



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD) No.5 of 2018

and

C.M.P. (MD) No.88 of 2018

(Through Video Conferencing)

1.The State of Tamil Nadu
Rep. By the Secretary to Government
Revenue (Servant-7-1) Department
Fort St. George
Chennai.

2.The Tahsildar
Kolathur Taluk
Kolathur
Pudukottai District.

... Appellants

-Vs-

A.Pitchai

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 23.03.2016 passed in W.P.(MD)No.5832 of 2008.

Prayer in WP(MD). 5832/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandmaus, calling for the records relating to the memorandum dated 19/05/2008 in O.Mu./6297/2008-A.3 of the second respondent herein and quash the same and consequently direct the respondnets to grant pension to the petitiioenr in accordance with Tamil Nadu Village Assistant Pension Rules, 1995.



For Appellant : Mr.VR.Shanmuganathan,
Special Govt. Pleader

For Respondent: M/s.AL.Ganthimathi

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JUDGMENT

Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,

The Official respondents in W.P.(MD)No.5832 of 2008, filed by the respondent/writ petitioner, are the appellants.

2. The respondent/writ petitioner has filed the above said writ petition stating, among other things, that he joined the service as Village Assistant in the Revenue Department on 16.04.1986 and even prior to that, was temporarily working as Village Assistant and taking into consideration his earlier services, he was given appointment by the second respondent/second appellant herein to the said post, vide his proceedings, dated 16.04.1986 and the petitioner claims that ever since the date of joining in service as a Village Assistant, he was rendering sincere, hard and unblemished service to the satisfaction of the superior Officer.

3. The respondent/writ petitioner would further aver that on attainment of age of superannuation on 30.06.1999, he retired from service and pursuant to the same, he has been paid with Gratuity and other retirement benefits, except the pension and family pension. According to the respondent/writ petitioner, in terms of G.O.(3D) No.9, Revenue (Ser 7(1) Department, dated 28.02.2006, especially, Rule 4(a), the services rendered by him, as a temporary measure, is also liable to be taken into consideration as qualified service and if it is calculated from the date of joining of service on 16.04.1986, till the date of his retirement on 30.06.1999, he has rendered more than 10 years of qualifying service and as such, he is entitled to pension and family pension.

4. The writ petition was entertained and the second respondent has filed his counter affidavit and would submit that the said Rule, shall be deemed to have come into force from 01.06.1995 only and if the period of service is calculated from 01.06.1995, the petitioner had rendered only four years and add of services and admittedly, he did not render the qualifying service of 10 years and as such, he is not eligible for pension and however, in the light of Rule 8 of the Tamil Nadu Village Assistant's Pension Rules, 1995, he has been settled with DCRG and other benefits.

5. The learned Judge had taken note of the averments made in the writ petition as well as the counter affidavit and on going through the Tamil Nadu Village Assistant's Pension Rules, 1995, held that since he has been appointed on 16.04.1986 as permanent Village



Assistant, the said Rules are having applicability and he is eligible for pension and family pension and accordingly, allowed the writ petition by quashing the impugned proceedings of the second respondent dated 19.05.2008, in and by which, the request made by the respondent/writ petitioner came to be entertained.

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6. The official respondents aggrieved by the allowing of the writ petition, came forward to file this writ appeal.

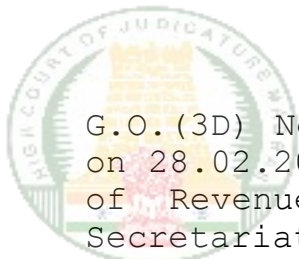
7. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants has drawn the attention of this Court to the Tamil Nadu Village Assistant's Pension Rules and would submit that though the said Rules came to be framed as early as on 1995 in terms of G.O.(3D) No.9, Revenue (Ser. 7(1) Department, dated 28.02.2006, it came to be existence from 01.06.1995 and in fact, it was published in the Tamil Nadu Government Gazette on 27.03.2019 and has also drawn the attention of this Court to the Letter No.17035/Ser.8(1)/2020-1, dated 22.07.2020 of Revenue and Disaster Management Department, Services Wing, Secretariat, Chennai - 9.

8. It is the further submission of the learned Special Government Pleader appearing for the appellants that the said Rule came into force only from 01.06.1995 and therefore, from the date only, the qualifying service is to be calculated and the services of the petitioner were brought into time scale of pay on 01.06.1995 and prior to that, admittedly, he was appointed only on consolidated pay and he retired on 30.06.1999, by rendering only four years of service and since he did not render the prescribed qualifying service, he has not been paid with pension and family pension and in terms of Rule 8, he has been conferred with other benefits and since this aspect has been overlooked/not considered in the impugned order, he prays for interference.

