

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1111 of 2016
and C.M.P.No.14400 of 2016

- 1.The Government of Tamil Nadu
Rep by its Principal Secretary to Government
Rural Development and Panchayat Raj Department
Fort St.George,
Chennai 600 009.
 - 2.The Principal Secretary to Government of Tamil Nadu
Finance Department
Fort St.George
Chennai 600 009.
 - 3.The Commissioner of Rural Development
and Panchayat Raj
Panagal Building
Saidapet, Chennai 600 015.
 - 4.The Principal Accountant General (A&E)
Tamil Nadu
No.361, Anna Salai
Chennai 600 018.
- ... Appellants/Respondents

Vs.

Tamil Nadu Rural Development Official's
Association rep by its State
Vice President Mr.A.Kennedy Boobala Rayan
No.46, Theradi Street
Triplicane, Chennai 600 005. ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 27.08.2014 made in W.P.No.2697 of 2014 on the file of this Court.

WP.No.2697/2014:This writ petition filed U/Article 226 of constitution of India, praying to call for the records pertaining to paragraph 4(b) of G.O.Ms.No.77 Rural Development

and Panchayat Raj (PA4) department dated 12.7.2013 of the first respondent and quash the same and further direct the respondents to count 50% of the services rendered by the petitioners in the post of part time Panchayat clerk along with regular service for the purpose of pension in accordance with G.O.Ms.No.39 Rural Development Department and Panchayat Raj dated 13.06.2011.

For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader
For Respondent : Mr.V.Suthakar

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

The Government of Tamil Nadu issued an order in G.O.Ms.No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12 July, 2013 giving weightage to 50% of the services rendered in the earlier service for the purpose of fixing pension in accordance with the Government Order in G.O.Ms.No.39, Rural Development and Panchayat Raj (E5) Department, dated 13 June 2011. Paragraph 4(b) of the Government Order in G.O.Ms.No.77 dated 12 July, 2013 excluded the part time service for counting the total service for the pension. The said clause was challenged in W.P.No.19624 of 2014. The learned single Judge allowed the writ petition and quashed the impugned provision, which excludes the part time service from the purview of the Government Order in G.O.Ms.No.77 dated 12 July, 2013.

2. When a similar writ petition was filed by the respondent herein, the learned single Judge following the earlier orders, allowed the writ petition by order dated 27 August, 2014. The order is under challenge at the instance of the State.

3. We have heard the learned Special Government Pleader appearing on behalf of the appellants. We have also heard the learned counsel for the respondent.

4. The respondent filed the writ petition in W.P.No.2697 of 2014 challenging paragraph 4(b) of the Government Order in G.O.Ms.No.77 dated 12 July, 2013. The respondent made a further prayer to count 50% of the services rendered by the members of the association in the post of part time Panchayat Clerk along with the regular service for the purpose of pension in accordance with the Government Order in G.O.Ms.No.39 dated 13 June, 2011. Paragraph 4(b) of G.O.Ms.No.77, dated 12 July, 2013 has already been quashed by a learned single Judge of this Court in a writ petition in W.P.No.19624 of 2014. Therefore, there

was no legal requirement on the part of the respondent to challenge the very same clause once again independently. Even then, the learned single Judge considered the background facts including the outcome of the writ petitions filed earlier challenging the very same provision. The learned single Judge quashed paragraph 4(b) of the impugned Government Order and directed the appellants to give the benefit of part time service to the members of the respondent association.

5. The very same issue came up for consideration before a Division Bench of this Court in Government of Tamil Nadu vs. P.V.Velliyangiri (judgment dated 11 April, 2016 in W.A.No.431 of 2016).

6. The Division Bench in P.V.Velliyangiri, considered the scope and ambit of the Government Order in G.O.Ms.No.77 dated 12 July, 2013 and the policy decision expressed by the Government in G.O.Ms.No.39 dated 13 June, 2011 and opined that an employee working in a Panchayat as a Full Time Clerk or Part Time Clerk and having been absorbed prior to 01 April, 2003 would be entitled for counting 50% of the earlier service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. We are in agreement with the views expressed by the Division Bench in its judgment dated 11 April 2016 in W.A.No.431 of 2016. We are informed that, subsequently another Division Bench took the very same view in Government of Tamil Nadu and others vs. M.Rajendran and another (judgment dated 24 June 2016 in W.A.No.612 of 2016)

7. There was no appeal preferred by the appellants against the order in W.P.No.19624 of 2014 quashing paragraph 4(b) of G.O.Ms.No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12 July, 2013. It was only the subsequent order following the order in W.P.No.19624 of 2014 which was challenged by the appellants. In any case, the issue is now covered by the decision given by two co-ordinate Benches of this Court. We are, therefore, of the view that there is absolutely no merit in the appeal filed by the appellants.

In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms

To

Tamil Nadu Rural Development Official's
Association
Vice President
No.46, Theradi Street
Triplicane, Chennai 600 005.

+1cc to Government Pleader Sr.No.22301
+1cc to MR.V.Suthakar, Advocate Sr.No.22410

RJI(CO)
sm:3.5.2018

W.A.No.1111 of 2016



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