IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.04.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.24654 of 2015

K.Amirthammal ... Petitioner

versus

1. The District Collector,
Vellore, Vellore-09.

2. The District Revenue Officer,
District Revenue Office,
Tirupathur, Vellore District. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents to pay her family pension along with arrears from 09.01.1997 to till date and other death benefits with 18% interest till the date of realization.

For Petitioner : Mr.R.Jaikumar
For Respondents : Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Mandamus, to direct the respondents to pay her family pension along with 18% interest till the date of realization.

2. The husband of the petitioner was appointed as Office Assistant on 11.1.1985 at Pachur village Administration and he worked till 9.1.1997 on which date, he died in service. The deceased employee left behind by the time of his death, his wife, the petitioner herein, two sons and three daughters. Consequent to the death of the deceased employee, the petitioner was paid certain monetary benefits to the tune of Rs.1,30,000/-. However, certain other statutory benefits like, family pension, etc. had not been granted to the petitioner. According to the petitioner, during the entire period of employment of the

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petitioner's husband, his contribution has been deducted towards provident fund. In these circumstances, the petitioner had been approaching the respondents for grant of family pension and other allied benefits as per her entitlement. According to the petitioner, whenever she approached the authorities concerned, she was informed that the service register of the petitioner's husband was not traceable and on tracing out the same, suitable action would be taken on the request of the petitioner. Although several years gone by after the death of the petitioner's husband, no positive response was forthcoming despite lapse of more than 18 years. Therefore, the petitioner is constrained to approach this Court, seeking for a direction to the respondents to pay family pension with interest.

3. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the respondents and filed a counter affidavit, wherein, it is submitted that the post of Village Assistant has been brought under establishment only after issuance of Tamil Nadu Village Assistants Pension Rules 1955, which rules were put into effect from 1.6.1995. According to the learned Special Government Pleader, since the petitioner had rendered only two years of service after introduction of the said Pension Rules, he was not entitled to grant of pension or family pension as the case may be since minimum 10 years of qualifying service is required as per Rule 7(i) of the Tamil Nadu Village Assistants Pension Rules 1995. He would draw the attention of this Court to Sub Clause (i) of Rule 7 of the Tamil Nadu Village Assistants Pension Rules, 1995, which is reproduced herein below:

> "7(i). A Village Assistant shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per rules and orders."

Therefore, the learned Special Government Pleader would contend that the claim of the petitioner herein is misconceived and cannot be granted.

4. On the other hand, the learned counsel appearing for the petitioner would submit that the issue is squarely covered by the decision of this Court rendered in W.A.(MD) No.313 of 2016, dated 18.2.2016, wherein the learned Division Bench of this Court, has dealt with the similar claim in detail and confirmed the order of the learned single Judge in the appeal. The facts and observation of the learned Division Bench as set out in paragraphs 1 to 7, are extracted as under:

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"Challenge in this appeal is to an order made in W.P(MD)No.12953 of 2014, dated 17.11.2014 by which, following an earlier decision of a Hon'ble Division Bench in W.A (MD)No.16 of 2009, dated 16.02.2009, and accepting the contention of the writ petitioner that he was appointed, as a Village Assistant (Thalayari) on 21.07.1975 and put in more than 10 years of service, the Writ Court has issued a Mandamus, directing that the entire period of service from 21.07.1975 to 31.01.2013, the date on which he retired, shall be counted for the purpose of pension, directed the respondents therein, to sanction pensionary benefits to the writ petitioner.

2. Though Mr.A.K.Baskarapandian, learned Special Government Pleader has assailed the correctness of the abovesaid order made by the Writ Court, on the grounds that Rule 11(4) of the Tamil Nadu Pension Rules, 1978, considered in W.A(MD)No.16 of 2009, dated 16.02.2009 ought not to have been applied to the facts of this case and that Writ Court ought to have considered the Tamil Nadu Village Assistant Pension Rules, 1975 issued in G.O.Ms.No.9, Revenue Section 7(1) Department, dated 28.02.2006, as applicable to the case of the respondent, this Court is not inclined to accept the said contention for the reason that perusal of the order made in W.A(MD)No.16 of 2009, dated 16.02.2009 shows that the Tamil Nadu Village Assistant Pension Rules, 1975, which came into effect from 1st June 1995, and the entitlement of the Village Assistant to reckon the qualifying service, either temporary or officiating or permanent (full time), the Hon'ble Division Bench has upheld the order impugned therein.

