



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.23383 of 2015

M.Rathinam

... Petitioner

Vs.

1.The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet,
Chennai.

2.The Divisional Forest Officer,
Velu Nachiar Complex,
Dindigul.

3.The Principal Accountant General of Tamil Nadu,
Office of Accountant General,
Teynampet,
Chennai.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 to consider the petitioner's representation dated 08.12.2015 for counting half of the service rendered by the petitioner from 01.05.1983 to 07.08.2009 as plot watcher a daily wage basis along with regular service rendered from 07.08.2009 to 31.07.2015 send revised pension proposal to the third respondent and further grant pension to petitioner will all consequential benefits.

For Petitioner : Mr.G.Thiruvavutselvan

For RR 1 & 2 : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader.

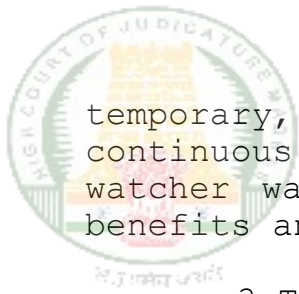
For R - 3 : Mr.P.Gunasekaran

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus, directing the respondents 1 to 3 to consider the petitioner's representation dated 08.12.2015 for counting half of the service rendered by the petitioner from 01.05.1983 to 07.08.2009 as plot watcher on a daily wage basis along with regular service rendered from 07.08.2009 to 31.07.2015 and to send revised pension proposal to the third respondent.

2.The learned counsel appearing for the petitioner submitted that the petitioner was initially appointed as a plot watcher on a

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temporary, daily wage basis from 01.05.1983 and he has been in continuous service without any break in service. His service as plot watcher was regularised on 07.08.2009 and conferred with all the benefits and he retired from service on 31.07.2015.

3.The learned counsel appearing for the petitioner further submitted that earlier the plot watchers and Village Social Forest Workers were working on an adhoc basis and their services were not regularised. Subsequently based on the representations and demands made by those persons, Government Orders came to be issued and they were brought under regular time scale of pay and consequential benefits were granted.

4.The plot watchers, who served and retired from service, were not granted pensionary benefits under the Tamil Nadu Pension Rules, 1978 on the ground that they were not having 10 years of continuous pensionary service, since the service rendered by them continuously prior to permanency on a daily wage basis was treated as non-pensionary service.

5.In the meantime, one B.Murugan, who retired from service on 13.09.2005, was granted pensionary benefits by virtue of G.O.Ms.No.332, dated 19.11.2008 wherein 50% of the service rendered by him on a daily wage basis was ordered to be included with his regular service for the purpose of sanction of pension. The said G.O was passed based on the recommendation made by the first respondent and it was further clarified that with respect to similar cases, orders will be passed by the Government based on the recommendation of the first respondent.

6.The learned counsel appearing for the petitioner further submitted that as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, for calculating qualifying service, half of the service paid from contingencies shall be allowed to be counted and the petitioner had also satisfied the said condition.

7.Similarly placed persons, like that of the petitioner, have filed Writ Petitions in W.P.Nos.2185 of 2012 and batch etc., wherein this Court has held that as the issue raised in the Writ Petitions was covered by the decision rendered in W.P(MD)No.13832 of 2011, dated 29.06.2011, allowed the Writ Petitions on the same lines by order dated 13.06.2012. Hence, the petitioner has filed the above Writ Petition with the above stated relief.

8.The respondents filed the counter-affidavit, in which it is stated that the petitioner has been engaged as a plot watcher on daily basis from 01.05.1983 in Dindigul Range to 31.05.2012 and from 01.06.2012 to 06.08.2009 in Palani Range and continued in service from 06.08.2009. As per G.O.Ms.No.95, E & F (FR - 2) Department dated 07.08.2009, the petitioner continued in service and retired from service on 31.07.2015.



9.As per the petitioner's representation dated 08.12.2015 seeking pensionary benefits, the service rendered by him as plot watcher on daily basis from 01.05.1983 to 06.08.2009 and regular service from 07.08.2009 to 31.07.2015 has been entered in the Service Register of the individual on 23.12.2015.

