



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2019

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

W.P. (MD)No.13919 of 2013

WEB COPY

V.Ganapathivel

... Petitioner

vs

1.The Accountant General (A&E)

Office of the Principal of Accountant General (A&E)

No.61, Anna Salai

Chennai 600 018

2.The Tahsildar

Radhapuram Taluk

Tirunelveli District

... Respondents

PRAYER: Petition filed under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings Pen 26/I/PPT 5521/201874/dated 01.03.2013 and quash the same as illegal and consequently to direct the 1st respondent to pay full pension taking into account of 50% of service from 01.07.1960 to 31.05.1995 as qualifying service and pay pension thereon within a period that may be stipulated by this Court.

For Petitioner

... Mr.C.Venkatesh Kumar

M/s.Ajmal Associates

For R1

... Mr.P.Gunasekaran

For R2

... Mr.S.Dhayalan

Government Advocate

ORDER

This Writ petition has been filed to count 50% of the service period as qualifying service and pay pension thereon within a stipulated time to be fixed by this Court.

2.The petitioner was appointed as Thalayari on 01.07.1960 on consolidated pay of Rs.22/- per month. Later, as per G.O.No.623 Revenue Department dated 06.07.1995, the post of Thalayari was re-designated as Village Assistant and his service was regularised with effect from 01.06.1995 in the revised time scale of pay of Rs.600-750-30-1380 and he attained the age of superannuation on 31.03.2002. After his retirement, the pension proposal was forwarded by the second respondent to the first respondent. But, there is no response from the second respondent till 2009. After that, the second respondent by his proceedings dated 24.12.2008, rejected the claim of the petitioner for pension. Hence, the petitioner filed W.P(MD).



No.380 of 2009 seeking for a direction to the respondents to sanction the pensionary benefits to him from the date of retirement and the said Writ petition was allowed on 02.03.2009 by setting aside the impugned order passed by the second respondent, dated 24.12.2008. On receipt of the above order, the petitioner communicated the same to the second respondent and requested him to forward his pension proposal to the first respondent so as to enable him to get full pension. While so, no action has been taken. Later, the first respondent by his impugned proceedings, dated 01.03.2013 rejected the claim of the petitioner on the ground that the Government D.O.Letter No.37496/Ser-8(1)10-1, dated 31.03.2011 has clarified that G.O.No.408 is not applicable to Village Assistant who are employed in Special time scale of pay. The learned counsel for the petitioner would submit that as per G.O.No.408 Finance (Pension) Department dated 25.08.2009, half of the service of the Non-Provincialised Service, consolidated pay, honorarium and daily wages should be calculated for pension. Therefore, 50% of the past service (Thalayari) rendered by the petitioner is bound to be calculated as qualifying service for the purpose of calculating pension along with regular service for all who were absorbed on or before 01.04.2003. Therefore, the learned counsel contended that the first respondent cannot return the revised pension proposal on the ground that G.O.No.408 is not applicable to the Village Assistant who are employed in special time scale of pay and hence, he prays for allowing this Writ petition.

3.Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned Government Advocate appearing for the second respondent.

4.The issue involved in this Writ petition has been decided in number of cases where the latest Judgement of this Court reported dated 31.01.2019 in W.A(MD).No.370 of 2019, paragraph No.17 reads as follows:

"17.From the above Government Order, it is evident that the Government wants to contend before this Court and in every forum that the Village Assistants before 01.06.1995 were in part time service and that therefore, their services upto 01.06.1995 cannot be taken into account for qualifying service under the Pension Rules applicable to them, namely, the Village Assistants Pension Rules, 1995. In para 7, the Government accepted the position that for computing length of service for retirement benefits, the service rendered by a person from the date of original appointment either temporary officiating should be taken. However, para 8 is self-contradictory inasmuch as it suggests that all Village Assistants were engaged on part time basis. The service of Village Assistant is permanently required and it was always a full time job as held in



several judgments. Despite the stand taken by the Government, the Government has implemented the order of this Court granting relief to several persons. It has been repeatedly held by this Court in number of Judgments without any controversy that the service rendered by Thalayaris till their service was regularised with effect from 01.06.1995 were on permanent basis. This Court has already considered the nature of job and the work rendered by Thalayaris. It is to be noted that after the service of Thalayaris was regularised as Village Assistants with effect from 01.06.1995, the nature of duties were defined. However, the Thalayaris who were appointed earlier on consolidated pay were also doing full time job which can never be treated as temporary or part time. Since Thalayari in those days was a key man rendering valid assistance to revenue department and officials of Revenue Department, he could never be dispensed with. When the respondents themselves have admitted Rule 4(a) of Tamil Nadu Village Assistants Pension Rules, 1995, there is no scope for confusion except the issue whether the appellant is entitled to count half of the services put in by him in the cadre of Thalayari for the period upto 31.05.1995 or the entire period of service. In such circumstances, the judgement of Hon'ble Mr. Justice S.Vaidyanathan in *M.Vellaian v. Secretary to Government, Department of Revenue and others* may not hold good having regard to the specific provisions of Tamil Nadu Village Assistants Pension Rules, 1995. Leave alone the provisions of the Rules which have been given effect to or interpreted in several precedents including the two judgment relied upon by the learned Single Judge in this case in several judgments of Division Bench, this Court has taken a consistent view that the petitioners are entitled to count 50% of their past service they have rendered as Thalayaris upto 31.05.1995 along with the regular service for the purpose of pension. It is admitted that the decisions of this Court by the Division Bench have been confirmed by the Hon'ble Supreme Court in several cases. It is also admitted that the Government has implemented the consistent view expressed by this Court in several individual cases. It was on account of the fact that some of the precedents and the applicable rules have not been brought forth by the Government Pleaders properly before some of the learned Judges of this Court, the issue which has been raised by the Government has been answered against the Government in several precedents and the ratio settled by this Court has been followed and implemented in several individual cases by the Government. In such circumstances, this Court is of the view that there is no scope for reference to a larger Bench and that the order



impugned in W.P(MD).No.70 of 2019 is set aside. The Writ petition in W.P(MD).No.70 of 2019 stands allowed in tune with the earlier precedents of this Court. The first respondent is directed to pass orders counting 50% of the services of the appellant put in by him as Thalayari for the period from 07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant and Village Administrative Officer and to send revised pension proposals within a period of six weeks from the date of receipt of a copy of this order".

5.The petitioner also stands in the same footing as that of the appellant in the above Writ Appeal. Therefore, the petitioner is entitled to count half of the services put in by him in the cadre of Thalayari. The second respondent Tahsildhar shall forward the pension proposal by counting 50% of the service of Thalayari for the purpose of calculating pension, within a period of four (4) weeks from the date of receipt of a copy of this order. On receipt of such proposal, the concerned Regional Divisional Officer shall forward the same to the Government, within a period of one week therefrom. The Government shall pass appropriate orders within a period of four (4) weeks, thereafter. On passing orders by the Government, the first respondent herein shall release the pension, within a period of four (4) weeks thereafter.

6.In the result, this Writ petition is allowed. No costs.

Sd/-

Assistant Registrar (writs)

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Sub Assistant Registrar(CS)

msa

To
The Tahsildar
Radhapuram Taluk
Tirunelveli District

+1 CC to SPL.GP (SR-105326[F] dated 17/12/2019)

+1 CC to Mr.P.GUNASEKARAN, Advocate (SR-105666[F] dated 18/12/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105646[F] dated 18/12/2019)

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