

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.39861 of 2005
and WPMP.No.42751 of 2005

Mohanavalli

..Petitioner

Vs

1.The State of Tamilnadu
rep. by the Secretary to the Government
Rural Development Department
Chennai.

2.The Director of Local fund Audit
Kurulagam, 4th floor
Chennai-108

3.S.Puthur Panchayat Union
rep. by the Commissioner
S.Puthur Panchayat Union
Sivagangai District

..Respondents

Prayer : Writ Petition filed praying to issue a writ of Mandamus directing the respondents to pay the Retirement benefits, Pay commission arrears of the petitioner's husband and pension arrears with effect from 28.02.1994 also in the light of G.O.Ms.No.118 dated 14.02.1996 and also the order passed by this Court in W.P.No.11691 of 2002 dated 28.12.2004 with 18% per annum.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mr.P.Chinnadurai,
Addl Govt.Pleader

ORDER

The case of the petitioner is that her husband was selected for the appointment to the post of Rural Medical Practitioner on merits and he joined service on 02.01.1973. His service was regularised with effect from 01.10.1984 and after regularisation, he attained the age of superannuation with effect from 28.02.1994. He died on 01.05.2004 and her claim is that half of his service with effect from 02.01.1973 till

30.09.1984 should be taken into account along with his regular service, i.e., if 9 years 4 months and 27 days was taken, her husband would have been paid pensionary benefits with effect from 01.03.1994.

2. It is the further case of the petitioner that as per the Government Order G.O.Ms.No.118 dated 14.02.1996 and order passed by this court in number of similar cases, her husband would have been paid pensionary benefits with effect from 01.03.1994 by adding half of his services from 03.01.1973 to 01.03.1994 along with his regular service viz., 9 years 4 months and 27 days, pensionary benefits would have been paid for the same.

3. It is averred by the writ petitioner that though she has made several representations dated 07.06.1999 and 21.10.2005 seeking payment in respect of her husband retirement benefits, there is no action on that also. Therefore, she has filed the present writ petition before this court.

4.(a) The 2nd respondent has filed counter affidavit stating that only on 21.09.1998 in G.O.Ms.No.16/RD &LA (E5) Department, the Government sanctioned scale of pay to the Rural Medical Practitioner with effect from 01.10.1984, even though they are employed on part time basis. Hence upto the date of retirement, the petitioner's husband was working as part time Rural Medical Practitioner with fixed pay and in non pensionable establishment. The petitioner's husband expired on 01.05.2004 without getting any service benefits from the local body. On 24.09.2007 in G.O.Ms.No.164/RD & LA (E5) Department, Government ordered that the Rural Medical Practitioners worked in rural dispensaries and those who are sanctioned time scale of pay w.e.f. 01.10.1984 are considered for pensionary benefits. The petitioner's husband was eligible for pensionary benefits for the services rendered in time scale of pay with effect from 01.10.1984 to 29.02.1992 upto date of superannuation. Several reminders were forwarded to the petitioner to submit pension proposal through proper channel for sanctioning Life Time Arrears of Pension and Family Pension. But the pension proposals were received by the 2nd respondent office only on 20.09.2010. The petitioner was allowed to draw regular Family Pension with effect from November 2010 and arrears of pension and Family Pension from the date of retirement to October 2010 was paid in one lump sum. Now the petitioner has filed this writ petition to incorporate the part time service put forth by the petitioner's husband with effect from 02.01.1973 to 30.09.1984 which is under non pensionable establishment.

(b) As per Rule 11(4)(i) of Tamil Nadu Pension Rule 1978, "the service rendered in non provincialized service, consolidated pay, honorarium, or daily wages shall be in a job involving "Whole Time Employment" only eligible for calculation of pension benefits."

(c) The petitioner's husband rendered service from 02.01.1973 to 30.09.1984 as part time fixed pay employment which comes under non pensionable establishment and hence as per the above rules, the part time service period from 02.01.1973 to 30.09.1984 shall not be incorporated for pensionary benefits.

5. (a) As per the counter affidavit filed by the 3rd respondent, the Ulagampatti Rural Dispensary was originally under the control of the Singampunari Panchayat Union. The petitioner's husband K.Subramanian was appointed as Rural Medical Officer for the Ulagampatti Rural Dispensary, on 02.01.1973 as per the order of the District Collector by Na.Ka.B3/2498/92-1, and he was drawing a fixed monthly salary of Rs.485/-. After the bifurcation of the Singampunari Panchayat Union, Ulagampatti Rural Dispensary became under the control of S.Pudur Panchayat Union from April 1992. Then he was drawing a fixed monthly salary of Rs.505/- from 01.04.1992 onwards. Thiru.K.Subramanian was allowed to retire in the afternoon on 28.02.1994 due to his attainment of superannuation as per the order of S.Pudur Panchayat Union Commissioner by his Proceedings Na.Ka.A1/2061/93 dated 25.02.1994. At the time of his retirement, his pay last drawn was Rs.2060/- He was paid Rs.470/- as family pension after his retirement. The 2nd respondent has sanctioned the family pension as Rs.618/- from 02.05.2004, the death cum retirement benefit as Rs.13,212/- and the service gratuity as Rs.15,450/- by his payment order No.Pu.b3/44690/2010 dated 24.09.2010. The Pension Payment Order number of K.Subramanian is 26761. The 3rd respondent submitted that entire amount was paid to the petitioner on 05.10.2010 and no arrears of payment is payable to the petitioner.

(b) Though the petitioner has stated that her husband was selected for appointment to the post of Rural Medical Practitioner, joined service only on 1973. His service was regularised with effect from 01.10.1984 and he retired on 29.02.1992. The Government sanctioned scale of pay to the Rural Medical Practitioners with effect from 01.10.1984. Therefore, that cannot be taken into consideration.

