

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Writ Petition No.28278 of 2013

V.S.Kanniyappan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Secretary to the Government,
Highways Department, St. Fort George,
Chennai 600 009.
2. Divisional Engineer, Highways Construction and MATCE,
Chennai City Roads Division,
Saidapet, Chennai 600 015. ... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India to issue any appropriate Writ, order or direction and in particular a Writ in the nature of a Mandamus, directing the respondents to take into account 50% of the petitioner's service as NMR from 09.05.1987 to 28.05.1997 as qualifying service for calculating pension as per the G.O.Ms.No.408 dated 25.08.2009 issued by the Finance (pension) Department, Government of Tamil Nadu, pay the same with arrears of Commutation amount and pension award penal interest at the rate of 18% thereon and exemplary costs.

For Petitioner : Mrs.Meenakshi

For Respondent : Mr.J.Ramesh, Addl.Gov.Pleader
for R1 and R2

O R D E R

This petition has been filed for direction to the respondents to take into account 50% of the petitioner's service as NMR from 09.05.1987 to 28.05.1997, as qualifying service for calculating pension, as per the G.O.Ms.No.408 dated 25.08.2009 issued by the Finance (pension) Department, Government of Tamil Nadu and to pay the same with arrears of Commutation amount and pension along with penal interest at the rate of 18% thereon.

2. The case of the writ petitioner in nut shell is as follows.

The petitioner was appointed as Gang Mazdoor in the first respondent Department on a daily rated full time basis and he was continuously working from the year 1987 to 28.05.1997. Subsequently, the petitioner's service in the same post was

regularized on 29.05.1997 and he retired on superannuation on 30.06.2011.

2.1. As per the government order in G.O.Ms.No.408 Finance (Pensions) Department dated 25.08.2009, the service of the persons, who were engaged after 01.01.1961 in non provincialised service on consolidated pay, daily wages, honorarium and regularised prior to 01.04.2003, were given the benefit of counting 50% of their service as qualifying service for pensionary benefits. Though the petitioner has given representations to the respondents to implement the above said G.O. while calculating his pension, the respondents did not implement the same. Hence, he filed the present writ petition.

3. The learned Additional Government Pleader submitted that the representation made by the writ petitioner is still pending before the Department for consideration.

4. At this juncture, it is pertinent to point out that a Full Bench of this court has rendered a decision in The Government of Tamil Nadu, represented by Secretary to Government, Public Works Department, Secretariat, Chennai and two others Vs. R.Kaliyamoorthy reported in 2019-5 L.W. 673, wherein it is stated as follows.

45. 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 such 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)(i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2013 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".

5. In the light of the above decision and also taking note of the submissions made by the parties, this court is inclined to pass the following order.

The 2nd respondent is directed to consider the representation made by the petitioner dated 15.04.2013, and pass an order in accordance with law, by taking note of the above decision, within twelve weeks from the date of receipt of a copy of this order.

6. With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

mst

To

1. The Secretary, Government of Tamil Nadu,
Highways Department, St. Fort George,
Chennai 600 009.
2. Divisional Engineer, Highways Construction and MATCE,
Chennai City Roads Division,
Saidapet, Chennai 600 015.

+1cc to Mr.S.Sakthivel, Advocate, SR.No.3673.

+1cc to Spl. GP. SR.No.3944.

W.P.No.28278 of 2013

BS (CO)

CSR: 20.02.2020