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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01 .07.2021

CORAM

The Hon'ble Mrs.Justice Pushpa Sathyanarayana
and
The Hon'ble Mr.Justice Krishnan Ramasamy

W.A. No.1446 of 2017
and
C.M.P. No.19430 of 2017

Block Development Officer,
Namakkal.

...Appellant/3rd Respondent

vs

1. K.Bethan ...1st Respondent/Petitioner
2. The State of Tamil Nadu
rep. by the Secretary to Government,
Finance (Pension) Department,
Secretariate, Chennai - 09.
3. The District Collector,
Namakkal.
4. The Accounts Officer,
Office of the Accountant General,
Accounts and Entitlements,
Nandhanam, Chennai -18.

...Respondents/
1,2&4 Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters Patent against the order dated 23.06.2014 made in W.P. No.9198 of 2014.

Prayer in W.P.No.9198 of 2014:- Petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus directing the respondents to count the entire service in the post for Panchayat Assistant from 31.12.1990 till 15.12.2005 with service in the cadre of Junior Assistant from 15.12.2005 till 31.8.2007 and pay all pensionary and retirement benefits including the monthly pension.

For Appellant : Mr.V.Jayaprakash Narayanan
For Respondent-1 : Mr.R.Jayaprakash
For Respondents 2 to 4 : Mr.R.Neelakandan
State Government Counsel



JUDGMENT

(Delivered by Krishnan Ramasamy, J.,)

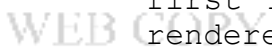
This is an intra Court Appeal filed against the order, dated 23.06.2014 made in W.P. No.9198 of 2014.

2. The facts of the case, which led to the filing of this Writ Appeal are as follows :-

i) The first respondent/writ petitioner was initially appointed as Panchayat Assistant (Part-time) by order, dated 19.03.1984. Later, on 31.12.1990, he was absorbed into service as regular full time Panchayat Assistant and promoted as Junior Assistant on 15.12.2005 and from the date of said appointment till the date of retirement, i.e. from 31.12.1990 till 31.08.2007, he has put in 23 years of service. Since the service put forth by the writ petitioner was not taken into consideration for grant of pension, he filed the Writ Petition, seeking for a mandamus to the respondents to count entire service rendered by him in the cadre of Panchayat Assistant from 31.12.1990 till 15.12.2005 and the service rendered in the cadre of Junior Assistant from 15.12.2005 till the date of his retirement on 31.08.2007 as qualifying service for the purpose of conferment of pension brought under the pension scheme.

ii) The learned Single Judge, after hearing both sides, allowed the Writ Petition with a direction to the respondents 1, 2 and 4 to count 50% of the service rendered by the writ petitioner as part time Panchayat Assistant before their regularisation as full time Panchayat Assistant together with the service rendered by him as full time Panchayat Assistant for the purpose of deciding as to whether the writ petitioner is entitled for pension and to pass orders.

3. Mr.V.Jayaprakash Narayanan, the learned counsel appearing on behalf of the appellant submitted that, a similar issue came for consideration before the Hon'ble Full Bench of this Court, in a batch of case, being W.A.Nos.158, 314, etc., of 2019 (Government of Tamil Nadu Vs. R.Kaliyamoorthy, dated 29.08.2018, wherein, it is held that as far as appointments made on or before 01.04.2003 is concerned, 50% of the service rendered by the employees on temporary basis should be taken into consideration and insofar as appointments made on and after 01.04.2003 is concerned, since such appointees are governed by new contributory pension scheme, 50% of the service rendered by them on temporary basis need not be taken into consideration for the purpose of calculating pension. Therefore, he submitted that as per the law laid down by the Hon'ble Full Bench of this Court, in the above referred case, the writ petitioner is not



4. Mr.R.Jayaprakash, the learned counsel appearing for the first respondent/writ petitioner submits that since the service rendered by the writ petitioner in the cadre of part time as well as full time Panchayat Assistant was not treated as qualifying service for the purpose of calculating pension, he filed the Writ Petition, and the learned Single Judge considering the fact that the writ petitioner was in continuous service as part time/full time Panchayat Assistant and without any break, he was absorbed as full time Panchayat Assistant, whereas, the appellant and respondents 2 to 4 have taken into consideration of his service only from the date of his entry into the post of Junior Assistant on 15.12.2005, and declined to grant pension and this aspect was rightly taken note of by the learned Single Judge and he was pleased to allow the Writ Petition and the same calls for no interference by this Bench.

