



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.12.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.17870 and 17871 of 2021

and

W.M.P.No.19077 of 2021

G.Mayavan, S/o Gurunathan ..Petitioner in W.P.No.17870 of 2021

1. P.Ulaganathan, S/o Palani
2. K.Palanisamy, S/o Kittan
3. N.Loganathan, S/o Natchimuthu
4. S.Balamani, W/o Shanmugam
5. P.Ranjitham, W/o Prabakaran
6. A.Rani, W/o Alagarsamy
7. M.Thangavel, S/o Marimuthu

..Petitioners in W.P.No.17871 of 2021

Vs.

1. The Director of Town Panchayat,
8th Floor, No.75, Santhome High Road,
MRC Nagar, Raja Annamalai Puram,
Chennai-600 028.

..First respondent in both the Writ Petitions

2. The Executive Officer,
Puliyur Selection Grade Town Panchayat,
Puliyur, Karur District.

..Second respondent in W.P.No.17870 of 2021

3. The Executive Officer,
Pallapatty Town Panchayat,
Pallapatty, Karur District.

.. Third respondent in W.P.No.17870 of 2021
and second respondent in W.P.No.17871 of 2021

Writ Petition No.17870 of 2021 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to issue suitable instructions to the third respondent enabling him to bring the petitioner under Old Pension Scheme from the date of his



eligibility in terms of the judgment passed in paragraph 45(ii) of the Full Bench judgment, reported in 2019 (6) CTC Page 705 and consequentially to direct the third respondent to grant all eligible benefits to the petitioner.

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Writ Petition No.17871 of 2021 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to issue suitable instructions to the second respondent enabling him to bring the petitioners under Old Pension Scheme from the date of his eligibility in terms of the judgment passed in paragraph 45(ii) of the Full Bench judgment, reported in 2019 (6) CTC Page 705 and consequentially to direct the second respondent to grant all eligible benefits to the petitioner.

For petitioners : Mr.P.I.Thirumoorthy
in both the Writ Petitions

For respondents : Mr.L.S.M.Hasan Fizal,
Addl.G.P.for R-1 in both W.Ps.
Mr.V.P.R.Elamparithi,

Addl.Govt.Pleader for RR-2 & 3
in W.P.No.17870 of 2021
& for R-2 in W.P.No.17871 of 2021

COMMON ORDER

W.P.No.17870 of 2021 is filed praying for issuance of a Writ of Mandamus to direct the first respondent to issue suitable instructions to the third respondent, enabling him to bring the petitioner under the Old Pension Scheme from the date of his eligibility, in terms of the judgment of this Court, passed in paragraph 45(ii) of the Full Bench judgment, reported in 2019 (6) CTC Page 705 (The Government of Tamil Nadu rep. by Secretary to Government, Public Works Department, Secretariat, Chennai-600 009 and others Vs. R.Kaliyamoorthy) and consequentially to direct the third respondent to grant all eligible benefits to the petitioner.

2. Writ Petition No.17871 of 2021 is filed praying for issuance of a Writ of Mandamus to direct the first respondent to issue suitable instructions to the second respondent, enabling him to bring the petitioners under the Old Pension Scheme from the date of his eligibility, in terms of the judgment of this Court, passed in paragraph 45(ii) of the Full Bench judgment, reported in 2019 (6) CTC Page 705 (The Government of Tamil Nadu



rep. by Secretary to Government, Public Works Department, Secretariat, Chennai-600 009 and others Vs. R.Kaliyamoorthy) and consequentially to direct the second respondent to grant all eligible benefits to the petitioner.

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3. The case of the petitioners is that they were working as Sanitary workers in the respondent Town Panchayat. The petitioners were appointed as Sweeper on 26.02.1999 with a consolidated pay of Rs.900/- per month and later brought under regular time scale of pay by the respondent on 28.07.2006 with effect from 23.06.2006. The petitioners approached this Court seeking regular time scale from the date of completion of three years consolidated pay and this Court allowed the writ petition and directed to award regular time scale from the date of completion of three years consolidated pay service and the Government also implemented the order in G.O.Ms.No.142 MAWSS Department dated 23.09.2015. Ultimately, the petitioner in W.P.No.17870/2021 was brought under the regular time scale of pay by the 2nd respondent on 14.10.2015 with effect from 26.02.2002 and the petitioners in W.P.No.17871/2021 were brought under the regular time scale of pay by the 2nd respondent on 10.10.2017 with effect from 01.06.2002.

4. The grievance of the petitioners herein is that they have been brought under the new pension scheme (CPS) despite the fact that they were brought under regular time scale with effect from 26.02.2002 and 01.06.2002 respectively. Similarly placed persons working in Aravakuruchi Town Panchayat had approached this Court in W.P.No.40736/2016 and the learned Judge of this Court passed an order on 16.06.2018 directing the writ petitioners therein to be brought under the old pension scheme and count 50% NMR service along with regular service for the purpose of pension. According to the petitioners, they are also similarly placed persons and therefore, representations were submitted to the 1st respondent on 27.07.2021 to bring them under the old pension scheme. As there was reply, the writ petitions have been filed with a prayer for issuance of writ of mandamus to direct the 1st respondent to bring the petitioners under old pension scheme in terms of the judgement of the Full Bench of this Court reported in 2019(6) CTC 705.

