

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.04.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

W.A.No.1457 of 2013
and M.P.No.1 of 2013

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Revenue Department,
Fort St. George,
Chennai - 9.
2. The District Collector,
Cuddalore District.
3. The Tahsildar,
Tittagudi Taluk,
Cuddalore District. ... Petitioner

versus

R.Akilandam ... Respondent

Prayer:-

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 12.06.2012 made in W.P.No.591 of 2012

W.P.No.591 of 2012:-

Petition under Article 226 of the Constitution of India
praying for the issuance of Writ of Mandamus to direct the
respondents to pay pensionary benefits to the petitioner from
the date of retirement of her husband (late) Mr.M. Ramalingam on
31.5.1998, with interest at 18% on the arrears of pensions
within a time frame as may be fixed by this Honourable Court

For Appellants : Ms.Thangavadhana Balakrishnan
Additional Govt. Pleader

For Respondent : Mr.R.Veeramani

JUDGMENT
(DELIVERED BY DR. S.VIMALA, J.)

This Writ Appeal has been filed by the Government, challenging the order dated 12.06.2012 made in W.P.No.591 of 2012.

Brief facts:

2. W.P.No.591 of 2012 has been filed by one Akilandam, who is the wife of the deceased employee, namely, one Ramalingam. The petitioner's husband was appointed as Village Menial on 17.10.1974. He continued in employment for more than 21 years, in the post of Village Menial. The post of Village Menials was given the nomenclature as Village Assistant and was brought into regular pensionable establishment with effect from 01.06.1995. He was consequently brought into the regular establishment and as such, he was entitled to pension and he retired on 06.05.1998. The petitioner's husband died on 09.06.2006, from then onwards, the petitioner was making representation for grant of pensionary benefits, based on G.O.Ms.No.118, dated 14.12.1996. Since there was no response, she was compelled to file this writ petition.

2.1. In the writ petition, the following decisions were relied upon.

(i) The Commissioner, Corporation of Chennai vs. V.Sumathi and another (2005 (2) LW 619);

(ii) K.Sampath vs. The State of TN by Secretary, Rural Development Department (W.P.(MD) No.4921 of 2006 dated 04.09.2006);

(iii) Essaki and two others vs. The Tahsildar, Tirunelveli (W.P.(MD) No.7699 of 2007, dated 05.11.2008);

(iv) S.M.Raju vs. State of TN, Secretary, Revenue Department (W.P.No.27577 of 2008 dated 09.11.2009);

(v) M.Jeya Pandi vs. The Secretary, Rural Development Department (W.P.No.2039 of 2008 dated 26.10.2009);

(vi) R.Srinivasan vs. TN State by Secretary Rural Development Department (W.P.(MD) No.8289 of 2008 dated 09.11.2009); and

(vii) V.Subramaniam vs. The Director of Local Fund Audit (W.P.Nos.53 to 56 of 2011 dated 12.11.2011).

By relying upon the same, the learned single Judge allowed the writ petition directing the respondents to pass orders within a period of eight weeks, granting pensionary benefits to the petitioner, upon the death of her husband, on the basis of the above Government Order and further directed that the entire arrears should be paid within a period of twelve weeks with interest at 6% per annum. Challenging the order passed by the learned single Judge, the present Writ Appeal has been filed by the Government.

3. It is the contention of the learned counsel appearing for the appellant that the petitioner's husband, M.Ramalingam, was employed only as a part-time Village Assistant from 17.10.1974 to 31.05.1995, during which, he was entitled only to Honorarium and not regular time scale of pay and therefore, G.O.Ms.No.118, Finance (Pension) Department, dated 14.02.1996 will not apply to the case of the petitioner's husband. A specific contention raised is that G.O.Ms.No.118, dated 14.02.1996 will be applicable only to the person working in the Government, Locak Body and Aided Educational Institutions and it will not apply to the case of Thalayari. It is also contended that the claim made by the wife of the employee is also a belated one and therefore, the employee is not entitled to pension and therefore, the impugned Judgment is unsustainable and hence, the writ appeal has to be allowed.

