BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**10.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14677 of 2019

(Through Video conferencing)

1.E.Arumugam
2.V.Vembulu
3.G.Ponnan ...Petitioners

-Vs-

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.

2.The Accountant General,
361, Anna Salai,
Chennai - 600 018.

3.The Revenue Divisional Officer,
Usilampatti Division,
Usilampatti,
Madurai District. ...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 2nd respondent i.e., the Accountant General, Chennai to implement the orders of the Hon'ble High Court in W.P.(MD) Nos.6905 to 6908 of 2015 dated 12.07.2016 which was confirmed in W.A.(MD) Nos.1048 to 1051 of 2017 dated 10.08.2017 and implemented by the specific directions of the Government issued in G.O.Ms.No.473 Revenue Disaster Management Department, Services Wing dated 03.12.2018 for counting the services put in by the petitioners in the cadre of Thalayari for the purpose of calculation of pension and the Revenue Divisional Officer, Usilampatti may also be directed to send revised pension proposal enclosing the specific orders passed in G.O.Ms.No.473, Revenue Disaster Management Department, Services Wing dated 03.12.2018, within a specified time frame that may be fixed by this Court without raising any further objections.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.K.Mu.Muthu, AGP for RR1 and 3
Mr.P.Gunasekaran, for R2
Standing Counsel

ORDER

The prayer in this writ petition is for a writ of Mandamus, directing the 2nd respondent i.e., the Accountant General, Chennai to implement the orders of the Hon'ble High Court in W.P.(MD) Nos.6905 to 6908 of 2015 dated 12.07.2016 which was confirmed in W.A.(MD) Nos.1048 to 1051 of 2017 dated 10.08.2017 and implemented by the specific directions of the Government issued in G.O.Ms.No.473 Revenue Disaster Management Department, Services Wing dated 03.12.2018 for counting the services put in by the petitioners in the cadre of Thalayari for the purpose of calculation of pension and the Revenue Divisional Officer, Usilampatti may also be directed to send revised pension proposal enclosing the specific orders passed in G.O.Ms.No.473, Revenue Disaster Management Department, Services Wing dated 03.12.2018, within a specified time frame that may be fixed by this Court without raising any further objections.

2.These three petitioners herein have already approached this Court by way of writ petition in W.P.(MD) Nos.6905 to 6907 of 2015 respectively. Their grievance is that, they were initially appointed prior to 1995 as Village Assistant/Thalayari on a consolidated pay and they have been working in that capacity till 01.06.1995, the date on which, all such persons, who were worked on consolidated pay were brought under regular time scale of pay on regular basis. After some years, on superannuation, these petitioners retired from service and they have been given pension also and they are continuing to receive pension. In this context, their grievance is that, while calculating pensionary service, the respondents taken into account only the service rendered by these petitioners from 01.06.1995 and service rendered by them prior to 01.06.1995 were not taken into account. In this regard, they approached this Court by way of earlier round of litigation as stated above. Those writ petitions along with some other writ petitions were heard together and decided by a common order of this Court in W.P.(MD) Nos.6905 to 6908 of 2015 dated 12.07.2016 by a learned Judge, where, after considering the merits of the case, the learned Judge allowed all those writ petitions, by giving directions to the respondents to extend the benefit of G.O.Ms.No.173 in favour of the petitioners therein and such exercise shall be undertaken within a period of eight weeks from the date of receipt of a copy of order passed in those writ petitions.

3.In this context, it is a further grievance of the petitioners that, as against the said order passed by the learned Judge in W.P.(MD) Nos.6905 to 6907 of 2015, intra Court appeals were preferred by the respondents in W.A.(MD) Nos.1048 to 1050 of 2017. By separate orders, the Division Bench of this Court on 10.08.2017 dismissed all those writ appeals. By thus, orders of the learned Judge made on 12.07.2016 has been confirmed.

4.Despite, those orders having been passed are confirmed by the Division Bench, import of the said order so far not been implemented by the respondents, especially the 2nd respondent. That appears to be the present grievance of the petitioners.

5.In this context, the Government has issued a Government Order in G.O.Ms.No.473, Revenue and Disaster Management Department, Service Wing Section dated 03.12.2018, wherein, after having considered the said order passed by the Writ Court as well as the order passed in intra Court appeal by the Division Bench of this Court, has decided to accept the import of the order and passed the aforesaid Government Order. The operative portion of the Government Order in G.O.Ms.No.473 is quoted hereunder for easy reference.

> "9.The Government after careful examination of the above case and decided to implement the orders passed by the Hon'ble Madurai Bench of Madras High Court in W.P.Nos.6905 to 6908 of 2015 and W.P(MD) Nos.7446 to 7449 of 2016 dated 12.07.2016 filed by the petitioners and accordingly directs that the respective part time services rendered by the petitioners Tvl.G.Ponnan, V.Vembulu, E.Arumugam, P.Alagarsamy, K.Pandi, R.Rajangam, V.Gurusamy and P.Thirugnanam prior to 01.06.1995 be taken into account for their pension calculation, and the pension may be granted to them from the date of issue of order as a special case, subject to the outcome of the Review Petition to be filed by the Government in this regard."

