

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WP.No.29600 of 2017

L.Joseph Raj

...Petitioner

vs

1. The Government of Tamil Nadu
Rep. By its Principal Secretary to Government
Rural Development & Panchayat Raj Department
Fort St.George,
Chennai 600 009
2. The Director of Rural Development & Panchayat Raj
Panagal Building
Saidapet, Chennai 600 015
3. The Principal Accountant General (A & E) Tamil Nadu
No.361 Anna Salai
Chennai 600 018
- 4.The District Collector, (PD Section)
Tutucorin District
Tuticorin.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India prayed that this Hon''ble Court may be pleased to issue a WRIT OF MANDAMUS directing the respondents to extend the benefit of orders passed by Division Bench of this Court in Writ Appeal No.431 of 2016 dated 11.04.2016 and W.A.No.612/2016 dated 24.06.2016 by counting 50% services rendered by the petitioner in part time Panchayat Clerk along with regular service for the purpose of pension and direct the respondents to count 50% services rendered in the post of part time Panchayat clerk from 01.01.1983 till 30.06.1998 along with regular service for the purpose of granting pension.

For Petitioner : Mr.V.Suthakar

For Respondents : Mrs.A.Srijayanthi
Special Government Pleader
for R1, R2 & R4

O R D E R

The relief sought for in this Writ Petition is for a direction directing the respondents to extend the benefit of orders passed by Division Bench of this Court in Writ Appeal No.431 of 2016 dated 11.04.2016 and W.A.No.612/2016 dated 24.06.2016 by counting 50% services rendered by the petitioner in part time Panchayat Clerk along with regular service, for the purpose of pension and direct the respondents to count 50% services rendered in the post of part time Panchayat clerk from 01.01.1983 till 30.06.1998 along with regular service for the purpose of granting pension.

2.The learned counsel appearing for the writ petitioner contended that the issue involved in these Writ Petition has been considered by two different Hon'ble Division Benches of this Court, on the same line. The first Judgement was pronounced on 11th April, 2016 in W.A.No.431 of 2016 and the following paragraphs of the Judgement are relevant for the purpose of deciding these Writ Petitions:

"4 The State Government took a policy decision by G.O.Ms.No.39, Rural Development and Panchayat (E5) Department dated 13 June 2011, (for short "G.O. Ms.No.39") whereunder, it was clearly observed that an employee, working in Panchayat as Full Time Clerk or Part Time Clerk and having been absorbed by the Government prior to 01 April 2003, will be entitled to counting 50% of the service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. Subsequently, the said Government Order, as pleaded by the learned Special Government Pleader appearing for the appellants, was amended by G.O.Ms.No.77, Rural Development and Panchayat Raj Department dated 12 July 2013 (for short "G.O. Ms.No.77"), whereunder, counting of 50% of service in case of Part Time Clerks was withdrawn.

5 In the case on hand, indisputably, the respondents 1 and 2 were absorbed as Junior Assistant before 01 April 2003, subsequent to which the first respondent was promoted as Assistant and retired from service on 31 4 December 2009 and the second respondent retired as Cashier on 30 June 2007. Thus, the respondents 1 and 2 are entitled to the benefit as granted in G.O.Ms.No.39 and the subsequent Government Order in G.O.Ms.No.77, would not be applicable to those

employees, who were entitled to the benefit before issuance of the said Government Order.

6 The learned single Judge has rightly come to the conclusion that 50% of the service period put in by the respondents 1 and 2 under the consolidated pay by way of part time employment will be computed for pensionary benefits. We do not find any reason to take a view contrary to the one taken by the learned single Judge.

With the aforesaid observations, the writ appeal stands dismissed. No costs. Consequently, connected C.M.P. is closed. "

3. Another Hon'ble Division Bench of this Court passed a Judgment on 24th June 2016 in W.A.No.612 of 2016, as extracted under:

"3. The grievance of the first respondent is that the services rendered by him as Part Time Panchayat Clerk was not taken into consideration while calculating pension. Therefore, he filed a writ petition and the same was allowed on 27.6.2014, along with similar writ petitions, holding that 50% of the services rendered by the writ petitioners as Part Time Panchayat Clerk should be taken into account while calculating pension and directing the concerned authority to calculate and issue orders granting pension and other benefits within a period of three months and to implement the same within a period of one month thereafter. Aggrieved by the same, the appellants have come up with this appeal.

4. As against the order of the learned single Judge dated 27.6.2014 3 passed in a batch of writ petitions, one of the writ petitioner, filed W.A.No.431 of 2016. A Division Bench of this Court, by judgment dated 11.4.2016, dismissed the appeal, holding that the learned single Judge had rightly concluded that the 50% of the services rendered by the petitioners therein under the consolidated pay by way of part time employment has to be taken into account for pensionary benefits.

5. In view of the decision of the Division Bench of this Court dated 11.4.2016 made in W.A.No.431 of 2016, this writ appeal is also dismissed in terms of the above judgment. There shall be no order as to costs. Consequently, CMP No.8080 of 2016 is closed. "

4.The learned counsel appearing for the petitioner contended that the Judgments of the Hon'ble Division Benches were implemented by the respondents in G.O.(P) No.111 RD & Panchayat Raj (PA5) Department dated 14.3.2016. Thus the writ petitioner herein is also eligible to get the same benefits extended to the other similarly placed employees worked as part time employees and absorbed as regular employees in the cadre of Junior Assistant.

5.The learned Additional Government Pleader opposed the contentions raised by the writ petitioner by stating that the writ petitioner is not eligible to get the benefits, as contended by the learned counsel for the writ petitioner.

6.Since the issue has been decided by the two different Hon'ble Division Bench of this Court on the same line, no exception can be drawn, by considering the arguments advanced by the learned Additional Government Pleader in this regard.

7.In this view of the matter, the Writ Petition stands disposed and the benefits granted by the two different Division Benches of this Court in W.A.No.431 of 2016 dated 11th April, 2016 and in W.A.No.612 of 2016, dated 24th June 2016, respectively are directed to be extended to the Writ Petitioner also. No costs.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

sk/vv2

To

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4.The District Collector, (PD Section)
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Tuticorin.

+1 CC to Mr.V. Suthakar, Advocate sr 55630.
+1 CC to Govt. Pleader sr 55365.

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KGK (CO)
SP(17/09/2018)



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