IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.07.2018

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.34696 of 2013

N.Shanmugam .. Petitioner

versus

1. The Commissioner of Agriculture,
Chepauk,
Chennai-600 005.

2. The Director of Agriculture,
Villupuram District,
Villupuram.

3. The Joint Director of Agriculture,
Villupuram District,
Villupuram,

4. The Principal Accountant General (A&E),
Office at DMS Compound,
Teynampet, Chennai-600 018. .. 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 count half of the service rendered by the petitioner as Plan Assistant and Attender cum Messenger in TANCOF between 06.09.1985 to 22.4.2002 as qualifying service, send the revised proposal to the fourth respondent to grant pension to the petitioner with all consequential monetary benefits.

For Petitioner : Ms.S.Girija

For Respondents: Mrs.P.Rosekamalam, AGP
for respondents 1 to 3
Mrs.Hema Muralikrishnan
for respondent 4

ORDER

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

> "To issue Writ of Writ of Mandamus, to direct the respondents to count half of the service rendered by the petitioner as Plan Assistant and Attender cum Messenger in TANCOF between 06.09.1985 to 22.4.2002 as qualifying service, send the revised proposal to the fourth respondent to grant pension to the petitioner with all consequential monetary benefits."

2. The case of the petitioner is as follows:

The petitioner was appointed as Plant Assistant in the erstwhile Tamil Nadu Co-operative Oilseeds Growers Federation Limited (in short, "TANCOF"). His services were also regularized in the said post. Later, he was promoted to the post of Attender cum Messenger. While so, TANCOF has been wound up with effect from 31.3.2002. Before winding up of TANCOF, a proposal was sent by the Director of TANCOF to the Government to accommodate the staff including the petitioner, who were likely to be affected by the winding up process. Pursuant to the said proposal, the Government has issued G.O.Ms.No.41, Agriculture Department, dated 8.8.2002 accommodating the affected employees of TANCOF. By virtue of the same, the petitioner was deputed to the Agriculture Department in the same cadre as Office Assistant on 2.1.2003. The grievance of the petitioner is that on attaining the age of superannuation, he retired on 30.06.2012, however, while paying terminal benefits, he was denied pension on the ground that the petitioner had not rendered qualifying service for grant of pension. According to the petitioner, before his absorption, he had rendered long years of service in erstwhile organization, i.e., more than 17 years, however, unfortunately, the services rendered by the petitioner in erstwhile organization from 6.9.1985 till 22.4.2002 had been wiped out with no pension being sanctioned to him. Hence, the petitioner has come forward with the present writ petition.

3. Upon notice, Mrs.P.Rosekamalam, learned Addl.Govt.Pleader entered appearance for respondents 1 to 3 and Mrs.Hema Muralikrishnan, learned counsel entered appearance for respondent No.4. A counter affidavit has been filed on behalf of the respondents 1 and 2, inter alia, stating that the Government has issued G.O.Ms.No.142, Agriculture (OS) Department date 4.6.2002 while ordering the transfer of the staff of TANCOF to the Agriculture Department, it is made clear that the employees inducted in

Agriculture Department by transfer from TANCOF are not eligible for regular pension scheme but to be covered under Contributory Pension Scheme. As per Rule 43 of the Tamil Nadu Pension Rules 1978, minimum qualifying service required for sanction of pension is 10 years and since the petitioner has rendered service only 9 years and six months, he is declared not eligible for regular pension. Hence, the petitioner is not entitled to the grant of pension.

4. The issue involved in the present Writ Petition has been covered by the order of this Court passed in similar writ petitions filed in W.P.Nos.2623, 3355 and 3356 of 2014. The relevant portion of the order as found in paragraphs 11 to 17 is extracted as under:

> 11. Mr.M.Ravi, learned counsel appearing for the petitioners, at the outset, would contend that two other employees who were identically placed like the petitioners herein, had been granted the benefit of counting their services rendered in TANCOF for the purpose of pension and other retirment benefits, it was not open to the Government to deny the same benefits to the petitioners since such denial would tantamount to flagrant violation of equity principle enshrined under Articles 14 and 16 of the Constitution of India. He would straight away draw the attention of this Court to Rule 11(3) of the Tamil Nadu Pension Rules 1978. The operative portion of the Rule 11(3) as far as the petitioners' claim is concerned, is extracted below:
>
> > "11. Commencement of qualifying Service:
> >
> > (1) ....
> >
> > (2) ....
> >
> > (3) 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.

Provided that in respect of those who retired prior to the 14^{th} February, 1996, the retirement benefit or revised retirement benefit, as the case may be admissible to them shall be paid from the 14^{th} February 1996 and there shall be no claim for arrears in any case, for the period up to the 13^{th} February, 1996."

12. Although the writ petitioners originally sought for counting their entire service for the purpose of grant of pensionary and other retirement benefits, the learned counsel would confine the relief only to the limited extent as provided under Rule 11(3), which is extracted above. According to the learned counsel, the statutory entitlement as provided for in the Rules cannot be negated or denied by the Government under any circumstances and therefore, the petitioners are entitled to be granted the benefit as provided for under Rule 11 (3) of the Tamil Nadu Pension Rules, 1978.

