BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.03.2020
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD) No.4797 of 2020

S.Balakrishnan ...Petitioner

Vs.

1.The Principal Accountant General (A & E) Pension,
391, Anna Salai,
Chennai -1.

2.The District Collector,
Thenkasi District,
Thenkasi.

3.The District Collector,
Tuthukudi District.

4.The Tahsildar,
Sankarankovil.

5.The Secretary to Government,
Revenue Department,
Secretariat,
Chennai. ...Respondents

(The 5th respondent is *suo motu* impleaded in this petition, as per the order dated 06.03.2020 made infra.)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents 2 to 4 to send revised pension proposal to the 1st respondent calculating half of the service put in by the petitioner as Village Assistant from 15.10.1985 to 01.06.1995 within a stipulated time.

For petitioner : Mr.T.S.Mohamed Mohideen

For 1st respondent : Mr.P.Gunasekaran

For respondents 2 to 5 : Mr.M.Rajarajan, Government Advocate

ORDER

By consent, this Writ Petition is taken up for final disposal at the stage of admission itself.

2. It is stated by the respondents that the Secretary to Government, Revenue Department, Secretariat, Chennai -9, who is a

necessary party, has not been impleaded in this petition. Hence, the Secretary to Government, Revenue Department, Secretariat, Chennai-9 is *suo motu* impleaded as 5th respondent in this writ petition. Mr.M.Rajarajan, learned Government Advocate takes notice on behalf of the 5th respondent.

3.The learned counsel for the petitioner submitted that he was appointed as Village Assistant on 15.10.1985 and his service was brought under regular time scale of pay on 06.07.1995 and he retired from service on attaining the age of superannuation on 31.05.2007. The grievance of the petitioner is that the respondents have been paying pension by calculating the service of the petitioner only from 01.06.1995 to 31.05.2007 and his half of the service rendered during the period 15.10.1985 to 01.06.1995 has not been taken into account by the respondents, as per Rule 11(4)III of the Tamil Nadu Pension Rules, 1978. Hence, he has come up with this writ petition for the aforesaid prayer.

4. The issue involved in this writ petition has already been settled in various decisions of this Court as well as by the Hon'ble Supreme Court. A Division Bench of this Court recently in the case of K.Velmayil Vs. the Secretary to Government, Revenue Department, Chennai and others, [W.A.(MD).No.370 of 2019], dated 22.10.2019, after referring to various decisions, has ultimately held in paragraph No.17 as follows:

> "Leave alone the provisions of the Rules which have been given effect to or interpreted in several precedents including the two judgment relied upon by the learned Single Judge in this case in several judgments of Division Bench, this Court has taken a consistent view that the petitioners are entitled to count 50% of their past service they have rendered as Thalayaris upto 31.05.1995 along with the regular service for the purpose of pension. It is admitted that the decisions of this Court by the Division Bench have been confirmed by the Hon'ble Supreme Court in several cases. It is also admitted that the Government has implemented the consistent view expressed by this Court in several individual cases. It was on account of the fact that some of the precedents and the applicable rules have not been brought forth by the Government Pleaders properly before some of the learned Judges of this Court, the issue which has been raised by the Government has been answered against the Government in several precedents and the ratio settled by this Court has been followed and implemented in several individual cases by the Government. In such circumstances, this Court is of the view that there is no scope for reference to a Larger Bench and that the order

impugned in W.P.(MD).No.70 of 2019 is set aside. The Writ Petition in W.P.(MD.No.70 of 2019 stands allowed in tune with the earlier precedents of this Court. The first respondent is directed to pass orders counting 50% of the services of the appellant put in by him as Thalayari for the period from 07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant and the Village Administrative Officer and to send revised pension proposals within a period of six weeks from the date of receipt of a copy of this order."

5. More over, in the recent Full Bench decision of this Court in a batch of writ appeals and writ petitions ie., in W.A.Nos.158, etc. batch, (Government of Tamil Nadu and others Vs. R.Kaliyamoorthy) dated 03.12.2019, it has been held that if the service of an employee has been regularised before 01.04.2003 only, his/her half of past service will be counted for the purpose of determination of qualifying service for pension.

6. Admittedly, in this case, the service of the petitioner has been regularised in the year 1995 itself and therefore, there would not be any impediment for the respondents in counting 50% of service rendered by the petitioner from 15.10.1985 to 01.06.1995 as qualified service for pension.

7. In view of the above, the respondents 2 to 5 are directed to send revised pension proposal to the first respondent calculating half of service put in by the petitioner as Village Assistant from 15.10.1985 to 01.06.1995, along with his regular service, within a period of eight weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall grant revised pension to the petitioner within a period of two weeks thereafter.

8. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To
1.The Principal Accountant General (A & E) Pension,
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Chennai -1.

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Thenkasi.

3.The District Collector,
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4.The Tahsildar,
Sankarankovil.

5.The Secretary to Government,
Revenue Department,
Secretariat,
Chennai.

+1 CC to M/s.T.S.MOHAMED ,OHIDEEN, Advocate (SR-10389[F] dated 06/03/2020)

+1 CC to M/s.SPL.GP (SR-10562[F] dated 09/03/2020)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-10692[F] dated 09/03/2020)

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KB(29/05/2020) 4P 9C