

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.09.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.15370 of 2019

&

W.M.P.No.15345 of 2019

S.Rajamanickam

..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)
Karur District,
Karur.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to Paragraph 4(b) of G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013 of the first respondent and quash the same in so far relates to not counting the 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 assistant from 01.03.1983 to 31.12.1990 along with regular service for the purpose of granting pension.

For Petitioner : Mr.V.Suthakar

For Respondents : Mrs.A.Sri Jayanthi
Additional Government Pleader

O R D E R

The prayer sought for in this Writ Petition is to call for the records pertaining to Paragraph 4(b) of G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013 of the first respondent and quash the same in so far relates to not counting the 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 assistant from 01.03.1983 to 31.12.1990 along with regular service for the purpose of granting pension.

2. The case of the petitioner is that he was initially appointed as Part time Panchayat Clerk with effect from 01.03.1983 in Vayalur Village Panchayat, Krishnarayapuram Panchayat Union. Thereafter, the petitioner was appointed as Junior Assistant on 03.05.1999 and subsequently retired on 31.01.2019 as Zonal Deputy Block Development Officer. On 12.07.2013, the Government of Tamil Nadu, the first respondent issued a G.O.Ms.No.77, Rural Development and Panchayat Raj (PA4) Department modifying the guidelines issued in G.O.Ms.No.39, Rural Development Department and Panchayat Raj dated 13.06.2011 to the effect that the services rendered by part time Panchayat clerk, Panchayat Assistant Grade I & II who worked in part time post shall not be taken into account for the purpose of pension.

3. After his retirement, his pay drawing officer, namely, the Block Development Officer, Kadaour Panchayat Union, Karur had sent a pension proposal to the Accountant General of Tamil Nadu, the third respondent, to count his 50% of services from 01.03.1983 to 02.05.1999 when the petitioner was working as part time Panchayat clerk from 01.03.1983 to 31.12.1990 and part time Panchayat Assistant Grade - II from 01.01.1991 to 02.05.1999 and thereafter full time services from 03.05.1999 to 31.01.2019. However, the third respondent has calculated the qualifying services as 23 years 4 months 27 days. Apparently he has not taken the services from the date of his initial appointment as part time Panchayat Clerk, namely, 01.03.1983 to 31.12.1990.

4. The third respondent has taken 50% of services from 01.01.1991 to 31.01.2019 and full time services from 03.05.1999 to 31.01.2019 was taken into account for the purpose of pension and the respondents have not taken any steps to count 50% of the part time service rendered by the petitioner along with other service for the purpose of pension in view of G.O.Ms.No.77 dated 12.07.2013. Hence the Writ Petition has been filed challenging the paragraph 4(b) of G.O.Ms.No.77 dated 12.07.2013 in so far relates to not counting 50% of the services rendered by the petitioner from 01.03.1983 to 31.12.1990.

5. The learned counsel for the petitioner would submit that the employees who got absorbed prior to 01.04.2003 are entitled to count 50% of their part time service along with regular service for the purpose of pension.

6. The learned counsel for the petitioner would also contend that issue involved in this 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 11.04.2016 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."

7. Another Hon'ble Division Bench of this Court passed a Judgment on 24.06.2016 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. "

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

9. 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.

10. In this view of the matter, the Writ Petition stands disposed of and the benefits granted by the two different Division Benches of this Court in W.A.No.431 of 2016 dated 11.04.2016 and W.A.No.612 of 2016 dated 24.06.2016, respectively are directed to be extended to the Petitioner also. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Government of Tamil Nadu
Rep. by its Principal Secretary to Government,
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- 4.The District Collector, (PD Section)
Karur District, Karur.

+1cc to Mr.V.Suthakar, Advocate SR.No.83397

W.P.No.15370 of 2019 &
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PPA (CO)
GMY (22/11/2019)

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