BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.09.2018**

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD).No.21591 of 2015
and
M.P(MD) No.1 of 2015

M.Vellaiyan ... Petitioner

Vs.

1) The Secretary to Government,
Department of Revenue,
Secretariat,
Chennai.

2) The Accountant General (A & E),
361, Anna Salai,
Chennai 600 018

3) The District Collector,
Madurai District,
Madurai.

4) The Tahsildar,
Taluk Office,
Usilampatti,
Madurai District. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to Pr.AG(A&E)/ Legal Cell/WP(MD) 2943/2012/2013-14 dated 02.09.2013, passed by the 2nd respondent and quashing the same and consequently directing the respondents to disburse the petitioner retirement pensionary benefits and monthly pension.

For petitioner: Mr.M.Kalamurugappan
For RR1, 3 & 4: Mr.M.Pandiarajan,
Additional Government Pleader
For R2 : Mr.P.Gunasekaran

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to Pr.AG(A&E)/ Legal Cell/WP(MD) 2943/2012/2013-14 dated 02.09.2013, passed by the 2nd respondent and quash the same and consequently, issue a direction to the respondents to disburse the petitioner's retirement and pensionary benefits and monthly pension.

2. The case of the petitioner is that he joined in the contingent service in December 1962 in Valanthur Village of the 4th respondent Taluk and his service was regularised w.e.f., from 31.05.1995. Even though the petitioner was employed as Village Assistant, the past period of service rendered by the petitioner from 27.12.1962 till 31.05.1995 has not been taken into account for the purpose of pensionary benefits.

3. According to the petitioner, he has been qualified, as contemplated under Rule 11 of Tamil Nadu Pension Rules, 1978 more particularly, Rule 11(1), which is extracted below for the sake of convenience:-

"**QUALIFYING SERVICE**

11.*Commencement of qualifying services.* -(1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the first October 1969, [1] [***] temporary or officiating service in the pensionable post whether rendered in a regular capacity or not shall count in full as qualifying services even if it is not followed by confirmation.

NOTE- In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore-Cochin State consequent on the reorganisation of States, temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore-Cochin State shall count in full for purposes of pension.

Provided that -

- in the case of a Government servant, service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity;

- in the case of a Government servant whose year and month of birth are known, but not the exact date the 16th of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1st July of the year shall be taken.

- in the case of a Government servant with no military service who gives on recruitment only his age, but not the year of his birth , the year should be arrived at by deducting from the Year of recruitment the given age and then the date of birth should be taken as the 1st July of that year:

Provided further that in the case of a Government servant with previous military service the date of birth is fixed as laid down below -

When a military employee is transferred to a civil department under the Government and assumes a civilian status, the date of birth to be entered in his service book should be·the date stated by him at the time of attestation.

When the documents referring to the previous military service of an individual do not give the definite date of birth but only the age stated at the time of attestation, he should be assumed to have completed the stated age on the date of attestation e.g., if ex soldier was enrolled on 1st January J 910 and if on that date, his age was stated to be 18, his date of birth should be taken as 1st January 1892. This procedure will apply to cases arising on or after 27th June 1938.

Notwithstanding anything contained above, in cases where S.S.L.C or any other school certificate is available, the date of birth, as entered therein should be taken into account."

4. The petitioner's service, on temporary basis, have got to be taken into account and 50% of the services will have to be counted for the purpose of pensionary benefits. Since the benefit has not been extended to the petitioner herein, the action of the respondent is arbitrary and the learned counsel for the petitioner submitted that the respondents have got to be directed to extend the pensionary benefits to the petitioner.

5. It is the further case of the petitioner that one another similarly placed employee, alike the petitioner, has been granted the pensionary benefits in terms of **G.O.Ms.No.425** dated 29.10.2013 and the relevant paragraph is extracted below:

"4. The Government after careful examination of the above case decided to implement the orders of

Hon'be Madurai Bench of Madras High Court dated 09.04.2010 in W.P.No.13624/2009 filed by Thiru.L.Chinnasamy, formerly Village Assistant and accordingly direct that the petitioner Thiru.L.Chinnasamy, formerly Village Assistant be paid pension taking into account of the service rendered by him prior to 01.06.1995 as a special case, this case will not be taken as a precedent to any other case in future."

6. Learned counsel for the petitioner submitted that the Division Bench of this Court in W.A.(MD) Nos.204 to 211 of 2011, dated 14.02.2011 has considered Rule 11(1) of the Tamil Nadu Pension Rules, 1978 and held that,

"*the qualifying service of the Government servant commences from the date on which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity*".

Hence, in view of the settled position of law, the pensionary rules have got to be extended to the petitioner.