9. Per contra, Ms.AL.Gandhimathi, learned counsel appearing for the respondent/writ petitioner would submit that the Tamil Nadu Village Assistant's Pension Rules, 1995 is a benevolent Subordinate Legislation and it should be interpreted liberally to the aid of the pensioners and it is an admitted case of the appellants/official respondents that the respondent/writ petitioner was appointed as Village Assistant on 16.04.1986 and brought into time scale of pay with effect from 01.06.1995 and retired on 30.06.1999 and if the period is calculated from 16.04.1986 till the date of retirement on 30.06.1999, he has rendered more than 10 years of qualifying service and as such, he is entitled for pension and family pension and prays for dismissal of this writ appeal with costs.

10. This Court has carefully considered the rival submissions and also perused the materials placed on record.

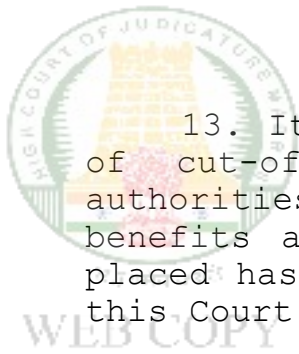
11. The Tamil Nadu Village Assistant's Pension Rules, 1995, though was framed in the year 1995, the relevant Government Order in



G.O.(3D) No.9, Revenue (Ser 7(1) Department, came to be issued only on 28.02.2006. A perusal of the communication in the form of letter of Revenue and Disaster Management Department, Services Wing, Secretariat, Chennai - 9, dated 22.07.2020 (referred to supra) would also disclose that the said Rule came to be notified in the official Gazette only on 06.03.2019 and of course, with effect from 01.06.1995. The said letter also deals with query No.3 and also answered the same. It is relevant to extract hereunder the same.

Sl.No	Details Sought for	Reply
1	...	...
2		...
3	Whether an employee who got retired before the framing of the said rules, say in the case of the petitioner on 30.06.1999, is entitled to any pension under the said rules, with reasons for the same?	An employee who got retired before the framing of the said rules is eligible for special pension if he has a qualifying service of five years or more from the date of regularization i.e., 01.06.1995 and is otherwise eligible. In the instant case, i.e., petitioner retiring on 30.06.1999, he is not eligible as his qualifying service falls short of five years.

12. Though it is the vehement and forceful submission of the learned counsel appearing for the respondent/writ petitioner that the Tamil Nadu Village Assistant's Pension Rules, 1995 is in the nature of benevolent Subordinate Legislation and therefore, it is deemed to have been given retrospective effect, in the considered opinion of this Court, it is a well settled position of law that statutory provisions and subordinate legislation are to be interpreted on a plain meaning given and admittedly, as per Sub-Rule (ii) to Rule 1 of the said Rules, the Rules shall be deemed to have come into force from 01.06.1995 and it is in the nature of cut-off date and if it is taken into consideration, the petitioner had rendered only four years of services, till the date of his retirement on 30.06.1999 and admittedly, prior to that, the petitioner was brought into time scale of pay on 01.06.1995 and he was paid with consolidated pay between 16.04.1986 and 01.06.1995. The computing the length of service has been calculated as provided under Rule 4 of Tamil Nadu Village Assistant's Pension Rules, 1995 and the said calculation has been taken into consideration on the basis of the cut-off date i.e., 01.06.1995.



13. It is a well settled position of law that the prescription of cut-off date falls within the domain of the concerned authorities, especially, it is relatable to disbursement of monetary benefits and unless it is pointed out that the persons similarly placed has been treated differently while applying the said Rules, this Court will not normally interfere with the same.

14. In the light of the reasons assigned above, the impugned order allowing the writ petition, warrants interference.

15. In the result, this writ appeal is allowed and the order dated 23.03.2016 passed in W.P.(MD)No.5832 of 2008 is set aside and consequently, the writ petition is dismissed. Consequently, connected miscellaneous petition is also closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

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 Secretary to Government,
State of Tamil Nadu,
Revenue (Servant-7-1) Department,
Fort St. George, Chennai.

2.The Tahsildar,
Kolathur Taluk, Kolathur,
Pudukottai District.

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and C.M.P. (MD) No.88 of 2018
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vsm

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