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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY
AND
THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Appeal No.2358 of 2021
and
C.M.P.No.15041 of 2021

- 1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Rural Development Department,
Fort St. George,
Chennai - 600 009.
 - 2.The Director of Rural Development & Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
 - 3.The District Collector (PD Section),
Namakkal District, Namakkal.
 - 4.The Principal Accountant General (A&E)
Tamil Nadu, No.361, Anna Salai,
Chennai - 600 018. ... Appellants/Respondents
- Vs.
- V.Natesan ... Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 31.10.2019 made in W.P.No.30704 of 2019.

WP.30704 of 2019: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to Paragraph 4(b) of G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013 of the first respondent and quash the same insofar relates to not counting the services rendered by the petitioner in part time Panchayat Clerk along with regular service for the purpose of pension and direct the respondents to count 50% services rendered in the post of part



time Panchayat Assistant from 11.10.1982 till 24.11.1999 along with regular service for the purpose of granting pension.

For Appellants : Mr.RU.Dinesh Rajkumar
Additional Government Pleader

For Respondent : Mr.K.S.Viswanathan

J U D G M E N T
(Delivered by M. DURAISWAMY, J.)

Challenging the order passed in W.P.No.30704 of 2019, the Government has filed the above Writ Appeal.

2.The respondent filed the Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records pertaining to Paragraph 4(b) of G.O.Ms.No.77, Rural Development and Panchayat Raj Department, dated 12.07.2013, of the 1st respondent and quash the same insofar as it relates to not counting the services rendered by the respondent in part time Panchayat Clerk along with regular services for the purpose of pension and direct the appellants to count 50% services rendered in the post of part time Panchayat Assistant from 11.10.1982 to 24.11.1999 along with regular service for the purpose of granting pension.

3.It is the case of the respondent that he was initially appointed as part time Panchayat Assistant with effect from 11.10.1982 in Puduchatram Panchayat Union. Thereafter, the respondent was appointed as Junior Assistant on 25.11.1999 and subsequently, retired on 31.03.2008 as Assistant, Panchayat Union, Puduchatram. The State Government issued a Government Order in G.O.Ms.No.77, dated 12.07.2013, modifying the guidelines issued in G.O.Ms.No.39, Rural Development Department and Panchayat Raj, dated 13.06.2011, to the effect that the services rendered by part time Panchayat Clerk, Panchayat Assistant Grade-I & II, who worked in part time post, shall not be taken into account for the purpose of pension. After the retirement of the respondent, his Pay Drawing Officer, namely, the Block Development Officer, Puduchatram, Namakkal District, sent pension proposal to the Accountant General of Tamil Nadu, to count his 50% of services from 11.10.1982 to 24.11.1999 when he was working as part time Panchayat Clerk and thereafter, full time services from 25.11.1999 to 31.03.2008. The 3rd appellant has calculated the qualifying services as 8 years 4 months 7 days and declined to take into consideration the services rendered by the respondent as part time Panchayat Assistant. The 3rd appellant has taken 50% of the services from 01.01.1991 to 24.11.1999 and full time services from 25.11.1999 to



31.03.2008 and did not count 50% of the services rendered by the respondent from 11.10.1982 to 24.11.1999.

4.The respondent contended that the employees who got absorbed prior to 01.04.2003 are entitled to count 50% of their services along with regular services for the purpose of pension.

5.The learned Single Judge, taking into consideration the submissions made by the learned counsel on either side and also relying upon the two judgments of the Division Benches of this Court made in W.A.No.431 of 2016 dated 11.04.2016 and in W.A.No.612 of 2016 dated 24.06.2016, disposed of the Writ Petition by extending the benefits to the respondent as directed in the Writ Appeals.