13. The learned counsel M.Ravi, would further contend that the Government has passed series of orders in respect of employees who were employed in Tamil Nadu Poultry Development Corporation Limited which came be closed and the employees were absorbed subsequently in Animal Husbandry Department. In those cases, the Government had applied Rule 11 by providing the benefit of counting of half of non-pensionable service rendered in Tamil Nadu Poultry Development Corporation Limited with regular service rendered in Animal Husbandry Dairying and Fisheries (Poultry) Department. The

learned counsel would also rely upon the similar orders passed by the Government in respect of similarly placed employees who were retrenched from various Boat Building Yard, were ultimately reemployed in Government Departments particularly, Animal Husbandry Dairying and Fisheries Department. He would rely on G.O.Ms.No. 184 Animal Husbandry Dairying and Fisheries Department, dated 18.9.2015, wherein, the Government ordered for counting the past service of Boat Building Yard employees for the purpose of pensionary benefits. Therefore, he would re-enforce his arguments that there is absolutely no justification for the Government to deny the benefits as per the provisions contained in Tamil Nadu Pension Rules and therefore, the petitioners herein are entitled to count their half of their services rendered in the erstwhile TANCOF along with their regular service rendered in Government from 1.4.2002 for the purpose of grant of pension and other retirement benefits.

14. Per contra, the learned Addl.Advocate General Shri K.Venkataramani, appearing for the respondents 1 to 3 would strongly resist the claim of the petitioners, stating that the Government took a sympathetic view earlier in 2002 for absorbing them into the Government department and such sympathy shown to them, cannot be extended to count their past services rendered by them in TANCOF. As regards the provisions as contained in Rule 11 (3) of the Pension Rules, the learned Addl.Advocate General attempted to draw a distinction between the claim of the petitioners herein vis-à-vis Rules. But he was unable to persuade this Court to read something into the Rule which is not explicitly found. The learned Addl.Advocate General was unable to distinguish the case of the petitioners herein from others' case as pointed out by the learned counsel appearing for the petitioners. Although a valid attempt was made by the Addl.Advocate General for resisting the claim of the petitioners, the said attempt was hardly convincing and did not carry conviction with this Court.

15. As rightly contended by the learned counsel for the petitioners that pension Rule which is extracted above, is unambiguous and clear which provides for the benefit of counting half of service rendered by the petitioners in non-pensionable establishment. The petitioners herein are entitled to the relief as provided for in the Rules for more than one reason. Firstly, the Rule position is very clear which does not give any scope for any different interpretation for the purpose of denying the benefit to the petitioners. Secondly, the Government itself has introduced the Pension Rules, as of-course, which had no option and applied the same Rule in respect of Animal Husbandry Dairying and Fisheries Department where similarly placed employees who worked in non-pensionable establishment were absorbed and their past service was ordered to be counted for the purpose of pensionery benefits. Thirdly, in respect of two employees,namely, Durai and Selvaraj from TANCOF who were given the benefit of counting past services including the services rendered in Government establishment from 1.4.2002 and sanctioned pension and other retirement benefits. As stated above, in the counter affidavit on behalf of the respondents 1 to 3, no valid reasons were assigned as to how those employees alone were granted the benefit of pension by counting their past services rendered in TANCOF and leaving out similarly placed employees like the petitioners herein.

16. In view of the above discussion and narrative, this Court has no hesitation in allowing the writ petitions to the extent that the petitioners are entitled to the benefit of counting their half of service rendered by them in their erstwhile establishment TANCOF and also their regular service from 1.4.2002 for the purpose of grant of pension and other retirement benefits. Accordingly, the impugned orders, viz., Government Letter No.103/OS/2009-26 dated 1.8.2012 issued by the 1st respondent and G.O.Ms.No.310 Agriculture (OS) Department dated 23.11.2005 are set aside to the extent as indicated above.

17. The Writ Petitions are allowed on the above terms. There shall be a consequential direction to the first respondent to grant pension and other retirement benefits admissible to the petitioners by applying the Rule 11(3) of the Tamil Nadu Pension Rules, 1978. The said direction shall be complied with by the first respondent or by the competent authority within a period of four months from the date of receipt of copy of this order. No costs. Consequently, connected MPs are closed."

5. Following the same, this Court is of the view that the above said order will hold good in respect of the present writ petition also and accordingly, the Writ Petition is allowed. There shall be a consequential direction to the first respondent to grant pension and other retirement benefits admissible to the petitioner by applying the Rule 11(3) of the Tamil Nadu Pension Rules, 1978. The said direction shall be complied with by the first respondent or by the competent authority within a period of four months from the date of receipt of copy of this order. No costs.

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To

1. The Commissioner of Agriculture,
Chepauk,Chennai-600 005.

2. The Director of Agriculture,
Villupuram District,Villupuram.

3. The Joint Director of Agriculture,
Villupuram District,Villupuram,

4. The Principal Accountant General (A&E),
Office at DMS Compound,
Teynampet, Chennai-600 018.

+1 cc to Mr.Hema Murali krishnan Advocate SR.NO. 46406
+1 cc to M/s.Girija, Advocate SR.NO. 46287
+1 cc to Government Pleader SR.NO.46574

W.P.No.34696 of 2013

ASK(27/08/2018)