6. We have heard the learned counsel appearing for the appellant, the learned counsel for first respondent and State Government Counsel for respondents 2 to 4 and also perused the materials available on record.

" 45. In the light of the above, we answer the reference as follows:-

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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 in 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."



7.1 Thus, as per the law laid down by the Hon'ble Full Bench, in the above referred case, the Government servants, who were appointed on or 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. In the present case, though the writ petitioner was appointed by an order, dated 19.03.1984 as part time Panchayat Assistant, his service was regularized prospectively w.e.f. 14.12.2005. Hence, as per the law laid down by the Hon'ble Full Bench of this Court, in a decision cited supra, the writ petitioner is not entitled to the relief as sought for in the Writ Petition.

7.2 However, the writ petitioner has not challenged the order, dated 14.12.2005, to regularize him from the date of his initial appointment as full time Panchayat Assistant w.e.f. 31.12.1990. We find that the writ petitioner has put in 21 years of service before the date of regularisation. Since there was no body to look after the job of the Panchayat Assistant, the writ petitioner was appointed. The appellant also extracted work for a period of 21 years and regularised his service belatedly w.e.f. 14.12.2005, and it is not the fault of the writ petitioner and it is owing to the failure of the decision making process on the part of the respondent/State to create the suitable post/sanctioned post to the position of the appellant, in time, as the writ petitioner's service with the panchayat is very much needed, for which, the writ petitioner cannot be expected to lose the employment benefits, to which, he is legally entitled to from 31.12.1990 to 14.12.2005. We have also noticed that the State have regularised similarly placed employees at every point of time, then and there. When such being the case, certainly, the same yardstick would apply to the writ petitioner, who is also entitled for such benefits of regularisation, and at any cost, his entitlement cannot be deprived. The respondent/State is supposed to have regularised the writ petitioner immediately when he was appointed as regular Panchayat Assistant but they have failed to do so. We are not compelling the respondents/State to regularise the service of the writ petitioner, but any regularisation by the State should not be in a pick and choose manner. If any decision is taken to regularise the service of temporarily or consolidated pay employees in the earlier occasions as Panchayat Clerk, Panchayat Assistant, etc., in any other Panchayat, the same principle will apply to the writ petitioner as well, since the writ petitioner is entitled for regularisation with effect from the date of his initial regular appointment as Panchayat Assistant.

7.3. However, before parting with this case, it would not be out of place to mention here that we have come across many instances, where, the State had the practice to regularize the



employees only at the fag end of their career, i.e. two years or three years before the employee retires from service. After extracting work from the employees for one or two decades, regularising their service at the verge of retirement would not benefit the employees in any way, and by doing so, the employees would obviously lose their entire terminal benefits, which is their hard earned money by sweat of the brow. We further noticed that the State had the practice of reckoning 50% of the temporary service rendered by the employees for the purpose of computing pensionary benefits, only when the aggrieved employees are coming before the Court craving for justice and obtaining orders from the Court. We still have a ray of hope that State would take care of its employees, at least, in the womb of time by providing all the benefits, to which, they are legally entitled to, inasmuch as, the State is functioning only for the well being of its people.

7.4 Therefore, as the writ petitioner has not challenged the order of regularization, dated 14.12.2005 but has filed Writ Petition seeking to count 50% of the service rendered by him on temporary basis as qualifying service for the purpose of computing pensionary benefits, he is not entitled to the relief sought for in the Writ Petition, in view of the law laid down by the Hon'ble Full Bench of this Court, in R.Kaliyamoorthy's case (cited supra).

8. Accordingly, this Writ Appeal is allowed. The impugned order passed by the learned Single Judge, dated 23.06.2014 made in W.P. No.9198 of 2014 is set aside. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Secretary to Government,
State of Tamil Nadu,
Finance (Pension) Department,
Secretariate, Chennai - 09.
2. The District Collector,
Namakkal.



3. The Accounts Officer,
Office of the Accountant General,
Accounts and Entitlements,
Nandhanam,
Chennai -18.

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4. The Block Development Officer,
Namakkal.

+2ccs to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.31065,30897

W.A. No.1446 of 2017

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NSK 13/09/2021