6.It is pertinent to extract the relevant portion of the judgment in W.A.No.431 of 2016, dated 11.04.2016, which reads as follows :

"4.The State Government took a policy decision by G.O.Ms.No.39, Rural Development and Panchayat (E5) Department dated 13 June 2011, (for short "G.O. Ms.No.39") whereunder, it was clearly observed that an employee, working in Panchayat as Full Time Clerk or Part Time Clerk and having been absorbed by the Government prior to 01 April 2003, will be entitled to counting 50% of the service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. Subsequently, the said Government Order, as pleaded by the learned Special Government Pleader appearing for the appellants, was amended by G.O.Ms.No.77, Rural Development and Panchayat Raj Department dated 12 July 2013 (for short "G.O. Ms.No.77"), whereunder, counting of 50% of service in case of Part Time Clerks was withdrawn.

5.In the case on hand, indisputably, the respondents 1 and 2 were absorbed as Junior Assistant before 01 April 2003, subsequent to which the first respondent was promoted as Assistant and retired from service on 31 December 2009 and the second respondent retired as Cashier on 30 June 2007. Thus, the respondents 1 and 2 are entitled to the benefit as granted in G.O.Ms.No.39 and the subsequent Government Order in G.O.Ms.No.77, would not be applicable to those employees, who were entitled to the benefit before issuance of the said Government Order.

6.The learned single Judge has rightly come to



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the conclusion that 50% of the service period put in by the respondents 1 and 2 under the consolidated pay by way of part time employment will be computed for pensionary benefits. We do not find any reason to take a view contrary to the one taken by the learned single Judge.

With the aforesaid observations, the writ appeal stands dismissed. No costs. Consequently, connected C.M.P. is closed."

7.The Division Bench of this Court, in W.A.No.612 of 2016 dated 24.06.2016, held as follows :

"3.The grievance of the first respondent is that the services rendered by him as Part Time Panchayat Clerk was not taken into consideration while calculating pension. Therefore, he filed a writ petition and the same was allowed on 27.6.2014, along with similar writ petitions, holding that 50% of the services rendered by the writ petitioners as Part Time Panchayat Clerk should be taken into account while calculating pension and directing the concerned authority to calculate and issue orders granting pension and other benefits within a period of three months and to implement the same within a period of one month thereafter. Aggrieved by the appellants have come up with this appeal.

4.As against the order of the learned single Judge dated 27.6.2014 passed in a batch of writ petitions, one of the writ petitioner, filed W.A.No.431 of 2016. A Division Bench of this Court, by judgment dated 11.4.2016, dismissed the appeal, holding that the learned single Judge had rightly concluded that the 50% of the services rendered by the petitioners therein under the consolidated pay by way of part time employment has to be taken into account for pensionary benefits.

5.In view of the decision of the Division Bench of this Court dated 11.4.2016 made in W.A.No.431 of 2016, this writ appeal is also dismissed in terms of the above judgment. There shall be no order as to costs. Consequently, CMP No.8080 of 2016 is closed."

8.Since the issue involved in the Writ Appeal was already decided by two Division Benches of this Court cited supra, the learned Single Judge extended the benefits to the respondent.



On a reading of the judgments of the Hon'ble Division Benches of this Court, it is clear that the respondent is entitled to count 50% of the services rendered in the post of part time Panchayat Assistant from 11.10.1982 to 24.11.1999 along with regular services for the purpose of pension. The submission made by the learned Additional Government Pleader to the effect that the respondent is not entitled to count 50% of the services rendered by him in the post of part time Panchayat Assistant cannot be accepted. In such view of the matter, we find no ground to interfere with the order passed by the learned Single Judge.

9. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. Since the respondent is aged 71 years, we direct the appellants to comply with the judgment of this Court made in the above Writ Appeal as expeditiously as possible, in any event, not later than twelve weeks from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Rural Development Department,
Fort St. George, Chennai - 600 009.

2. The Director of Rural Development & Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 015.

3. The District Collector (PD Section),
Namakkal District, Namakkal.

4. The Principal Accountant General (A&E)
Tamil Nadu, No.361, Anna Salai,
Chennai - 600 018.

+1cc to the Government Pleader SR.No.67942

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CP(CO)
GN(03/01/2022)