



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD)No.3263 of 2017

and

W.M.P (MD)No.2601 of 2017

J.John Philipose

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Principal Secretary,
Department of Revenue,
St. George Fort,
Chennai-600 009.

2.The District Collector,
Nagercoil,
Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to refix the petitioner's pension, by calculating 50% of his service period from 01.04.1977 to 31.05.1995 as per G.O.Ms.No.408, Finance (Pension) dated 25.08.2009 along with the remaining qualifying service period from 01.06.1995 to 30.06.2012 and direct the respondents to sanction the pension to the petitioner with all pensionary benefits in a time bound manner, as fixed by this Court.

For Petitioner : Mr.C.Kishore

For Respondents : Mr.M.Muthugeethayan
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner for a direction to the respondents to refix the petitioner's pension, by calculating 50% of his service period from 01.04.1977 to 31.05.1995 as per G.O.Ms.No.408, Finance (Pension), dated 25.08.2009 along with the remaining qualifying service period from 01.06.1995 to 30.06.2012 and direct the respondents to sanction the pension to the petitioner with all pensionary benefits in a time bound manner, as fixed by this Court.



2.The case of the petitioner is that the petitioner was appointed as Thalayari in the year 1977 and he was working on full time basis and not on parti-time basis. Whiles, the Government has issued G.O.Ms.No.625, Revenue Department, dated 06.07.1995, whereby the petitioner's employment was regularized by fixing the scale of pay with effect from 01.06.1995. As per the said G.O., the petitioner was entitled to get all the allowances. Thereafter, the petitioner was promoted as Village Administrative Officer and he was retired from service in the year 2013. While the petitioner was working as Village Assistant, he is entitled for pension for the period from 01.04.1977 to till the date of superannuation ie., 30.06.2012 and prior to the regularization, the service rendered by the petitioner cannot be calculated. Hence, the petitioner has made a representation, dated 06.10.2016. So far no order has been passed. Hence, the present writ petition is filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner had entered into service in the year 1977 and his service was regularized in the year 1995 and service benefits were granted only from the date of regularization. For the purpose of getting pension, the service rendered by the petitioner between 1977 to 2013, prior to the regularization has to be taken into account. Hence, he prays for allowing the present writ petition.

4.Per contra, the learned Special Government Pleader appearing for the respondents submitted that G.O.Ms.No.408, dated 25.08.2009, is not applicable to the petitioner and that the issue already came up for consideration before the Division Bench of this Court in W.A. (MD)Nos.1629 of 2018 and this Court by order, dated 26.02.2021, had rejected the request of the similarly placed persons.

5.In view of the above decision, whether the petitioner is entitled for pension for the service rendered by him in the non-pensionable establishment between 1977 to 1995 and the issue came up for consideration before the Division Bench of this Court, wherein, in paragraph No.20 is extracted hereunder:

"20.Much reliance has been made to Rule 11(a) read with Rule 2(o) of the Tamil Nadu Pension Rules, 1978. These Rules are not applicable to the services of Talaiyaris, being in non~pensionable establishment and part~time and that too not in a cadre post. As per Rule 11(4), there must be whole~time employment. Similarly, there shall not be any break, which is in existence. Insofar as the other set of employees are concerned, viz., Village Officers (Karnams), we may appropriately quote Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980. Even as per Rule 16 of the said Rules, the post of Talaiyari being~non pensionable, they are not entitled."



6.In view of the above, the prayer sought for by the petitioner cannot be granted. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1. The Principal Secretary,
The State of Tamil Nadu,
Department of Revenue,
St. George Fort,
Chennai-600 009.
- 2.The District Collector,
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