



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.8987 of 2016

I.Floradani

Petitioner

Vs

1. The Principal Accountant General (A&E),
No.361, Anna Salai,
Teynampet,
Chennai - 600 018.

2. The State of Tamil Nadu,
Rep by its Secretary,
Department of Revenue,
St.George Fort, Chennai.

3. The District Collector,
Nagercoil,
Kanyakumari District.

4. The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to consider and pass appropriate orders on the petitioner's representation dated 20.04.2015, for disbursement of entire arrears of pension as entitled by the petitioner's husband till his demise I.e on 29.02.2008 and thereafter family pension to the petitioner, by taking note of the entire period of service rendered by the petitioner's husband as Vettis from 21.07.1975 to 31.12.2003.

For Petitioner : Mr.A.Saravanan.

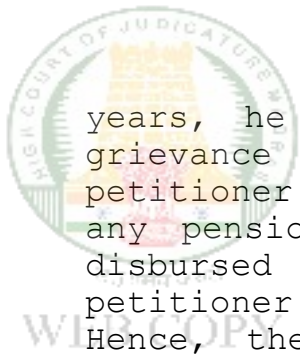
For Respondents : For R1 - Mr.P.Gunasekaran

For R2 to R4 - Mr. Karuppasamy Pandian
Government Advocate

O R D E R

This Writ Petition is filed to direct the respondents to consider the representation of the petitioner for disbursement of the arrears of pension of petitioner's husband and the family pension after the demise of the petitioner's husband taking into consideration 50% of the temporary service rendered by the petitioner's husband.

2. The case of the petitioner is that her husband was employed with the 4th respondent on 26.07.1975 and after serving 28



years, he retired from service on attaining superannuation. The grievance of the petitioner is that till the death of the petitioner's husband on 29.02.2008, he was not been disbursed with any pension and after his demise, family pension also not been disbursed to the petitioner. For the representation given by the petitioner to the second respondent, no action has been taken. Hence, the petitioner has come up before this Court with this present Writ Petition.

3. The learned counsel for the petitioner submitted that the issue involved in this Writ Petition has been covered by the order of this Court in W.P(MD) No.11807 of 2014 and the judgment of the Division Bench of this Court in W.A.1254 &1255 of 2019 . Hence, the learned counsel prays this Court to direct the respondent to pass orders in accordance with the above order and judgment.

4. The learned Additional Government Pleader has filed Counter affidavit stating that as per Rule 43(2) of Tamil Nadu Pension Rules, pension will be payable only if a person completes a minimum service of 10 years. The date of birth of Thiru.Issac formerly Village Assistant is 25.12.1943. The individual retired from service on superannuation on 31.12.2003. His service in the post of Village Assistant was regularized from 1.6.1995 to 31.12.2003. Since he has less than 10 years service, and as per the existing norms, the period of of part time service rendered by the individual cannot be calculated towards his qualifying service for pension.

5. Heard both sides and perused the documents.

6. For better appreciation, it would be useful to refer the operative portion of the Order in W.P(MD) No.11807 of 2014 and the Judgment in W.A.Nos.1254 & 1255 of 2019, which reads as follows:

W.P (MD) No.11807 of 2014:-

.....I find full merits in his submission for in the said decision, the learned single judge applying the provisions contained in Rule 11 of the Tamil Nadu Pension Rules has held that the past services, even in temporary capacity has to be taken into account. On that basis, the learned single judge therein has held that pension should be paid taking into account the entire period of service with initial appointment ie with effect from 21.07.1975. That was the original date of appointment of Mr.K.Raman Nair. On that basis, Mandamus was issued to the respondents therein to calculate the entire pension and further direction was also given to pay arrears of pension payable thereon. This order of the learned single Judge is also confirmed in W.A.(MD)No.16 of 2009, dated 16.02.2009. It is therefore pertinent to extract paragraphs 8,9 and 10, which are extracted hereunder:-

<https://hcservices.ecourts.gov.in/hcservices/>



"8.Rule 11 of the Tamil Nadu Pension Rules, 1978, of which reference has been given by the learned Single Judge, relates to commencement of qualifying service for payment of pension. The relevant portion of which is quoted hereunder:-

1. "Commencement of qualifying service (1) subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date of takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation". It will be evident from the above rule that for payment of pension not only the appointment in the substantive capacity to be looked into but the appointment in an officiating or temporary capacity is also to be counted for commencement of qualifying service.

W.A.Nos.1254 & 1255 of 2019:-

3. The said Writ Petitions were filed by the first respondent for issuance of a Writ of Certiorarified Mandamus to quash the proceedings, dated 24.01.2018 passed by the office of the Principal Accountant General, who is the second respondent in these Appeals. The Writ Petitioners sought for a consequential direction to count half of the service rendered by them as full time Thalaiyari on temporary basis from 07.08.1094 and 01.06.1995 & 22.08.1975 & 31.05.1995 respectively and pay pension including the half service rendered during the relevant period. The Writ Petitions were tagged along with several other Writ Petitions, wherein more or less identical prayer was sought for and by a common order, dated 10.07.2018, the Writ Petitions are allowed. While doing so, the learned single bench has taken note of various earlier decisions on the very same issue and some of which are the judgments of the Honourable Division Benches.

4. It is the submission of the learned counsel appearing for the first respondents/Writ Petitioners that several of the decisions of the Honourable Division Benches and the Honourable Single Benches have been implemented by the Government and Pension has been paid by counting 50% of the services rendered as "Thalaiyari". Further, it is submitted that in W.A.(MD) Nos. 898 to 904 of 2018, dated 17.07.2018, in an Appeal filed by the Accountant General, the Division Bench considered the matter elaborately and dismissed the Appeals.

5. While doing so, the Honourable Division Bench noted that identical orders were subject matter of challenge before the Honourable Supreme Court in S.L.P.Nos.26586 to 26593 of 2012, which were dismissed confirming the judgment made in the Writ Appeals. Therefore, the contention of the first



respondents/Writ petitioners is that a settled issue should not be permitted to be reopened in these Appeals."

7. Following the above said decisions, there shall be a direction to the second respondent to consider the petitioner's representation and to pass appropriate orders, in the light of the above order and judgment, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioner shall submit a fresh representation along with a copy of this Order to the second respondent forthwith.

8. With the above directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal Accountant General (A&E),
No.361, Anna Salai,
Teynampet,
Chennai - 600 018.

2. The Secretary, State of Tamil Nadu,
Department of Revenue,
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3. The District Collector,
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Kanyakumari District.

4. The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

+2 CC to M/s.A.SARAVANAN, Advocate (SR-10244[F] dated 05/03/2020)

W.P.(MD) No.8987 of 2016

05.03.2020

SMA/02/06/2020/4P/7C