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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.30555 of 2018

1.C.Gopal

2.S.Assaithambi

3.P.Thiupathy

4.K.Velu

5.P.Perumal

6.T.Kuppusamy

...Petitioners

v.

1.The Director of Town Panchayat
Kuralagam Buildings, Chennai - 108.

2.The Executive Officer,
Kadathur Town Panchayat,
Kadathur, Dharmapuri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to consider the petitioners' representation dated 12.06.2017 and thereby to direct the 2nd respondent to bring the petitioners under Old Pension scheme and to refund the subscription already made by the petitioners towards the new Pension Scheme in the light of the judgment of this Hon'ble Court dated 06.06.2018 in W.P.No.22741 of 2015 within the stipulated time.

For Petitioners : Mr.P.I.Thirumoorthy

For R1 : Mr.R.S.Selvan, Government Advocate

For R2 : Mr.G.B.Rajesh, Government Advocate



ORDER

The petitioners have come up with this Writ Petition seeking a mandamus to direct the 1st respondent to consider their representation dated 12.06.2017 and thereby direct the 2nd respondent to bring the petitioners under Old Pension Scheme and refund the subscription already made by them towards the new Pension Scheme in the light of the order of this Court dated 06.06.2018 in W.P.No.22741 of 2015 within a stipulated time.

2.The case of the petitioners is that the petitioners 1 to 3 were appointed on 31.12.1998 and the petitioners 4 to 6 were appointed on 19.03.1999 as Sweepers, on a consolidated pay of Rs.900/- per month and all the petitioners were brought under regular time scale of pay only with effect from 23.06.2006 and hence, they filed W.P.No.65 of 2012 seeking regular time scale of pay from the date of completion of three years of service, which was allowed by this Court on 14.06.2012 and the said order was also implemented by the Government vide G.O(D)No.119 MAWSS (TP-1) Department dated 08.03.2013. Accordingly, the petitioners were brought under regular time scale with effect from 31.12.2001 and 31.03.2002 respectively. In view of the same, they are entitled to be brought under old Pension Scheme. Claiming the said relief, they made a representation to the 1st respondent on 12.06.2017, which was kept pending without any action. Hence, this writ petition.



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3.The learned counsel for the petitioners submitted that in similar circumstances, in WP.No.22741 of 2015 etc batch, this Court, by order dated 06.06.2018, considered the issue involved herein and allowed those writ petitions, the relevant passage of which is extracted hereunder:

"11.A reading of Rule 11(2) shows that all the employees, who are in non-provincialized service, on consolidated pay/honorarium/daily wages basis, are paid only from contingencies and the said Rule 11(2) makes it very clear that an employee is entitled to count half of the service rendered by him for the purpose of pension along with the regularised service and the service paid from contingencies shall be continuous and followed by absorption in regular employment without any break. While so, a reading of Rule 11(4) says that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January, 1961 in respect of Government Employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service subject to three conditions, namely, 1) the service rendered on daily wages basis shall be in a job involving whole time employment, 2) Service rendered on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service and 3) Such service shall be followed by absorption in regular service before 1st April, 2003 without a break.

12.This rule is applicable to all the employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January, 1961 and absorbed in regular service before 1st April 2003. The service of any employee is regularised after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, such employee is not entitled to get the benefit of counting half of the service rendered in daily wage basis along with regular service. The decision in P.Chinnaiyan's case says that the crucial date i.e. on 01.04.2003 has been chosen since a New Pension Scheme was introduced for



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those employees who entered into Government Service after 01.04.2003. Hence the Tamil Nadu Pension Rules, 1978 are not applicable to the persons who were recruited after 01.04.2003. Fixing the crucial date as 01.04.2003 makes a difference between Rule 11(2) and Rule 11(4) of the Tamil Nadu Pension Rules because one should have been absorbed in regular service before 01.04.2003 for the benefits of Rules 11(2) and Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

13. After comparing the hardships faced by the employees who entered into service after 01.04.2003 and those who were appointed prior to 01.04.2003, but, given the benefit of regularisation after 01.04.2003, the Government came to the conclusion that the persons who are freshly recruited after 01.04.2003 into the Government Service are governed by the New Pension Scheme and the persons who are absorbed after 01.04.2003 are not extended the benefit of New Pension Scheme and held that the action of the department in denying to count the half of the long service rendered by the employees before their absorption into regular service who are not fresh recruiters, but absorbed into regular service after 01.04.2003, as per Rule 11 (4) of the Tamil Nadu Pension Rules has no rationale basis. Hence, the State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the employees like the petitioners herein, who had rendered more than 2 or 3 decades of service before absorption.

