IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.23629 OF 2021
AND
W.M.P.NO.24867 OF 2021

(Through Video Conferencing)

N.Krishnamoorthi
... Petitioner

Vs

1. The Government of Tamil Nadu,
   Represented by its Secretary,
   Revenue Department,
   Fort St.George, Chennai - 600 009.

2. The Special Commissioner and
   Commissioner of Revenue Administration,
   Chepauk, Chennai - 600 005.

3. The District Collector,
   Tiruppur District, Tiruppur.

4. The Revenue Divisional Officer,
   Udumalaipet, Tiruppur District.

5. The Thasildar,
   Udumalaipet Taluk, Tiruppur District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the impugned order passed by the fourth respondent herein in his proceeding Na.Ka.No.350/2010/A1 dated 12.02.2020 and quash the same and consequently direct the respondents to regularize the service of the petitioner in the post of Panchayat Assistant with effect from 01.01.1991 and count the same as qualifying service for the purpose of pension and pay the pensionary and other monetary benefits.

For Petitioner : Mr.K.Raja

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the respondents.

2. The petitioner has challenged the impugned communication dated 12.02.2020, bearing reference in Na.Ka.No.350/2010/A1 of the fourth respondent. By the impugned communication, the fourth respondent has rejected the request of the petitioner for granting of Government pension under the Provisions of the Tamil Nadu Pension Rules, 1978 on the ground that the petitioner services were regularized and the petitioner was appointed as a Village Administrative Officer only on 15.02.2009 and therefore the petitioner was not entitled for Government pension under the Provisions of the Tamil Nadu Pension Rules, 1978. The ostensible reason for denying pension to the petitioner under the Provisions of the Tamil Nadu Pension Rules, 1978, is G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003 vide SRO B-82/2003 with effect from 1st April 2003.

3. Appearing on behalf of the petitioner, the learned counsel has drawn attention to a recent decision of the Hon'ble Supreme Court rendered in Prem Singh Vs. State of Uttar Pradesh and others in Civil Appeal No.6798 of 2019 (Special Leave Petition (C) No.4371 of 2011) vide order dated 02.09.2019.

4. The learned counsel for the petitioner has drawn attention to Paragraphs 35 & 36 of the aforesaid decision which reads as under:-

> "35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such

employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

5. Appearing on behalf of the respondents, the learned Government Advocate submits that the petitioner and the respondents are governed by the Provisions of the Tamil Nadu Pension Rules and therefore the said decision of the Hon'ble Supreme Court will not apply to this case.

6. The learned Government Advocate further submits that since the petitioner's appointment as a Village Administrative Officer is only in the year 2009, the question of granting Government pension does not arise and therefore there is no mistake in the impugned communication of the fourth respondent.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the impugned communication dated 12.02.2020 of the fourth respondent.

8. As a matter of fact, the issue as to whether the Government pensions have to be sanctioned or not under the Provisions of Tamil Nadu Pension Rules, 1978 came up for consideration on a reference to the decision of the Full Bench of this Court in the case of Government of Tamil Nadu, Chennai

and others Vs R.Kaliyamoorthy, in W.A.Nos.158 of 2016 etc batch, vide order dated 03.12.2019 wherein, after examining the entire gamut of the case, this Court finally held as under:-

> "44. The aforesaid Judgment of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as resjudicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons.
>
> 45. In the light of the above, we answer the reference 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 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) (1) of Tamil Nadu State and Subordinate Service Rules 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."

9. Prima facie, this aspect has not been considered by the fourth respondent while issuing the impugned communication on 12.02.2020 and this aspect is required to be examined by the respondents. Under these circumstances, the impugned communication dated 12.02.2020 of the fourth respondent is quashed with a consequential direction to the third respondent to pass appropriate orders on merits and in accordance with law duly considering the aforesaid decision of the Full Bench of this Court and that of the decision of the Hon'ble Supreme Court in Prem Singh Case referred to supra. This exercise shall be carried out by the third respondent within a period of six months from the date of receipt of a copy of this order.

10. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

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

2. The Special Commissioner and
   Commissioner of Revenue Administration,
   Chepauk, Chennai – 600 005.

3. The District Collector,
   Tiruppur District, Tiruppur.

4. The Revenue Divisional Officer,
   Udumalaipet, Tiruppur District.

5. The Thasildar,
   Udumalaipet Taluk, Tiruppur District.

+1cc to Mr.K.Raja, Advocate, S.R.No.57443

+1cc to the Government Pleader, S.R.No.57689

W.P.No.23629 of 2021
and
W.M.P.No.24867 of 2021

GPL(CO)
RLP(01/12/2021)