



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.07.2020

PRONOUNCED ON : 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAARAMAN

W.P. (MD)No.1758 of 2014

K.Krishnasamy

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Social Welfare and Nutritious Meal Programme,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The Principal Secretary,
Revenue Department,
Government of Tamilnadu,
Fort St.George, Secretariat,
Chennai - 600 009.

3.The Accountant General,
(Accounts and Entitlements),
No,361, Anna Salai,
Chennai- 600 018.

4.The District Collector,
Thanjavur District,
Thanjavur.

5.The Revenue Divisional Officer,
Thanjavur.

6.The Tahsildar,
Orathanadu Taluk,
Thanjavur District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to count 50% of the petitioner's Noon Meal services for pensionary benefits and to award pension.



For Petitioner : Mr.Selvin Raja
for R.Subramanian

For R1,2,4 to 6 : Mr.Gunaseelan Muthiah
Additional Government Pleader

For R3 : Mr.P.Gunasekaran
Standing Counsel

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O R D E R

The petitioner has filed the present Writ Petition seeking for the issue of a Writ of Mandamus, to direct the respondents to count 50% of the petitioner's Noon Meal Services for pensionary benefits and to award pension.

2. The factual matrix of the case of the petitioner is as follows:

(a). The writ petitioner is a retired Village Administrative Officer. He has worked as temporary Village Karnam at Achampatti Village, Thanjavur Taluk from 03.04.1979 to 19.11.1979. This was a part time village officer post. After the abolition of the post of Village Officer and creation of the Village Administrative Officer post, the petitioner was selected as Village Administrative Officer in Thanjavur District and he had worked as Village Administrative Officer from 23.12.2000 to 30.06.2009 and retired on superannuation on 30.06.2009.

(b). Prior to his service as Village Administrative Officer, he had worked as part time Noon Meal Organizer in Pudukottai District from 08.02.1983 to 22.12.2000. Subsequently, he has been selected as Village Administrative Officer and he resigned his post of Noon Meal Organizer on the afternoon of 22.12.2000. As such, he rendered full time Government service as Village Administrative Officer only for a period of eight years six months and nine days only. Hence, the petitioner has claimed to take into account of 50% of services rendered by him as Noon Meal Organizer in the light of G.O.(Ms)No.408, Finance (Pension) Department, dated 25.08.2009.

3. In the counter, the contesting official respondent stated that,

(a). As the Writ Petitioner did not put a minimum regular service of 10 years, he is not eligible for payment of pension as per Rule 43 (1) of the Tamil Nadu Pension Rules, 1978. Therefore, the Accountant General granted only proportionate service gratuity to him and pension was not sanctioned due to the dearth of minimum qualifying service as full time Government service.



3(b). It remains to be stated that in respect of Government employees absorbed in regular service before first April 2003, who has completed ten years of service were granted a minimum pension of Rs.3050/- as per the Tamil Nadu Pension Rules, 1978. The petitioner has served only eight years six months and nine days. Hence he is not eligible for getting pension.

4. Heard both sides and perused the records produced before this Court.

The relevant Rules that governs the subject matter of this writ petition are hereunder:

5. Tamil Nadu Pension Rules, 1978, rule 11(2) has been laid down as follows:

"2. Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii) (iii)....."

6. The Government have amended the Tamil Nadu Pension Rules, 1978, in rule 11 and inserted the rule 11(4) by their G.O.(Ms)No.41, Finance (Pension) Department, dated 09.02.2010 so as to implement the benefits extended by the G.O.(Ms)No.408, Finance (Pension) Department, dated 25.08.2009. It has been laid down as follows:

"4. Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January, 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily

Wages basis shall be followed by absorption in



regular service before 1st April 2003 without break."

7. The above said two provisions relating to Rule 11(2) and Rule 11(4) concerning with the G.O.Ms.No.41 Finance (Pension) Department, dated 09.02.2010 and G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 as mentioned supra has been dealt with by the Full Bench decision reported in **2019(6) CTC 705** wherein at paragraph No.45, it was held as under:

"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.