5. When these writ petitions have been taken up for hearing, the learned counsel for the petitioners would submit that they are covered under the ruling of the Hon'ble Full Bench decision of this Court reported in 2019(6) CTC 705 (The Government of Tamilnadu vs. R.Kaliyamoorthy), particularly, with reference to paragraph 45 which is extracted hereunder



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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 W.A.No.158 of 2016 etc., batch 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 W.A.No.158 of 2016 etc., batch 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."

The learned counsel would draw reference to sub para (ii) and (iii) of the above paragraph 45.

6. The learned counsel would also refer to the other order passed by the learned Single Judge of this Court in W.P.No. 4481/2021 dated 16.05.2021. The order of the learned Judge referring to the observation of the Division Bench order is extracted hereunder.



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2. These petitioners have earlier approached this Court by way of Writ Petition in W.P.No.40736 of 2016, with a prayer to bring them under regular time scale, which was allowed by this Court on 06.06.2018 and aggrieved by the said order, a Writ Appeal was preferred before the Division Bench by the Government and on 10.06.2019 in W.A.No.701 of 2019 the Division Bench has observed as follows:~

"11. However, from a perusal of the proceedings of the 2nd respondent, it is seen that the writ petitioners were appointed on a consolidated pay on 02.11.1998 and thereafter by order of this Court they were regularised with effect from 17.11.2001, which is much prior to the introduction of the New Pension Scheme. The writ petitioners are entitled to the Old Pension Scheme since they have been brought under the Regular Time Scale as early as in the year 2001. In fact, by proceedings in Na.Ka.No.477/2015 dated 16.10.2015, the 2nd respondent has fixed the revised pay scale for the 1st petitioner with effect from 17.11.2001.

In view of the above there is no merits in the writ appeal. The Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous petition is also closed."

3. When the petitioners have been brought under the regular time scale and that it has been observed that they are entitled to old pension scheme, the petitioners cannot file one more Writ Petition seeking for extension of the benefits of old pension scheme and the same is impermissible in the eye of law. The intention of the petitioners appears that they want a direction to the respondents to implement the orders of the Division Bench and this Court is not inclined to issue such a blanket direction to the Respondents. A reading of Paragraph No.11 of the order in W.A.No.701 of 2019 makes it very clear that the petitioner were initially appointed on consolidated pay and thereafter, they were brought under regular time scale as early as in 2001, entitling them to get the benefits of old



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pension scheme. The non-compliance of the order is a clear violation of orders of this Court and amounts to contempt. Hence the remedy lies to the petitioners to approach the Division Bench, by way of initiation of contempt proceedings and petitioners cannot seek the relief of implementation of the order, by filing a separate Writ Petition, as the cause of action is a continuous one and Section 20 of the Contempt of Courts Act cannot abridge the powers of the Constitution of India and the powers under Article 215 of the Constitution are supreme than the powers enumerated under the Contempt of Courts Act.

4. Writ petition is disposed of with the above observation. No costs. Consequently connected miscellaneous petition is also closed.

7. The learned counsel also referred to the subsequent order of the respondents dated 05.07.2021 implementing the order of the Division Bench in respect of those employees of Aravakuruchi Town Panchayat.

8. The above factual legal position has not been disputed by the learned Additional Government Pleader appeared for the respondents.

9. In view of the admitted position as narrated above, the petitioners herein are also entitled to be brought under the old pension scheme as that of the employees who had been brought under the regular time scale prior to 01.04.2003. The Writ Petitions are accordingly allowed.

10. The first respondent is directed to issue appropriate orders towards bringing these petitioners under old pension scheme from the date of their eligibility.

11. The first respondent is also directed to pass appropriate orders in this regard, after taking note of the decision of the Full Bench of this Court as stated in the prayer itself and also the other decisions and the orders implementing the decisions of this Court as aforementioned and pass final orders within a period of eight weeks from the date of receipt of a copy of this order.



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No costs. Consequently, W.M.P.No.19077 of 2021 is closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

vsi
To

1. The Director of Town Panchayat,
8th Floor, No.75, Santhome High Road,
MRC Nagar, Raja Annamalai Puram,
Chennai-600 028.
2. The Executive Officer,
Puliyur Selection Grade Town Panchayat,
Puliyur, Karur District.
3. The Executive Officer,
Pallapatty Town Panchayat,
Pallapatty, Karur District.

+2 Ccs to Mr.P.I.Thirumoorthy, Advocate sr 63284, 63283
+1 CC to The Government Pleader sr 63831.

W.P.Nos.17870 and 17871 of 2021

KG(CO)
SP(17/12/2021)