6.Though the said Government Order was passed accepting the order passed by this Court for granting benefit of calculating earlier service rendered by these petitioners prior to 01.06.1995 for the purpose of pensionary benefits, it seems that on 22.04.2019, the 2nd respondent has taken a stand that no specific direction has been given to the 2nd respondent for calculating the earlier service rendered by these petitioner prior to 01.06.1995 for the purpose of calculating the pensionary service for disbursing the pension. Only in that circumstances, the present writ petition has been filed to implement the order passed by this Court, followed which, the Government Order issued by the Government for grant of full pension by taking into account the prior service rendered by these petitioners prior to 01.06.1995.

7.The learned standing counsel appearing for the 2nd respondent has taken a stand that, in the earlier round of litigation, the 2nd respondent was not a party and what order has been passed by this Court is not binding on them and no direction was given to the 2nd respondent. In that circumstances, if the petitioner approached this Court to implement the earlier order, it may be difficult for the 2nd respondent to implement it, unless and until the order passed by this Court is known to the 2nd respondent. Moreover, the 2nd respondent since was not a party to the earlier proceedings, that order will not bind them.

8.The learned Additional Government Pleader appearing for the respondents 1 and 3, on the other hand, would submit that, as against the order passed by this Court, as has been confirmed by the Division Bench of this Court, SLPs have been filed, but they are not so for brought for hearing.

9.Be that as it may, insofar as the orders passed by this Court in the 1st round by order dated 12.07.2016 is concerned, intra Court appeals were filed and the appeals filed by the respondents/Government were dismissed, thereby, the order dated 12.07.2016 of the learned single Judge become final. Thereafter, in order to implement the said order passed by this Court, the Government also came forward to issue a Government Order in G.O.Ms.No.473 dated 03.12.2018 and directed the concerned authorities to implement the order as the Government has accepted the verdict, which is reflected at para 9 of the Government order, which has already been extracted hereinabove.

10.When that being the position, it is not correct to state that, merely because the 2nd respondent was not a party in the earlier round of litigation, the order passed by this Court to the other respondents i.e., the State Government, who in turn, after unsuccessfully filed intra Court appeal, has decided to accept the import of the order and issue Government Order in G.O.Ms.No.473 dated 03.12.2018, giving direction to the authorities to implement the order, cannot be implemented by the 2nd respondent.

11.When the Government issued Government Order pursuant to the order passed by the Court of law, the implementing authority must see only the import of the Government order and the implementing authority need not ask for any clarification as to what order has been originally passed by the Court of law, which directing the Government to take a decision. Such kind of roving enquiry on the part of the 2nd respondent may not be necessitated as the Government is the employer, petitioners are the employees. Therefore, service benefits given to the employees are to be decided only by the Government, of course, within the framework of law and once the Government decided in this regard and passed a Government order, which is a statutory order passed by the Government by exercising its executive power conferred on them under Article 162 of Constitution of India, therefore, the validity of the import of such Government Order/executive instructions in exercise of the executive power under Article 162 of Constitution of India issued by the State Government cannot be questioned by any other authority as it is the wisdom of the State Government to pass any such orders by taking a policy decision either on their own or towards implementing orders passed by the Court of law.

12.In that view of the matter, this Court finds force in the contention raised by the petitioners herein and therefore, this Court is inclined to dispose of this writ petition with the following direction:

"The 2nd respondent shall act upon as per G.O.Ms.No.473 dated 03.12.2018 and implement the import of such Government Order, especially in the context of the operative portion of the Government Order at para 9 of the Government Order, which has been extracted herein above. Accordingly, the 2nd respondent shall calculate the period of 50% of the service rendered by the petitioners prior to 01.06.1995 for the purpose of pensionary benefits and accordingly, shall calculate the pension payable to the petitioners and pay the same with arrears and shall continue to pay the revised pension to the petitioners. Needful as indicated above shall be undertaken by the respondents, especially the 2nd respondent, within a period of two months from the date of receipt of a copy of this order.

13.Now, the learned counsel appearing for the 2nd respondent pointed out that the proposal has been returned to the concerned Revenue Divisional Officers for necessary clarification, but, so far, the concerned Revenue Divisional Officers have not clarified the position. In view of the above discussion, such clarification shall also be given by the Revenue Divisional Officers through the District Collectors concerned to the 2nd respondent and on receipt of the same, the 2nd respondent should act upon as directed above.

14.Accordingly, this writ petition is ordered to the terms indicated above. No costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

Arul

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.

2.The Accountant General,
361, Anna Salai,
Chennai - 600 018.

3.The Revenue Divisional Officer,
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Usilampatti,
Madurai District.

Order made in
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10.07.2020

KK(06.08.2020) 6P 4C