3. From the averments made in para 7 of the supporting affidavit to the Writ Petition it is seen that respondent was initially appointed only on temporary basis, the appellants have not even disputed the same, in the supporting affidavit to CMP

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(MD)No.1652 of 2016 filed in the present Writ Appeal. There is no grounds of challenge on that aspect.

4. Chapter 2 of the Tamil Nadu Village Assistant Pension Rules, 1995, deals with the pension and gratuity. As per Rule 4(a) in computing the length of service for calculation of pension and gratuity temporary, officiating and permanent (full time) service shall be reckoned as qualifying service. For Brevity, Rule 4(a) is extracted hereunder;-

> 4(a) in computing the length of service for calculation of pension and gratuity temporary, officiating and permanent (full time) service shall be reckoned as qualifying service.

5. As per Rule 7(i) of the said Rules, a Village Assistant shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per rules and orders.

6. On the contention of Mr.A.K.Baskarapandian, learned Special Government Pleader that the Writ Court has erred in applying Rule 11 of the Tamil Nadu Pension Rules, 1978, a comparative study of The Tamil Nadu Village Assistants Pension Rules 1995 and Rule 11 of the Tamil Nadu Pension Rules, 1978 shows there is no glaring difference in the Rules, on the aspect as to how the qualifying service shall be reckoned. In Rule 4 of the Tamil Nadu Village Assistants Pension Rules, 1995, in computing the length of service for calculation of pension and gratuity temporary, officiating and permanent (full time) service shall be reckoned as qualifying service. In Rule 11 of the Tamil Nadu Pension Rules, 1978, the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he first appointed either subsequently or in an officiating or temporary capacity.

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> 7. As observed earlier, the contention of the respondent that he was appointed on temporary capacity on 21.07.1975, has not been disputed. The decision made in W.A(MD)No.16 of 2009, dated 16.02.2009, squarely applies to the facts on hand, as to how the period of qualifying service has to be reckoned. The Tamil Nadu Village Assistants Pension Rules 1995, has also been taken note of by the Hon'ble Division Bench and the relevant provisions have been extracted in para 8 of the said decision. There is no manifest illegality in the impugned order warranting interference. Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed."

5. The learned Special Government Pleader would also admit that the issue is covered by the above decision rendered by the learned Division Bench and few decisions rendered on the above said subject.

6. According to the learned Division Bench of this Court, once the Pension Rules had been brought into effect from 1995, the minimum qualifying service for entitlement is prescribed only 10 years as per Clause 7(i), the respondent in the above said decision having rendered service more than 10 years, was entitled to pension and on his death, his family was entitled to family pension.

7. In fact, in the counter affidavit, the period of service rendered by the petitioner's husband had been admitted in paragraph 4. Therefore, the claim of the petitioner has been squarely covered by the decision of the learned Division Bench and also other decisions and also the fact that the petitioner's husband had admittedly rendered more than 10 years of service and was covered under the earlier Pension Rules applicable to the Tamil Nadu Government Servants and also covered under the Tamil Nadu Village Assistants Pension Rules 1995 after their introduction in 1995. Therefore, in all fours, the petitioner is entitled to family pension. It is very unfortunate that in spite of clear entitlement, no effective steps were initiated by the respondents for sanction of the family pension to the poor family of the deceased employee for more than 20 years.

8. In the aforesaid circumstances, the Writ Petition is allowed. The respondents are directed to sanction family pension to the petitioner from the date of the death of the

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petitioner's husband with arrears and other pensionary benefits, which are admissible. It is also made clear that since the family pension has been denied unjustly for more over 20 years, the respondents are directed to pay the arrears of family pension with interest at 12% p.a. from the date it became payable till the date of actual payment. The respondents are directed to implement this order within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

suk
To

1. The District Collector,
Vellore, Vellore-09.

2. The District Revenue Officer,
District Revenue Office,
Tirupathur, Vellore District.

+1cc to Mr.T.Fenn Walter Associates, Advocate Sr.31569

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