

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.22220 of 2015 and
W.M.P.No.27705 of 2016

S.Murali

... Petitioner

vs.

1. The Director of Town Panchayats,
Chennai 600 108.
 2. The Executive Officer,
Thirupporur Town Panchayat,
Thirupporur, Kancheepuram District.
 3. The Director of Local Fund Audit,
Chennai 600 108.
- Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue an appropriate order, directions or Writ including a Writ of Mandamus directing the respondents to apply the old pension scheme (defined Benefit Pension Scheme) to the petitioner and refrain from applying the new pension scheme (Defined Contribution pension scheme) and refund the amounts deducted from the petitioner's monthly salary towards subscriptions under the new pension scheme under Pran No.926599/DTP.

For Petitioner : Mr.P.Rajendran
For Respondents : Mr.J.Ramesh, Addl.Gov.
Pleader (for R1 & R3)
: Mr.R.Selvakumar,APP for R2

O R D E R

This petition has been filed for direction to the respondents to apply the old pension scheme (defined Benefit Pension Scheme) to the petitioner and refrain from applying the new pension scheme (Defined Contribution pension scheme) and

refund the amounts deducted from the petitioner's monthly salary towards subscriptions under the new pension scheme under Pran No.926599/DTP.

2. The case of the petitioner in nutshell is as follows.

The petitioner was appointed as NMR (Nominal Muster Roll) in the Tamil Nadu Water Supply and Drainage Board (herein after referred to as TWAD Board) on 01.04.1990. The water supply scheme was handed over by the TWAD Board along with the staffs to the Town Panchayats on 01.04.1992 and therefore, the petitioner was posted as Daily Rater Worker in Thiruppur. Thereafter, he was appointed as Water Supply Maintenance Assistant in the Town Panchayat in the year 2001 on consolidated pay. Subsequently, his consolidated pay was brought into the regular scale of pay w.e.f. 09.04.2004.

3. The new pension Scheme (Contribution pension scheme) was came into force with effect from 01.04.2003. The petitioner's pay was brought on to regular time scale of pay on 09.04.2004 and hence, new pension scheme has been applied to him. But, according to the petitioner, he is not a new entrant in the government service after 01.04.2003, and he was entered into service prior to 01.04.2003 and therefore, old pension scheme is applicable to the petitioner. Accordingly, the petitioner made a representation dated 02.07.2014 to the first respondent through proper channel, requesting to apply new pension scheme to him. However, no order has been passed. Contribution of 10% of the basic pay plus dearness allowance is deducted from his salary. Hence, this writ petition.

4. The 2nd respondent filed counter affidavit, wherein, it is stated as follows.

When the petitioner was working as Non Muster Roll on daily wages, the government vide its order in G.O.Ms.No.198 Municipal Administration and water supply Department dated 26.10.1998, permitted the 2nd respondent to sanction required number of water supply workers posts, as per the norms of various categories, on consolidated pay per month. Accordingly, the petitioner was appointed in this post on consolidated pay. As per the above said Government Order, on completion of three years, the petitioner was sanctioned regular time scale of pay w.e.f. 09.04.2004 and hence, new pension scheme was applied to him. The respondents are the implementing agencies and not vested with any powers of doing away with the old pension scheme. Hence, this writ petition is liable to be dismissed.

5. Heard the learned counsel appearing the for the petitioner as well as the respondents. I have perused the materials on record.

6. The contention of the petitioner is that the petitioner was appointed as NMR in the TWAD Board on 01.04.1990 and thereafter, he was appointed as Water supply assistant on consolidated pay on 01.04.2001 and thereafter, as per the G.O.No.198 dated 26.10.1998, on completion of three years of service, he was brought into regular time scale of pay on 01.04.2004. According to the petitioner, since he put service as NMR and thereafter on consolidated pay before 01.04.2003, half of service shall be counted for the purpose of conferment of pensionary benefits.

7. The said contention of the writ petitioner cannot be countenanced for the reason that as per the order passed by the government in G.O.Ms.No.259 dated 06.08.2003, a person who appointed on or after 01.04.2003, or whose service was regularised after 01.04.2003, are not entitled for conferment of pensionary benefits. Here in this case, though the petitioner was appointed on consolidated pay before 01.04.2003, his pay was brought into regular time scale of pay only on 09.04.2004.

8. At this juncture, it is relevant to extract the relevant portion of the decision rendered by this court in W.A.Nos.158, 314, 315, 316, 317,, 343, 426, 455, 490, 536, 41, 610 and 235 of 2016 and W.A.Nos.25, 1747 and 1751 of 2017 dated 03.12.2019.

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

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.no.259 dated 06.08.2003.

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 service rendered shall be counted for the purpose of conferment of pensionary benefits.

iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (1) of Tamil Nadu State and Subordinate Service Rules and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

9. In the above said decision in Clause IV of Paragraph No.46, this court has elaborately considered the issue of counting 50% of the service rendered by a person on daily rated basis or on consolidated pay before 01.04.2003 and decided that, that person is not entitled for conferment of the pensionary benefits. Therefore, in the light of the above said decision and also, as per the amended Provisions of the Pension Rules, the petitioner is not entitled to the relief as claimed in the writ petition.

10. Accordingly, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

mst

To

1. The Director of Town Panchayats,
Chennai 600 108.
2. The Executive Officer,
Thirupporur Town Panchayat,
Thirupporur, Kancheepuram District.

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3. The Director of Local Fund Audit,
Chennai 600 108.

+lcc to Mr.P.Rajendran, Advocate, S.R.No.15070
+lcc to the Government Pleader, S.R.No.15697

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W.M.P.No.27705 of 2016

NRJK (CO)
KKV/12/06/2020



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