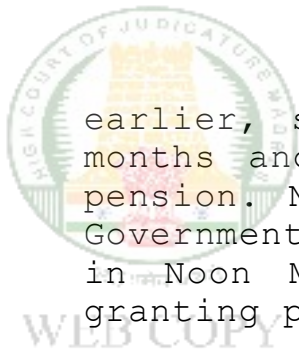
(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(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 01.04.2003 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."

Clause(iii) of the above said paragraph No.45 covers the service matrix of the petitioner. As stated supra, the petitioner had worked as a Noon Meal Organizer only on part time basis with consolidated pay and he has resigned the job on 22.12.2000. Thereafter, he was appointed to the post of Village Administrative Officer by fresh appointment in a different Department on 23.12.2000 and retired on 30.06.2009. As observed



earlier, since the petitioner has served only eight years six months and nine days, he is not eligible for getting regular pension. Now the petitioner is relying upon the above said two Government Orders and claimed that 50% of his previous service in Noon Meal Scheme has to be taken into consideration for granting pension.

8. As stated supra, Clause (iii) in paragraph 45 of the Full Bench decision cited supra, the petitioner's service must have been regularised before 01.04.2003 in the same Department. However, he resigned and went to join a new Department and hence the rejection order passed by the respondent is sustainable in law. Hence, I do not find any merit in this case. After arguments are over, the learned counsel for the petitioner has submitted a written submission wherein at page No.5, it is mentioned as under:

*"With great respect, the answer given by the Hon'ble Full Bench failed to consider the applicability of G.O.Ms.No.6 in its entirety. Further, the ratio laid down by the Hon'ble Full Bench is unreasonable and it violates accrued rights of the petitioner and the persons, who are similarly situated. It is equally important to point out that the judgment rendered by the Hon'ble Full Bench is in per inqurium as the Hon'ble Supremen Court of India in the case of **Tamilarasi vs. The State of Tamil Nadu** in SLP Civil No.8051 of 2019 issued a notice vide order dated 20th February 2019, which governs the same issue as involved in this case. Thus the order passed by the Hon'ble Full Bench is in ignorance of the order passed by the Hon'ble Supreme Court."*

9. Following the Doctrine of *ratio decidendi* the judgment rendered by the Full Bench is binding upon the Bench with the smaller strength and as such a decision of the Full Bench is binding upon me and the reason assigned by the petitioner in which written argument that as against one of the judgment passed by the Division Bench, which went against the similarly placed person, the Hon'ble Supreme Court has condoned the delay and ordered notice to the respondent, but that will not preclude the Full Bench to hear the matter and hence the submissions made by the petitioner in the form of written argument, as extracted above, has no legs to stand and has to be thrown out at the threshold. Accordingly the said contention stands rejected. Since the petitioner is retired from the Government service, I am imposing self-restriction upon me and refraining myself from imposing cost.



10. In the result, this Writ Petition stands dismissed. No Costs.

Sd/-

Assistant Registrar(Records)

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// True Copy //

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Sub Assistant Registrar(CS)

PJL

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,
The Government of Tamil Nadu,
Social Welfare and Nutritious Meal Programme,
Fort St.George, Secretariat, Chennai - 600 009.
- 2.The Principal Secretary,
Revenue Department,
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- 4.The Revenue Divisional Officer, Thanjavur.
- 5.The Tahsildar, Orathanadu Taluk,
Thanjavur District.

+1 CC to M/s.GP (SR-13944[F] dated 13/08/2020)

+1 CC to M/s.R. SUBRAMANIAN, Advocate (SR-14045[F] dated 13/08/2020)

**ORDER MADE IN
W.P. (MD)No.1758 of 2014
13.08.2020**

SE(CO)

TR(02.09.2020) 6P 8C