

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 21.02.2018**

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**W.P(MD)No.19514 of 2013**

N.Govindan

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-600 009.

2. The District Collector,
Kanyakumari District,
Nagercoil-629 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondents 1 and 2 herein to refix the pension of the petitioner by calculating half of the total honorarium service rendered by the petitioner and add it into regular service as per G.O.Ms.No.408, Finance (Pension) Department dated 25.08.2009 by including 3% increment on the petitioner's last drawn basic pay Rs.5,010/-.

For Petitioner

:Mr.S.Deenadhayalan

For R1 & R2

: Mr.M.Muthu,

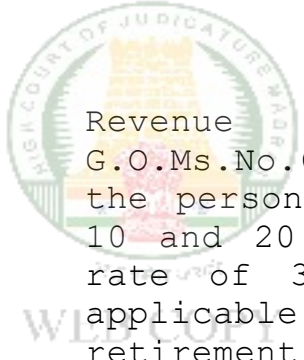
Additional Government Pleader

ORDER

The grievance of the writ petitioner is that he was appointed as Village Assistant on 26.07.1975 and served about 20 years on honorarium basis and from 01.06.1995 onwards and his monthly salary was fixed in the regular time scale of pay. Subsequently, the services of the writ petitioner was regularised in the Village Assistant. The writ petitioner was retired from service on 31.01.2013 on attaining the age of superannuation. In view of the fact that the services of the writ petitioner was regularised with effect from 01.06.1995, the writ petitioner has not sanctioned with full pension by counting the earlier service rendered by him on honorarium basis from the year 1975 to 1995.

2.In view of this fact, the learned counsel for the petitioner states that at least half of the service rendered on honorarium basis ought to have been taken into account for the purpose of reckoning the qualifying service. Thus, the petitioner is constrained to move the present writ petition.

3.The learned Additional Government Pleader appearing on behalf of the respondents states that as per G.O.Ms.No.645,



Revenue (Employment) Department, dated 29.11.2010 and G.O.Ms.No.64, Finance (Pay Cell), Department, dated 26.02.2011, the persons, who are working as Village Assistants for more than 10 and 20 years respectively are entitled for increment at the rate of 3% increment on the basic scale of pay. It is not applicable to the petitioner, because at the time of his retirement, the petitioner has received a monthly salary of Rs.5,610/-. This apart, it is further submitted that G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 states that persons worked in Government services under the following categories viz., non provisionalised service, consolidated pay, honorarium and daily wages and absorbed in regular establishment before 01.04.2003 are entitled for pension for the said period calculating half of the service of the above mentioned categories served after 01.01.1961 and 01.04.2003. Since the petitioner was appointed on 26.07.1975 he is not entitled for claiming the benefit.

4.This Court is of an opinion that the Government issued amendment to Rule 11 of the Tamil Nadu Pension Rules, G.O.Ms.No.41, Finance (Pension), dated 9th February 2010. The amended Rule 11 of the Tamil Nadu Pension Rules is extracted hereunder:-

"In the said Rules, in rule 11, after sub-rule (3) the following sub-rule shall be added namely:-

(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(I) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break;

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.



Provided further that whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

5.This Court is of an opinion that based on the amended Rule 11 of the Tamil Nadu Pension Rules, the case of the writ petitioner deserves to be reconsidered by the respondents.

6.The amended Rule provides certain benefits in respect of the servants, who served on honorarium basis. This being the factum of the case, the second respondent is directed to consider the representation submitted by the writ petitioner on 15.03.2012 and pass an orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioner is directed to enclose the copy of the representation and the documents, if any, along with the order passed in this writ petition.

7.Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-600 009.

2. The District Collector,
Kanyakumari District,
Nagercoil-629 001.

+1cc to Mr.S.Deenadhayalan, Advocate Sr.No.50151

+1cc to Spl.Government Pleader Sr.No.50954

AM

VB/SV/MMS/SAR4/07/03/2018/3P/5C

W.P (MD) No.19514 of 2013
21.02.2018