



.BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) .Nos.20757 to 20764 of 2015
and connected MPs

C.Tamilselvan	.. Petitioner in WP(MD).20757/2015
M.Murugesan	.. Petitioner in WP(MD).20758/2015
P.Nagarajan	.. Petitioner in WP(MD).20759/2015
T.Kannaiah	.. Petitioner in WP(MD).20760/2015
R.Krishnamoorthy	.. Petitioner in WP(MD).20761/2015
N.Muthu Irulappan	.. Petitioner in WP(MD).20762/2015
V.Malairaj	.. Petitioner in WP(MD).20763/2015
N.Thennarasu	.. Petitioner in WP(MD).20764/2015

Vs.

- 1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector,
Ramanathapuram District,
Ramanathapuram. ... 1st & 2nd Respondents
(in all cases)
- 3.The Panchayat Union Commissioner,
Thiruvadanai, Thiruvadanai Taluk,
Ramanathapuram District. ... Respondent in WP(MD).20757/2015
- 4.The Panchayat Union Commissioner,
Kamudhi,
Ramanathapuram Taluk and District. ... Respondent in WP(MD).20758/2015
- 5.The Panchayat Union Commissioner,
Kadaladi, Kadaladi Taluk,
Ramanathapuram District. ... Respondent in WP(MD).20759/2015



either as Fitter Assistant or in any other posts in the respective Panchayat Unions. It is not in dispute that the petitioner in the respective Writ Petitions were regularised on completion of 10 years of service and brought into regular time scale of pay with effect from a date after 01.04.1993. The grievance of the petitioner in these Writ Petitions is that as per G.O.(Perm)No.131, Rural Development and Panchayat Raj (E5) Department, dated 01.10.2015, the employees whose services were regularised before 01.04.2003 shall come under old pension scheme and that the employees whose services were regularised on or after 01.04.2003 shall come under new contributory pension scheme. It is contended by the petitioners that the impugned Government Order is quite contrary to the provisions made in Rule 11(2) of Tamil Nadu Pension Rules, 1978.

2.It is admitted that the petitioner in all the writ petitions are entitled to calculate 50% of their past service till their service is regularised for the purpose of calculation of pension and other benefits as per Rule 11(2) of Tamil Nadu Pension Rules, 1978. In this context, the petitioners submitted that the impugned Government Order has taken away the petitioners' right to count 50% of their past service on daily wage basis and that the past service will not be taken for the purpose of pension. Since this Court in previous judgments has held that the cut off date, namely, 01.04.2003 in Rule 11(2) of the Tamil Nadu Pension Rules, is for a different purpose and that people who are regularised prior or after 01.04.2003 is entitled to count their past service on daily wage basis for the purpose of calculating pension. It is submitted that the impugned Government Order is contrary to the judgment of a learned Single Judge of this Court in W.P.(MD)No.12656 of 2013, dated 18.06.2014. In the case of P.Chinnian v. The Government of Tamil Nadu and others and in the judgment of the Hon'ble Division Bench of this Court in a batch of cases in W.A.(MD)No.51 of 2018 and batch dated 27.03.2018 reported in **2018 (1) CWC 689 [Government of Tamil Nadu and others v. K.Sakthivel and others]**, it has been held that 50% of the service rendered by the employees on daily wages should be considered for computing total length of service irrespective of the fact that the employee was absorbed into regular service after 01.04.2003. The learned Counsel appearing for the petitioner submitted that the petitioners should be given the benefit of old pension scheme and that they are entitled to calculate 50% of their past service before regularisation for the purpose of pension. The question before this Court is whether the impugned Government Order is discriminatory and opposed to Article 14 of the Constitution of India.

3.The proceedings of the District Collector, Ramanathapuram District, dated 28.11.2008, indicates that the petitioner along with several other persons were regularised in service with effect



from the date on which they had completed 10 years of service. The petitioner in all these writ petitions have not completed 10 years prior to 01.04.2003 and therefore, on application of the impugned Government Order, dated 01.10.2015, the petitioners are not entitled to the benefit of old pension scheme and they will be covered by Contributory Pension Scheme which is introduced with effect from 01.04.2003. The grievance of the petitioner is that the decision of this Court with regard to the applicability of Rule 11(4) of the Pension Rules squarely applies to the present case and the impugned order is not only discriminatory but also passed with an intention to circumvent the judicial decision which was in favour of the persons who were regularised after 01.04.2003 as referred to supra.

