

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19734 of 2019

And

W.M.P.No.19250 of 2019

M.Pandiyan

... 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 District Collector, (PD Section),
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Principal Accountant General (A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai 600 018.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India 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 panchayat clerk from 15.09.1979 till 31.01.1991 along with regular service for the purpose of granting pension.

For Petitioner : Mr.V.Suthakar
For Respondents: Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of 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 to quash the same in so far it 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 to direct the respondents to count 50% services rendered in the post of Panchayat Clerk from 15.09.1979 till 31.01.1991 along with regular service for the purpose of granting pension.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader.

3.The case of the petitioner is that the petitioner was initially appointed as Part Time Panchayat Clerk at Polur Panchayat Union with effect from 15.09.1979 and was subsequently appointed as Junior Assistant and retired from service on 31.05.2019 as Block Development Officer.

4.It is the further case of the petitioner that on 12.07.2013, the Government of Tamil Nadu, the first respondent issued 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.

5.It is the further case of the petitioner that the respondents have not taken any steps to count 50% of the part time service rendered by the petitioner along with the regular 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 it relates to not counting 50% of the services rendered by the petitioner from 15.09.1979 to 31.01.1991.

6. 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.

7. The learned counsel for the petitioner would also contend that the 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 Judgment 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 this writ petition:

"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."

8. Another Hon'ble Division Bench of this Court passed a Judgment on 24.06.2016 in W.A.No.612 of 2016, the relevant portion is extracted hereunder:

"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. "

9.The learned Special 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.

10.Since the issue has been decided by 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 Special Government Pleader in this regard.

11.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.

12.The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

- 1.The Principal Secretary to Government,
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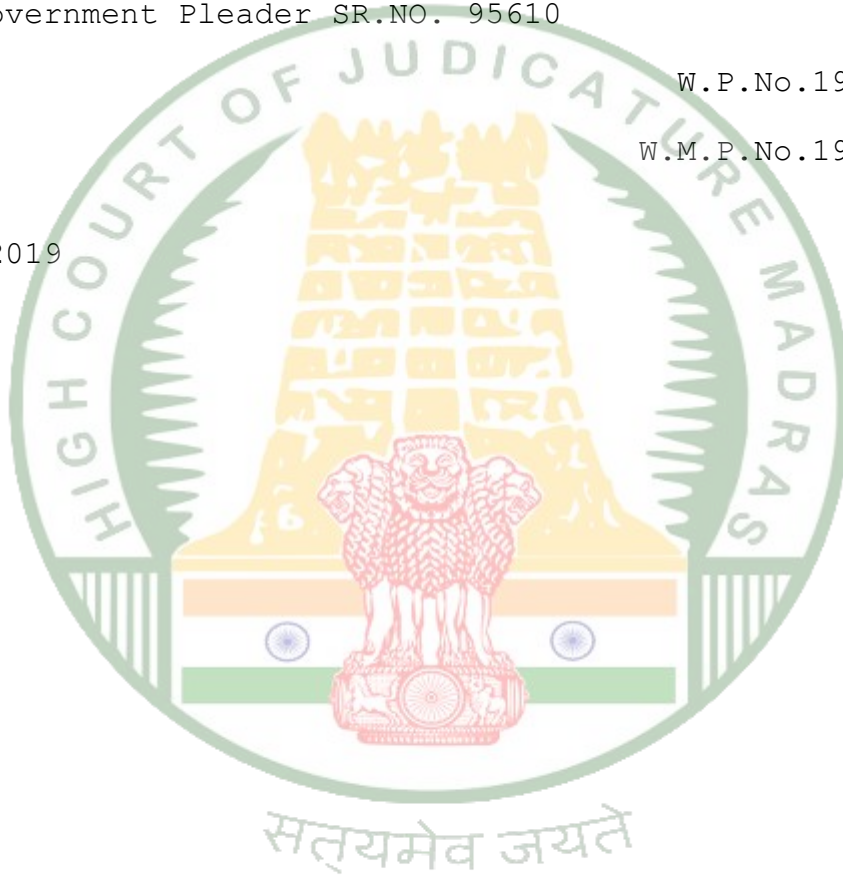
+lcc to M/s.J.Sreevidya, Advocate sr.95712

+lcc to Mr.V.Suthakar, Advocate sr.95502

+lcc to Government Pleader SR.NO. 95610

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