14. I also fully agree with the ratio laid down by this Court in P.Chinnaiyan's case and being bound by the same, this Court finds no difficulty to follow the same. Further, in appeal, the decisions of the Single Judge in similar circumstances have been upheld by the two Division Benches of Madurai Bench of this Court in the Writ Appeals in W.A.(MD) No.760/2013 dated 09.09.2015 (The Director, Local Fund Audit, Chennai-106 and 2 others vs. A.R.D.Nayagam) and in W.A.(MD) No.1026/2015 dated 30.09.2015 (The State of Tamil Nadu rep. By its Secretary, Department of Municipal and Water Supply Department, Fort St. George, Chennai-9 and 5 others vs. R.Kesavan). Further, when an identical prayer was made to count half of the service rendered by the petitioner therein as Plot Watcher on daily wage basis along with regular service rendered by him in W.P. (MD) No.15903 of 2012 (M.Nagasamy vs. The Government of Tamil Nadu rep. by Secretary to the Government, Forest and Environment Department, Fort



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St. George, Chennai-9 and 3 others) by order dated 28.06.2016, after referring to the cut off date of 1.4.2003 fixed in the proviso to Rule 11(4), this Court has categorically held that the benefits given under Rule 11(2) of the Tamil Nadu Pension Rules, cannot be deprived of and take away by Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

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16.While considering the similar and identical issue in W.P.Nos.2205 to 2209/2018 seeking Mandamus, directing the respondents to allot GPF Account Number for grant of pension to the petitioners under the Tamil Nadu Pension Rules, 1978 (Old Pension Scheme) by counting 50% of the services rendered by the petitioners in the post of Part Time Librarian, Double Part Time Librarian, Village Librarian from 02.01.1991 to 10.12.2006 along with their regular service in the post of Grade III Librarian from 11.12.2006, following the orders passed by this Court in W.P.Nos.272 of 2008 and 14416 of 2007 and 23.2.2011 and 9.4.2011 respectively to the effect that 50% of the past service in the post of Vocational Instructor along with the regular service has to be calculated for the purpose of pensionary benefits, directed the respondents therein to count 50% of the part-time service rendered by the petitioners along with the regular service for the purpose of pensionary benefits and allowed the said Writ Petitions by order dated 12.2.2018. Therefore, I have no impediment to allow these Writ Petitions.

17.A Division Bench of this Court in Union of India rep. by the Secretary, Atomic Energy Commission, Ministry of Atomic Energy, Trombay, Anushakthi Bhavan, C.S.M.Marg, Mumbai-1 and another reported in 2014(2) CTC 777 after referring to Rule 14 of CCS (Pension) Rules, 1972, has also held that the persons appointed as contingent staff either on temporary basis or on daily wage basis, who served not as a part timer and received salary every month are entitled to count 50% of their service for pension on their regularisation/absorption in regular establishment. It is pertinent to extract the relevant portion hereunder :

''...Thus, it is clear that persons appointed as contingent staff either on temporary basis or on daily wage basis, who



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served not as a part timer and received salary every month are entitled to count 50% of their service for pension on their regularisation/absorption in regular establishment. The New Pension Scheme, which is called Contribution Pension Scheme, came into force from 1.1.2004 and the same is applicable to all new entrants of Central Government Service as per the Scheme, and the respondents 1 to 16 cannot be treated as new entrants in the Central Government Service/IGCAR.

17.The word 'new entrant' has got a definite meaning, 'a person, who enters recently'. A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 1.1.2004, cannot be termed as 'new entrant' into service. The New Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 1.1.2004.

18.Similar issue was considered by one of us (N.P.V.,J.) in W.P.Nos.26933 & 26934 of 2007, Order dated 23.4.2008....'

Mere perusal of the above judgment clearly tells me that the issue of counting 50% of the temporary services along with the regular services has already been decided by this Court in respect of various departments, like, Education Department, Forest Department and various Municipalities holding that a person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 1.1.2004, cannot be termed as 'new entrant' into service and that the New Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 1.1.2004. Since Article 14 and 16 of the Constitution of India cannot be violated, the respondent State has to accept and respect the decisions of the learned Single Judge and also the Division Bench mentioned above without wasting the valuable time and money of the department by filing intra court appeals.

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19.A close reading of the above judgment categorically shows that the issue raised in the present writ petitions is no longer res integra, since it has been repeatedly considered and decided by this Court in more than one judgment that 50% of the past service rendered in non-provincialised service, consolidated pay, honorarium, daily wage basis has to be counted along with the regularised service for the purpose of pension in respect of the employees who have retired in various departments viz., Education, Forest, Municipalities etc. Hence, this Court has no hesitation to allow all the writ petitions.

20.In the result, all the Writ Petitions are bound to be allowed. Accordingly, they are all allowed and the respondents are directed to count 50% of the petitioners services rendered on daily wage basis along with their regular service and to allot GPF Account Number for grant of pension to the petitioners under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme). The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petitions are closed."

Thus, the learned counsel prayed for similar relief to these petitioners as well.

4.On the other hand, the learned Government Advocate appearing for the respondents submitted that the respondents would consider the claim of the petitioners and pass orders, in the light of the Full Bench decision of this Court in W.A.No.158 of 2016 etc. batch dated 03.12.2019.

5.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court directs the respondents to consider the



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representation of the petitioners dated 12.06.2017 and pass appropriate orders, on merits and in accordance with law and also in the light of the Full Bench decision (cited supra). Such an exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. With the above direction, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Director of Town Panchayat
Kuralagam Buildings, Chennai - 108.

2. The Executive Officer,
Kadathur Town Panchayat,
Kadathur, Dharmapuri District.

+1CC Mr.P.I. Thirumoorthy, Advocate, Sr.12072

W.P.No.30555 of 2018

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NSK 14/07/2021