4.The learned Single Judge of this Court in W.P.(MD)No.12656 of 2013 considered the scope of cut off date as 01.04.2003 in Rule 11 (4) of the Tamil Nadu Pension Rules. The scope of Rule 11(2) and 11 (4) of the Tamil Nadu Pension Rules was considered by the learned Single Judge in the said judgment and observed as follows:

"19. As stated in Rule 11(2) of the Tamil Nadu Pension Rules, the petitioner was paid only from contingencies. All the employees, who are in non-provincialized service, on consolidated pay / honorarium / daily wages basis, are paid only from contingencies and the petitioner was in daily wages service without time scale of pay and he was also paid from contingencies. Hence, as per Rule 11(2) of the Tamil Nadu Pension Rules, he is entitled to count half of the service rendered by him for the purpose of pension.

20. But the respondents heavily relied on Rule 11(4) of the Tamil Nadu Pension Rules, which was introduced only in the year 2010. But Rule 11(2) has been in existence from the very inception of the Tamil Nadu Pension Rules. Rule 11(4) is extracted hereunder :

"11. Commencement of qualifying service (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



subsequent 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 Department in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

21. The difference between Rules 11(2) and 11(4) of the Tamil Nadu Pension Rules is that one should have been absorbed in regular service before 01.04.2003, for counting half of the service rendered on consolidated pay / honorarium / daily wages basis. The date 01.04.2003 is chosen, since a New Pension Scheme was introduced for persons, who are recruited after 01.04.2003 into the Government service. The Tamil Nadu Pension Rules are not applicable to the employees who are recruited after 01.04.2003.

22.(a) In my view, in any stretch of imagination, the absorption of the petitioner into service after 01.04.2003 cannot be equated with the persons who are freshly recruited after 01.04.2003 into the Government service. The persons, who are fresh recruits after 01.04.2003, are governed by New Pension Rules and the persons, who are absorbed after 01.04.2003, like the petitioner, are not extended the benefit of New Pension Scheme also.

(b) At this juncture, it is relevant to extract paragraph 9 of the judgment of the learned Single Judge dated 30.11.2010 in W.P.No.25293 of 2010, in this regard, wherein, it was noticed that the persons, who are absorbed after 01.04.2003, like the petitioner herein, were not granted the benefits of the New Pension Scheme also. Paragraph 9 is extracted hereunder :

"9. At this juncture, the learned counsel for the petitioner also brought to my notice that the Government issued G.O.(D)No.332, Environment and Forest Department, dated 19.11.2008 in favour of one V.Murugan, Forest Guard, who retired on 30.9.2005, ordering to count 50% of



sanction of pension to the said Murugan. The learned counsel for the petitioner also submits that the petitioner has not been paid any benefit under the new pension scheme and hence, there will be no impediment to extend the benefits of old pension rules to the petitioner as it was given to the said V.Murugan. Even in discretionary matters if the persons are identically placed, same treatment shall be followed to all, is well settled. I had an occasion to consider similar issue in the decision report in (2006) 2 MLJ 574 (N.S.Balasubramanian V. Food Corporation of India). The said decision was confirmed by the Division Bench of this Court (A.P.Shah, C.J. & K.C., J.) in W.A.No.956 of 2006, dated 30.10.2006 and by the Supreme Court in S.L.P.(C) No.6771 of 2007 dated 23.4.2007."

23. I am of the considered view that the action of the Departments in denying to count half of the long service rendered by the persons before the absorption into regular service, who are not fresh recruits, but absorbed into regular service after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, has no rationale basis.

24. The State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the employees like the petitioner, who had rendered more than three decades of service before absorption. The petitioner or the persons situated like him cannot be blamed for non-absorption before 01.04.2003, though they rendered 2 to 3 decades of service before 01.04.2003.

25. It is a different matter if a person joined the service after 01.04.2003 on daily wages basis and he was absorbed thereafter. But in my view, the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption has no rationale basis and the same is arbitrary and violative of Article 14 of the Constitution. In fact Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant, in view of Rule 11(2) of the Tamil Nadu Pension Rules. Rule 11(2) does not prescribe any cut off date as to absorption into regular service. The benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4). Thus, the cut off date of absorption as 01.04.2003 prescribed in Rule 11(4) shall be ignored. Otherwise, it will lead to grave injustice.

