

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24790 of 2013

- 1.M.Ponnuchamy (Deceased)
- 2.Subbulakshmi
- 3.P.Muthu Irualappan
- 4.Grahalakshmi
- 5.Muthumari
- 6.P.Murugan

(P2 to P6, the L.Rs. of the deceased P1
substituted as per the order of this
Court dated 16.07.2020 made in
W.M.P.No.516 of 2018 in
W.P.No.24790 of 2013)

... Petitioners

Vs.

- 1.The Principal Secretary to Government,
Environmental and Forest (FR-2) Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 600 009.

- 2.The Principal Chief Conservator of Forest,
Panagal House,
Saidapet,
Chennai – 600 015.

- 3.The Accountant General (A&E)
Tamil Nadu,
No.261, Anna Salai,
Chennai – 600 018.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to sanction the payment of the pension to the petitioner in terms of Rule 11 (2) of Tamil Nadu Pension Rules, by taking his services rendered as the Plot Watcher from 01.11.1980 to 30.04.2003 and from 07.05.2003 till 30.09.2006 into account along with as Forester with all the consequential benefits by considering the representation dated 27.05.2013 made by the petitioner to the respondents 1 and 2, within a time frame as may be fixed by this Honourable Court.

For Petitioners : M/s.P.Raja
For Respondents : Mr.M.Elumalai
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to sanction the payment of pension to the petitioner in terms of Rule 11 (2) of Tamil Nadu Pension Rules, by taking his services rendered as the Plot Watcher from 01.11.1980 to 30.04.2003 and from 07.05.2003 till 30.09.2006 into account along with Forester with all consequential benefits by

considering the representation dated 27.05.2013 made by the petitioner to the respondents 1 and 2, within a time frame.

2.Since the petitioner died during the pendency of this writ petition, his legal heirs are substituted as petitioners 2 to 6 in this writ petition.

3.The case of the petitioners 2 to 6 is that the first petitioner was appointed as Plot Watcher in the Forest Department on 01.11.1980 and from 01.11.1980 till 30.04.2003, he served as the Divisional Forests Officer in the Social Forest at Tuticorin. Thereafter, vide memo dated 02.05.2003 issued by the Forest Officer, Polampatti, Karunya Post, Salem District, he was appointed as Forester and he joined the post on 02.05.2003. Subsequently, his services were regularized with effect from 02.05.2003 as Forester vide proceedings of the District Forest Officer, Coimbatore, dated 31.10.2003. His period of probation was completed and the same was confirmed by the proceedings of the District Forest Officer, Coimbatore dated 31.05.2004. He retired on 30.09.2006 on attaining the age of superannuation. However, the pension amount was not paid to him citing the reason that he has not served the prescribed minimum services of 10 years. The respondents

have not taken into account his past services in the Forest Department. In this regard, he made representation dated 27.05.2013 to the respondents, however, there is no response. Hence, this writ petition.

4.The learned counsel appearing for the petitioners would submit that similar issue has already been decided by this Court in various writ petitions and this Court has held that 50% of the past services rendered till the date of regularization shall be counted for calculation of pension.

5.The learned Government Advocate would submit that similar issue had already been decided by this Court and by the Madurai Bench of this Court in several writ petitions. However, two Division Benches of the Madurai Bench of this Court gave contrary view in W.A.(MD) Nos.587 of 2014 etc., batch on 03.12.2014 and in W.A.(MD) No.760 of 2013 on 09.09.2015. Hence, similar issue in W.A.Nos.158 of 2016 etc., batch was referred to the Hon'ble Full Bench of this Court, and the Hon'ble Full Bench of this Court vide order dated

03.12.2019 made in W.A.Nos.158 of 2016 etc., batch has held as follows:

"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."

6. Since the issue has already been decided by the Hon'ble Full Bench, this Court directs the respondents to pass orders on the first petitioner's representation dated 27.05.2013 in the light of the above findings rendered by the Hon'ble Full Bench of this Court in W.A.Nos.158 of 2016 etc., batch on 03.12.2019 and as per Rule 11 (2) of the Tamil Nadu Pension Rules and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

7.This writ petition is accordingly disposed of. No costs.
Consequently, the connected miscellaneous petition, if any, is closed.

23.07.2020

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

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