

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.20149 of 2013

V.D. Dhayalan

..Petitioner

Vs

1. The Government of Tamil Nadu,
represented by its Principal Secretary to Government,
Revenue Department, For St. George,
Chennai - 600 009.
2. The Collector, Kancheepuram,
Kancheepuram District.
3. The Accountant General (A & E),
361, Anna Salai, Chennai - 600 018.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to allow pension and other retirement benefits by extending to the petitioner the benefits of the order passed in W.P.No.8318 of 2011, dated 27.07.2011 and G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 with effect from the date of his retirement namely 31.03.2010 and grant him all consequential benefits.

For Petitioner : Mr.P. Rajendran

For RR 1&2 : Mr.J. Ramesh
Additional Government Pleader

For R3 : Mrs.Hemamuralikrishnan

ORDER

This writ petition has been filed by the petitioner seeking for a direction to the respondents to allow pension and other retirement benefits by extending to the petitioner the benefits of the order passed in W.P.No.8318 of 2011, dated 27.07.2011 and G.O.(Ms).No.408, Finance (Pension) Department, dated 25.08.2009 with effect from the date of his retirement namely 31.03.2010 and grant him all consequential benefits.

2. According to the writ petitioner, he was working as Village Kallam in Valayaputhur Village, Madurantakam Taluk,

Kancheepuram District from 01.03.1977 to 12.11.1979. The post of Village Officers were abolished by the Government of Tamil Nadu on 14.11.1980. Thereafter, as per the order passed by the Government of Tamil Nadu as he was appointed as Village Administrative Officer on 16.07.2001. The services of the writ petitioner in the post of Village Administrative Officer were regularized with effect from 16.07.2001 i.e., prior to 01.04.2003. Thereafter, the writ petitioner passed the special test within the time prescribed and thereafter, he was declared to have satisfactorily completed the period of probation on 21.01.2004. Subsequently, he retired from service on 31.03.2010 as Village Administrative Officer on attaining the age of superannuation.

3. According to the writ petitioner, he worked as Village Karnam for 2 years, 8 months and 11 days i.e. [01.03.1977 to 12.11.1979] and as Village Administrative Officer for 8 years, 8 months and 16 days [16.07.2001 to 31.03.2010]. Since his regular service in the post of Village Administrative Officer is less than 10 years, he has not been sanctioned the pension benefits.

4. In W.P.No.8318 of 2011 filed by a similarly placed Village Karnam, namely, Mr.P. Subramaniam, by order dated 27.07.2011, this Court had directed the Department to extend the benefits of G.O.Ms.No.408, Personnel and Administration Reforms (F) Department, dated 25.08.2009 to the said petitioner for the purpose of terminal benefits.

5. According to the learned counsel for the writ petitioner, the Government had passed the said G.O.Ms.No.408, which provides for counting of 50% of the service rendered in non provincialized, consolidated pay and daily wages as qualifying service for pension. The said order applies to persons who were absorbed in regular service before 01.04.2003. The petitioner was absorbed in regular service on 16.07.2001 i.e. prior to 01.04.2003. Therefore, if 50% of the service rendered by him as Village Karnam is counted along the services rendered in the post of Village Administrative Officer, the qualifying service will be more than ten years and he will be entitled to get pension. Therefore, the petitioner submitted a representation to the first respondent on 16.08.2012 requesting for sanction of pension by extending to him the benefits of the order passed in W.P.No.8318 of 2011, dated 27.07.2011 and G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, but no order has been passed on the said representation. Hence, the petitioner has filed the present Writ Petition.

6. The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that the counting of the services were rendered by the writ petitioner from 01.03.1977 to 12.09.1977 will be in consolidated pay, in the light of the Full Bench decision of this Court in The Government of Tamil

Nadu and Others v. R.Kaliyamurthy reported in 2019 (5) LW 673, dated 29.08.2018, and the same may be extended to the writ petitioner based on the order passed in W.P.No.8318 of 2011, dated 27.07.2011 and also under the said Government Order in G.O.Ms.No.408. This had been in detail discussed by this Court in the said Full Bench decision and the operation of the order has been given effect to and the direction was issued and the reference was accordingly answered for the Government employee who have rendered the services based on category wise, as also the eligibility of the pensionary benefits for calculating the said period.

7. The case of the petitioner is covered by the above said Full Bench decision of this Court and he is entitled for the relief as prayed in the writ petition. Therefore, considering the fact that the writ petitioner was regularised prior to 01.04.2003, he is entitled for the half of the service rendered and is entitled to the pensionary benefits accordingly.

8. In the light of the Full Bench of this Court in the case of The Government of Tamil Nadu and Others v. R.Kaliyamurthy reported in 2019 (5) LW 673, dated 29.08.2018. The relevant portion of the judgment of the Full Bench in W.A.No.158 of 2016 etc., batch, in para No.45, Clause (ii) and (iii) reads as follows:-

"45. In the light of the above, we answer the reference as follows:-

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

9. In view of the aforesaid submissions made by the learned counsel for the writ petitioner and by also following the above said decision of the Full Bench of this Court, this Court is inclined to direct the first respondent to consider the petitioner's representation dated 16.08.2012 and pass appropriate orders on merits and in accordance with law, in consonance with the abovesaid Full Bench decision, by applying the same to the case of the petitioner, within a period of

three months from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Msm

To

The Principal Secretary to Government,
Government of Tamil Nadu,
Revenue Department, For St. George,
Chennai - 600 009.

2. The Collector, Kancheepuram,
Kancheepuram District.
3. The Accountant General (A & E),
361, Anna Salai, Chennai - 600 018.

+1cc to Mr.P.Rajendran, Advocate, S.R.No. 1880
+1cc to the Government Pleader, S.R.No. 2755

W.P.No.20149 of 2013

MP (CO)
GN (07/08/2020)

सत्यमेव जयते

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