10.The Government Employees, who are appointed prior to 01.04.2003, Rule 11(2) of the Tamil Nadu Pension Rules, 1978 is applicable, but as per G.O.Ms.No.259, dated 06.08.2003 and G.O.No.408, dated 25.08.2009 as amended in the Pension Rules in G.O.No.41, dated 09.02.2010, the persons appointed after 01.04.2003 are not coming under the Tamil Nadu Pension Rules and they are coming under the Tamil Nadu Contributory Pension Scheme and 10% contribution towards CPS has been made from his salary from the date of joining in the scheme. Accordingly, the petitioner is not entitled for pension under the Tamil Nadu Pension Rules, 1978 and the daily wage service rendered by him cannot also be counted for pension purpose and prayed for dismissal of the Writ Petition.

11.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

12.The learned counsel appearing for the third respondent has relied on the Full Bench Judgment of this Court in ***W.A.No.158 of 2016 and batch etc., decided on 03.12.2019 (The Government of Tamil Nadu, Rep. by Secretary to Government, Public Works Department, Secretariat, Chennai - 600 009 Vs. R.Kaliyamoorthy)***.

13.The Full Bench of this Court has stated that as per Rule 2 of the Tamil Nadu Pension Rules, 1978, these Rules shall apply to all Government servants appointed to services and posts in connection with the affairs of the State, which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to the persons in casual and daily rate employment, persons paid from contingencies, persons employed on contract except when the contract provides otherwise, members of the All-India Services, persons entitled to the benefit of a Contributory Provident Fund and persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Service Rules and belong to pensionable service.

14.It is further stated that the Temporary appointments are defined in Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and the same reads as follows:

'10.Temporary appointments:- Sub-Rule (a)(i)

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to an emergency which has arisen to fill immediately a vacancy in a post-borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these Rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualification prescribed for the post otherwise than in accordance with the said Rules.

Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission.

(2) Omitted vide G.O. Ms. No.21, P&AR Dept. dated 23.01.1996 wef 23.01.1996.

Provided further that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring.

27.Rule 2 of the Tamil Nadu Pension Rules, 1978 was amended in the year 2003 vide G.O.Ms.No.259 dated 06.08.2003. Text of the said proviso reads as under:-

[Provided that these rules shall not apply to Government servants **appointed on or after the 1st April 2003**, to services and posts in connection with the affairs of the State which are borne on pensionable establishment, whether temporary or permanent.]

28.A further amendment was introduced to the said Rules in the year 2010 whereby a new Sub-Rule (4) was added after Sub-Rule (3) to Rule 11 of the said Rules, vide G.O.No.41, Finance (Pension) Department dated 08.02.2010 which reads 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;

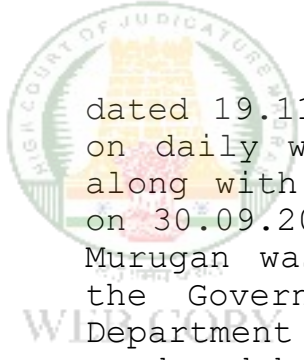
ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

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 a break."

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.'

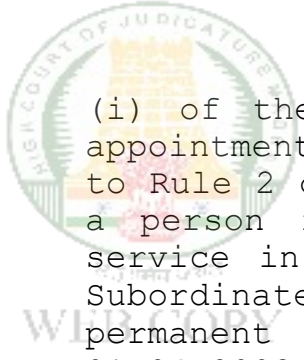
15. The Full Bench has considered all these persons' pleas, who were appointed in various departments of the Government in non-provincialised services, on consolidated pay, honorarium or daily wage basis, on contingency basis. They were not appointed against any sanctioned post or regular post. For having rendered such service, they were paid daily wage or wages from the contingency fund. To be specific, the writ petitioners were not appointed in a cadre post whether on temporary or permanent basis against vacancies which were duly notified. They were appointed on daily wage basis prior to 01.04.2003 on various dates. The service of some of the petitioners were also admittedly regularised after 01.04.2003 in a cadre post as and when permanent vacancies arose or had been notified. The writ petitioners therefore claimed that they are entitled to count half of the service rendered by them on daily wage basis or as contingent employees or on honorarium basis or in non-provincialised services etc. along with the regular service as has been contemplated under Rule 11 (4). The petitioners also claimed equity on par with one Murugan, in whose favour, the Government issued G.O. (D) No.332, Environment and Forest Department