6. A reading of G.O.Ms.No.118 Finance (Pension) Department dated 14.02.1996, shows that the Government has ordered that service under non-pensionable establishment should have been in a job involving whole time employment. The Government have decided to count half of the service rendered under non-

pensionable establishment along with service under pensionable establishment for pensionary benefits. They accordingly direct that half of the service rendered by State Government employees under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions:-

(i) Services under non-pensionable establishment should have been in a job involving whole time employment.

(ii) The service under non-pensionable establishment should have been on time scale of pay.

(iii) The service under Non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break.

7. Admittedly, the petitioner's husband was selected for appointment to the post of Rural Medical Practitioner on merits and he joined service on 02.01.1973 and his service was regularized with effect from 01.10.1984.

8. This court had an occasion to consider a similar situation in W.P.No.11691 of 2004, wherein, by order dated 28.12.2004, this court referred to judgment dated 08.03.1995 in W.P.No.863 of 1989 wherein, the learned Single Judge held that even though the post was only a permanent full-time post and the appointment was in temporary capacity, the appointment was only on part time basis cannot be accepted as the petitioner was held to be entitled to be placed in the time scale of pay fixed by the Government for medical officer in terms of the Revised Scale of Pay Rules 1985 with effect from 11.07.1985. The said order was confirmed by a Division Bench of this court and the Division Bench added that the petitioners/appellants will be entitled to regular scales of pay from 01.10.1984 and not from 11.07.1985.

9. Further, in the above referred to W.P.No.11691 of 2002, this court, by order dated 28.12.2004, finally concluded that the facts stated in the referred cases clearly establish that the case of the petitioner in W.P.11691 of 2002 is covered by the Judgment of this Court in W.P.1131 of 1989 filed by the petitioner himself which is traceable to earlier judgment in W.P.No.863 of 1989 dated 08.03.1995 holding that the employment of the Rural Medical Officers is only full time and that they would be entitled to be regularized. The Government had accepted the judgment in all those cases including the petitioner and had subsequently regularized his services and that being so, the attempt on the part of the respondents to revise the service conditions of the petitioner on the basis of a subsequent Government Order and on the alleged objections of Local Fund Audit cannot at all be sustained.

10. Therefore, following the above ratio, in this case also, the petitioner's employment in the post of Rural Medical Practitioner is only full time employment and he rendered service from 02.01.1973 and the petitioner will be entitled to regular scales of pay from 01.10.1984 i.e from the date of his regularization till he attained the date of superannuation. Though as per G.O.Ms.No.118, dated 14.02.1995 Finance (Pension) Department, the petitioner's husband has rendered his service under non-pensionable establishment, the job is one involving full time employment and further it is on time scale of pay. So, clauses (i) and (ii) conditions stated in the above G.O., are satisfied in the petitioner's case.

11. In this regard, it is relevant to take note of paragraph 6 of the counter affidavit filed by the 3rd respondent herein, wherein, it is stated as under:-

" 6. It is further submitted that the 2nd respondent herein has sanctioned the family pension as Rs.618/- from 02.05.2004, the death cum retirement benefit as Rs.13,212/- and the Service Gratuity as Rs.15,450/- by his payment order No.Pu.b3/44690/2010 dated 24.09.2010. The pension payment order number of Thiru.K.Subramanian is 26761. It is submitted that the above said entire amount was paid to the petitioner, Tmt.S.Mohanavalli on 05.10.2010. It was also informed to the District Collector by the 3rd respondent by his Letter No.Na.Ka.A1/227/2009 dated 10.12.2015. After 05.10.2010 no arrears of payment is payable to the petitioner."

12. Therefore, under these circumstances, when the matter was taken up before this court, on 06.03.2020, the third respondent admitted that the petitioner's husband retired on 28.02.1994 and he died on 01.05.2004, but the service Gratuity and the death cum retirement benefit has been made only on 24.09.2010 and the learned Special Government Pleader appeared before the Court also sought time to get instructions as regards the interest for the delayed payment.

13. On 16.10.2020, the learned Additional Government Pleader had produced a copy of the payment order made to the petitioner, wherein, the pension payment order number is found as 26761. The above proceedings had been issued taking note of family pension from 02.05.2004 to 31.10.2010.

14. According to the 2nd respondent, the petitioner's husband was eligible for pensionary benefits for the services rendered in time scale of pay with effect from 01.10.1984 to 29.02.1992 i.e, upto the date of superannuation; several reminders were forwarded to the petitioner to submit pension proposal through proper channel for sanctioning Life Time Arrears of Pension and Family Pension, but the pension proposals were received by the 2nd respondent office only on 20.09.2010. So, consequently, as per the counter of the 3rd respondent, they passed the Pension Payment Order on 24.09.2010.

15. As far as interest portion is concerned, since the respondents stated in their counter that they received the pension proposal only on 20.09.2010 and they passed the Pension Payment order on 24.09.2010 and that they have not passed any orders regarding interest amount for the delayed payment, this court is inclined to pass orders directing the respondents to consider the interest portion on the delayed payment taking into consideration the petitioner's husband fulfils clauses (i) and (ii) of the conditions stated in G.O.Ms.No.118 dated 14.02.1996 Government of Tamil Nadu Finance (Pension) Department.

16. In the result, the Writ Petition is disposed of with a direction to the Respondents to consider payment of interest for delayed Pension Payment Order as per Pension Rules. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Secretary to the Government

Rural Development Department

Chennai.

2.The Director of Local fund Audit

Kurulagam, 4th floor

Chennai-108

W.P.39861 of 2005

MG(CO)

KKV/20/11/2020