4. The dates and events submitted by the learned counsel for the respondent/petitioner are extracted for convenience reference:

Sl.No	Date	Events
1.	06.02.1975	Petitioner's husband (late) Mr.M.Ramalingam was appointed as Village Assistant in Kothattai Village, Tittagudi Taluk, Cuddalore District, in the Revenue Department. He was paid consolidated pay of honorarium.
2.	14.11.1980	Tamil Nadu Village Assistants Service Rules, 1980 introduced after abolition of part time posts. It speaks of temporary appointment and not part time appointment.
3.	01.06.1995	Her husband was brought under time-scale of pay and pensionable establishment.
4.	14.02.1996	G.O.Ms.No.118 Finance (Pension) Department provides for counting of 50% of service rendered in non-pensionable establishment.
5.	30.05.1998	Petitioner's husband (late) Mr.M.Ramalingam retired from service. He put in following service: 06.02.1975 to 30.05.1995 - 20 years, 3 months & 24 days in non-pensionable establishment. 01.06.1995 to 30.05.1998 - 2 years, 9 months and 29 days in pensionable and regular service. Counting of 50% of past service along with regular service makes him eligible for pension.

Sl.No	Date	Events
6.	25.08.2009	G.O.Ms.No.408 Finance (Pension) Department issued providing for calculation of or counting of 50% of past service rendered in non-provincialised service for the purpose of payment of pension. It was extended to persons borne on consolidated pay, honorarium & daily wages also from 01.01.1961, provided their service was regularized prior to 01.04.2003.
7.	09.02.2010	G.O.Ms.No.41 Finance (Pension) Department issued orders, amending Section 11 of TN Pension Rules, accordingly.

5. From the dates and events, it is apparent that the petitioner's husband has been appointed by issuance of appointment order dated 06.02.1975. A perusal of the appointment order itself would go to show that he was appointed on a permanent basis and not on part-time basis on temporary basis. The appointment rules also did not provide for appointment of part-time employee as disclosed from the rules. The learned counsel appearing for the respondent/petitioner relied upon the earlier decision of this Court on the same point and the first one is rendered in W.P.No.1716 of 2005 (K.Raman Nai vs. District Collector, K.K.District and another), where, a Village Menial was granted pension under the Rule 11 of the Tamil Nadu Pension Rules. As per the Rules, the past services, even in temporary capacity, is required to be taken into consideration and it was held that the petitioner therein is a permanent employee and therefore, is entitled to pensionary benefits. The matter was subsequently taken on appeal and appeal did not yield any positive results. Similar orders of this Court rendered in earlier cases have also been relied upon, where, it has been consistently held that the post of Village Menial is only a permanent post and not a temporary or part-time post.

6. Further, with regard to eligibility for pensionary benefits, Rule 7 of the Tamil Nadu Village Assistants' Pension Rules 1995 provides for granting of pensionary benefits.

7. It is needless to point out that Village Assistant would be governed by Tamil Nadu Village Assistants' Pension Rules 1995. Rule 7(i) of the Tamil Nadu Village Assistants' Pension Rules 1995, provides for eligibility or qualifying services for pensionary benefits. Under Rule 7(i) of the Tamil Nadu Village Assistants' Pension Rules 1995, 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. Under Rule 7(ii) of the Tamil Nadu Village Assistants' Pension Rules 1995, pension shall be calculated at 50% of the average emoluments drawn in the last 10 months before retirement for qualifying service of 66 half years and proportionate pension shall be paid for a qualifying service of less than 66 half years subject to a minimum of Rs.900/-.

8. So far as the petitioner's husband's case is concerned, it is not in dispute that he had the requisite qualifying service, having become eligible for grant of pension. The only objection raised herein is only on the ground of delay. But, the fact remains that that the petitioner, being the wife of the deceased, was a village lady and not conversant with the legal necessities/niceties, and therefore, would have knocked the doors of this Court belatedly. Hence, the delay alone cannot be a ground to decline the rights of the petitioner, when the eligibility and availability of rights under the Act is not in dispute.

9. Under the circumstances, we hold that there is no reason to differ from the view taken by the learned single Judge, which is the view taken by this Court in the earlier case, which has been upheld by the Supreme Court. Hence, the Writ Appeal has no merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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+1cc to Mr.R.Veeramani, Advocate, S.R.No.28382

CS/20/07/18

W.A.No.1457 of 2013