7. Learned counsel further drew the attention of this Court to the judgment reported in **2006 5 CTC 320** in the matter of ***O.A.Chinna Alagi vs., the State of Tamil Nadu and others,*** wherein, an employee, who is a contingent staff, who has served for 21 years, has been denied pensionary benefits and it was therefore, directed by the Government to extend the pensionary benefits due to her.

8. Per Contra, learned counsel appearing for the respondent submitted that Rule 11 of Tamil Nadu Pension Rules, 1978 cannot be read in isolation and it has got to be read with Rule 11(4). Even going by Rule 11(1), unless the petitioner's service in temporary service is a pensionable one, the benefit of pensionary benefits cannot be extended in this case. He further drew the attention of this Court to Rule 11(4) and stated that the petitioner was drawing honorarium and the services rendered on daily wages in a job involving whole time employment cannot be taken into account for the purpose of pensionary benefits, viz., 50% of services cannot be taken into account, for those who rendered services on or before 01.01.1961 and in respect of Government employees absorbed prior to 01.04.2003.

9. He further submitted that the petitioner's term of appointment is based on the Tamil Nadu Village Servants Services Rules, 1980 and that, in terms of Tamil Nadu Village Servants Conduct Rules, 1983, persons like the petitioner have been treated as part time employees and that they have been permitted to take

up private jobs and the relevant Rule 3 is extracted as under:

"TAMIL NADU VILLAGE SERVANTS CONDUCT RULES, 1983

RULES

3. Private trade or employment- The village servants being part-time Government servants, may take up part-time work or occupation.

Provided that -
1. such part time work or occupation shall not interfere with their legitimate duties as village servants; and
2. the previous permission, in writing, has been applied for and obtained from the Revenue Divisional Officer concerned if the work or occupation is confined to the charge village and from the District Collector concerned, if the work or occupation extends beyond the charge village."

10. He further drew the attention of this Court to Rule 14 of Tamil Nadu Village Servants Service Rules, 1980 and contended that the petitioner cannot be treated as a regular employee, as he was getting honorarium and in terms of Rules 16(2) which clearly shows that the post held by the village servant in terms of Tamil Nadu Village Servants Service Rules, 1980 is not pensionable and hence, the petitioner is not entitled to relief.

11. Heard the learned counsel appearing for the petitioner and learned counsel for the respondents and perused the materials placed before this Court.

12. It is not a dispute that the petitioner had joined in services in December 1962 and retired from service on 30.06.1998. The period of service rendered from the year 1962 to 1995 has not been taken into account as pensionable service. The decisions quoted by the petitioner may not be applicable to the facts of this case.

13. The Division Bench and the learned Single Judge of this Court in the decisions quoted supra have not taken into account the Tamil Nadu Village Service Rules 1980 and also the Tamil Nadu Village Servant Conduct Rules, 1983. In terms of the afore said rules, the posts held by persons, pursuant to the said Rules, belong to non-pensionable service. If the petitioner's services is counted as pensionable one, only then, Tamil Nadu Pension Rules will apply.

14. Rule 11(4) of Tamil Nadu Pension Rules, 1978 quoted by the

respondents may not be applicable to the facts of this case, as this has been introduced in the year 2010. Even otherwise, reading Rule 11(1) in isolation, the petitioner's services cannot be treated as a pensionable service.

15. It is no doubt true that, there is a Government order extending the benefit to one other employee granting pensionary benefits. That may not be applicable to the facts of this case. In view of the observations mentioned in the said order, which has been extracted supra, it has been made very clear that 'as a special case', the pensionary benefits can be extended and that it cannot be treated as a 'precedent'.

16. Two wrongs will not make a thing right. The Government order extending the benefits to the employee whose name is referred supra itself is bad. But however, this Court is not passing any order directing the respondents to stop the pensionary benefits, as he has the benefit of pension and will continue to enjoy the benefit. As long as Tamil Nadu Village Servants Service Rules, 1980 does not support the case of the petitioner and also as long as Rule 16(2) is there in the Rules, persons like the petitioner cannot be entitled to the pensionary benefits.

17. Hence, the relief sought for by the petitioner cannot be granted. Accordingly, this **Writ Petition is dismissed**. However, there shall be no order as to costs. Consequently, M.P(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

1)The Secretary to Government,
Department of Revenue,
Secretariat, Chennai.

2)The Accountant General (A & E),
361, Anna Salai,
Chennai 600 018

3)The District Collector,
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Madurai.

4)The Tahsildar,
Taluk Office,
Usilampatti,
Madurai District.

+ 1 CC TO MR.R.MURUGAPPAN, ADVOCATE IN SR NO.82532
+ 1 CC TO MR.P.GUNASEKARAN , ADVOCATE IN SR NO.82921
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.82821

STS
BU/NM/SV/SAR-IV :16.11.2018 : 7P/8C

Order made in
W.P(MD).No.21591 of 2015
05.09.2018