26. The Government cannot deny the pensionary benefit to the petitioner by fixing the cut off date as 01.04.2003 for absorption thereby refusing to take into account half the service rendered before absorption for the purpose of pension. Admittedly, the petitioner has been in service on daily wages basis from 01.04.1967 till the date of his



absorption as Mali on 20.10.2003, i.e., he served for more than 36 years before his absorption into regular service."

5.The judgment of the learned Single Judge was quoted with approval in the subsequent judgment of the Hon'ble Division Bench of this Court in **Government of Tamil Nadu and others v. K.Sakthivel and others** reported in **2018 (1) CWC 689**. The Hon'ble Division Bench has not only quoted the judgment of the learned Single Judge with approval but also held further that 50% of the service rendered by the employees on daily wage should be considered for computing total length of service irrespective of their absorption before or after 01.04.2003 after finding that the judgment of the learned Single Judge was also approved by the Hon'ble Division Bench on appeal. Ultimately, the Hon'ble Division Bench of this Court in the later judgment has allowed the Writ Petitions filed by the Plot Watchers directing to count 50% of the service rendered by them on temporary basis. The question in this case is whether the Government Order passed is violative of Article 14 of the Constitution of India in the sense that the petitioner has been discriminated based on their date of absorption. The learned Counsel appearing for the petitioners submitted that the Government while accepting the previous judgments in relation to counting of past service of temporary employees irrespective of their absorption whether it is prior or after 01.04.2003 has now sought to discriminate the petitioners who are regularised after 01.04.2003 by denying the benefit of Rule 11 of the Tamil Nadu Pension Rules.

6.It is demonstrated before this Court that the judgment of this Court in P.Chinnian's case and the judgment in similar cases have been implemented in its order and spirit. This would certainly lead to a position that the Government has now extended the benefit of old pension scheme to all those who are covered by the judgment in P.Chinnian's case and similar cases including the judgment of the Hon'ble Division Bench in the case reported in **2018 (1) CWC 689**. However, the petitioners who are regularised after 01.04.2003 denied the benefit of Rule 11 of Pension Rules. In view of the position that the Government by passing the impugned Government Order either wants to circumvent the order passed by this Court in the previous decision or to deny relief to those who are regularised after 01.04.2003, this Court has no hesitation to hold that the impugned Government Order is arbitrary and discriminatory and opposed to Article 14 of the Constitution of India. Though the learned Counsel for the petitioner raised few other grounds, this Court find that it is sufficient to strike down the Government Order on the ground of discrimination. Since the impugned Government Order is violative of Article 14 of the Constitution of India, the same is quashed and the Writ Petitions are allowed. The respondents are directed to consider the petitioners under old pension scheme without fixing any crucial

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benefit of old pension scheme irrespective of their regularisation whether it is prior or after 01.04.2003. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

- 1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 3.The Panchayat Union Commissioner,
Thiruvadanai, Thiruvadanai Taluk,
Ramanathapuram District.
- 4.The Panchayat Union Commissioner,
Kamudhi, Ramanathapuram Taluk and District.
- 5.The Panchayat Union Commissioner,
Kadaladi, Kadaladi Taluk,
Ramanathapuram District.
- 6.The Panchayat Union Commissioner,
Bogalur @ Chatrakudi, Paramakudi Taluk,
Ramanathapuram District.
- 7.The Panchayat Union Commissioner,
Thirupullani,
Ramanathapuram Taluk and District.
- 8.The Panchayat Union Commissioner,
Paramakudi,
Ramanathapuram Taluk and District.
- 9.The Panchayat Union Department,
Mandapam @ Uchipuli,
Ramanathapuram Taluk and District.



10.The Panchayat Union Commissioner,
Muthukalathur, Muthukalathur Taluk,
Ramanathapuram District.

+8 CC to M/s.S. VISVALINGAM, Advocate (SR-99697, 99698, 99720 to
99725 [F] dated 20/11/2019

+1 CC to M/s.SPL GP (SR-100376[F] dated 21/11/2019)

ORDER MADE IN
W.P. (MD) Nos.20757 to 20764 of 2015
20.11.2019

JMN(18.12.2019) 9P : 20C