup>st</sup> 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 the 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 1<sup>st</sup> January 1910 and if, on that date, his age was stated to be 18, his date of birth should be taken as 1<sup>st</sup> January 1892. This procedure will apply to cases arising on or after 27<sup>th</sup> 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.*

*[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.] '*

7. 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 1<sup>st</sup> April 2003 without a break”.

7. In view of the abovesaid judgment of this Court, the case of the writ petitioner also deserves consideration. Accordingly, the respondents are directed to verify the Service Records of the writ petitioner and extend the benefits in the light of the amended Rule 11 of the Tamil Nadu Pension Rules, 1978 and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

21-08-2017

Speaking Order/Non-Speaking Order.

Index : Yes/No.

Internet : Yes/No.

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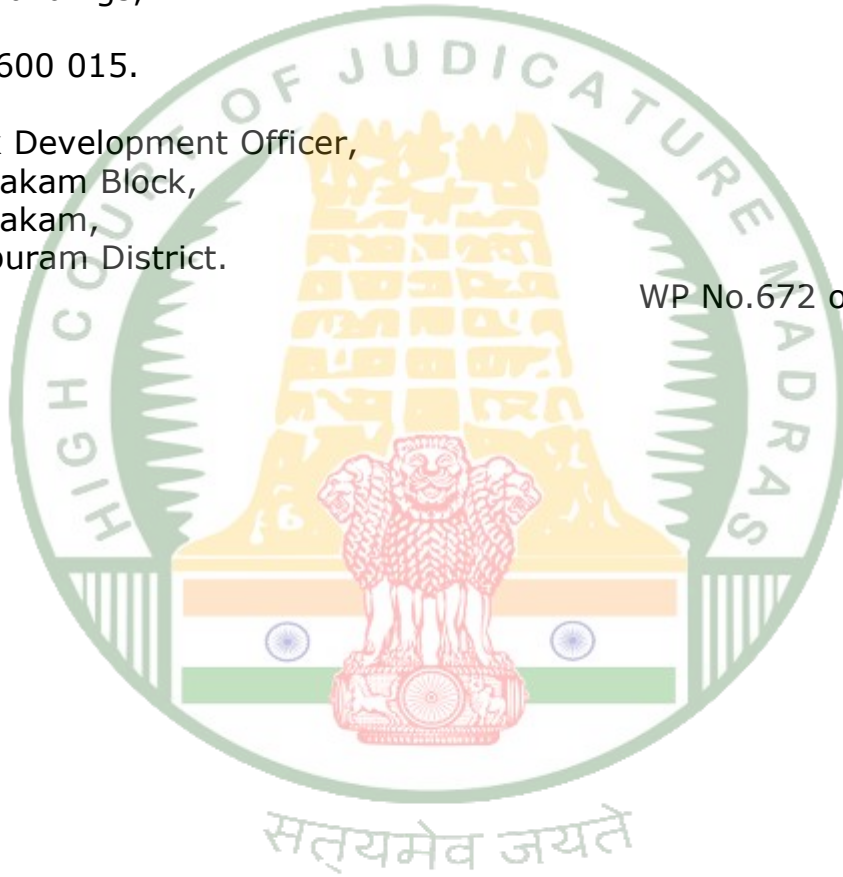
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**S.M.SUBRAMANIAM, J.**

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