dated 19.11.2008 by which the service rendered by the said Murugan, on daily wage basis for about 20 years was ordered to be counted along with his regular service rendered by him till his retirement on 30.09.2005. In other words, even though the service of the said Murugan was regularised after 01.04.2003, yet, as a special case, the Government issued G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 and ordered to count half of the service rendered by him on daily wage basis along with his regular service. This had apparently sparked and/or kick-started a volley of writ petitions to be filed before this Court at the instance of persons similarly placed like the writ petitioners in this batch. This Court had also, based on the order passed by the Government in G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 directed the Government to count half of the service rendered by the persons similarly placed like the petitioners along with their regular service, purportedly on the ground of equity. The State Government filed writ appeals before the Division Bench of this Court, as against few cases in which such directions were issued by the single Bench.

16.It is further stated that Rule 11(4) makes it clear that Government Employees, whose services were regularised before 01.04.2003, are entitled to Government pension. The word temporary or officiating service employed in Rule 11(1) is referable to 'Temporary appointment' contemplated under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. On a reading of Rule 10(a)(i), the wordings employed thereof are explicit and clear. A temporary appointment made to a government service is the one which is made in a post borne on the cadre of a service, class or category, meaning thereby such temporary appointment is made in an existing vacancy or notified vacancy. Rule 10(a)(i) further makes the position clear that such appointment is permissible to be made by the appointing authority in case of emergency to fill the vacancy, in public interest. For such appointment, the appointing authority has to form an opinion that the procedural process for appointment to the cadre post will take some time and that such delay would prejudice the public interest. In such circumstances, Rule 10(a)(i) can be invoked for appointing a candidate on temporary appointment in a sanctioned post. The service of such person, though appointed on temporary appointment can later be regularised by following the due procedure. The significance for invoking Rule 10(a)(i), apart from public interest, is the existence of sanctioned post or vacancy in a post borne on the cadre of a service, class or category. Thus, Rule 10(a)(i) cannot be invoked in the absence of an existing vacancy in a cadre post.

17.The Full Bench of this Court has held that the writ petitioners were however appointed on daily wage basis on payment of honorarium or consolidated pay and did not come within the fold of Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules. Only the appointments made under the provisions of Rule 10(a)



(i) of the aforesaid Rules alone can be considered as temporary appointment. The cut off date i.e. on or after 01.04.2003 in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 will not per se bar a person from getting pension if such a person had joined the service in accordance with the provisions of Tamil Nadu State and Subordinate Service Rules i.e., in the cadre whether on temporary or permanent basis. Services rendered before the cut off date of 01.04.2003, can be added to the regular service only if the service was regularised before the said date for determining the qualifying service. Therefore, the Full Bench has held that it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service.

18.The Full Bench has answered the issue in paragraph No.46, which reads as follows:-

'46. 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."

19. Accordingly, the petitioner's plea to count half of the service rendered by him from 01.05.1983 to 07.08.2009 as plot watcher on daily wage basis along with regular service rendered from 07.08.2009 to 31.07.2015 and to send a revised pension proposal is not acceptable on the basis of the orders passed by the Full Bench Judgment of this Court in W.A.No.158 of 2016 and batch etc., and the Writ Petition is liable to be dismissed.

20. In view of the above, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

1. The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet,
Chennai.

2. The Divisional Forest Officer,
Velu Nachiar Complex,
Dindigul.

3. The Principal Accountant General of Tamil Nadu,
Office of Accountant General,
Teynampet,
Chennai.

+1 CC to SPL.GP (SR-10544[F] dated 09/03/2020)

+1 CC to Mr.P.GUNASEKARAN, Advocate (SR-10690[F] dated 09/03/2020)

Order made in
W.P. (MD) No.23383 of 2015
06.03.2020

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