



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

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THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.6485 of 2017 and
W.M.P(MD) .No.3514 of 2021

S.Madhavan

: Petitioner

.vs.

- 1.The Secretary to Government,
Rural Development Department,
Fort St. George, Secretariat,
Chennai-9.
- 2.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai-5.
- 3.The District Collector,
Karur District, Karur.
- 4.The Block Development Officer,
(Village Panchayat),
Krishnarayapuram,
Karur District, Karur.
- 5.The Accountant General,
No.361, Anna Salai,
Chennai-15.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Mandamus, to call for the records relating to the impugned proceedings of the fifth respondent herein passed in Po3/10314860/2/Ro314860, dated 02.06.2015 and quash the same, consequentially, directing the respondents to issue proper pension to the petitioner by way of counting 50% petitioner's prior service of regularization in the post of Part Time Panchayat Clerk from 01.12.1978 to 31.12.1990 and the Panchayat Assistant Post from 01.01.1991 to 31.01.1995 along with his regular service for grant of pension on the basis of total service rendered by him, revised pension, arrears and all other monetary benefits accrued thereon to the petitioner.



For Petitioner : M/s.K.Abiya
For Respondents : M/s.D.Frajana Ghoushi
Special Government Pleader
(for R1 to R4)

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Mr.P.Gunasekaran (for R5)

ORDER

This Writ Petition has been filed in the nature of Writ of Certiorarified Mandamus, seeking to quash the impugned order in Po3/10314860/2/Ro314860, dated 02.06.2015 passed by the fifth respondent and further to direct the respondents to issue proper pension to the petitioner by way of counting 50% petitioner's prior service of regularization in the post of Part Time Panchayat Clerk from 01.12.1978 to 31.12.1990 and the Panchayat Assistant Post from 01.01.1991 to 31.01.1995 along with his regular service for grant of pension on the basis of total service rendered by him, revised pension, arrears and all other monetary benefits accrued thereon to the petitioner.

2. The case of the petitioner is that he was engaged as Part Time Panchayat Clerk from 01.12.1978 to 31.12.1990. Then, the petitioner rendered his service as Panchayat Assistant from 01.01.1991 to 31.01.1995 and thereafter, the petitioner's service was regularized and granted time scale of pay from 01.02.1995 onwards. Then, the petitioner retired from service on 28.02.2015. The petitioner was already granted the pension benefits by taking the service rendered from 01.02.1995 to 28.02.2015. Now the petitioner is seeking enhanced pension by taking the service rendered as Part Time Panchayat Clerk from 01.12.1978 to 31.12.1990 and also to add the service rendered as Panchayat Assistant from 01.01.1991 to 31.01.1995. The learned counsel for the petitioner placed reliance on the Government Orders in G.O.Ms.No.39 Rural Development and Panchayat Raj Department, dated 13.06.2011 and G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013.

3. The learned counsel for the fifth respondent filed a counter affidavit stating that G.O.Ms.No.39, dated 13.06.2011 was issued to add 50% of service rendered in Part Time Panchayat Clerks, which is against Rule 11 (a). Therefore, the Government has issued another G.O.Ms.77, dated 12.07.2013, stating that the full time service alone can be considered for calculation of pensionary benefits. These two G.Os were put to challenge before this Court and this Court has passed an order holding that para 4(b) in G.O.Ms.No.77, dated 12.07.2013 is struck down. With the above background, the issue ought to be considered.



4. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 to 4 and also the learned counsel for the fifth respondent.

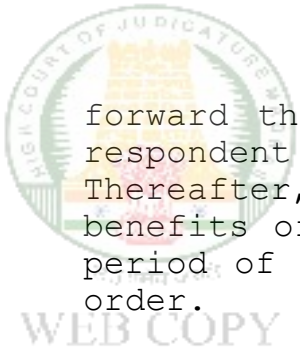
5. Admittedly, the petitioner had worked as Part Time Panchayat Clerk from 01.12.1978 to 31.12.1990 and the amended Rule 11(4) of the Pension Rules, states that any part time employment cannot be taken into account for considering the pension benefits.

6. The said G.O.Ms.No.39, dated 13.06.2011 it was held that an employee, working in Panchayat as Full Time Clerk or Part Time Clerk and having been absorbed by the Government prior to 01.04.2003, will be entitled for counting 50% of service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. This G.O. is against Rule 11 (a) and therefore, the Government has issued another G.O.Ms.77, dated 12.07.2013, stating that the full time service alone can be considered for calculation of pensionary benefits. But these two G.Os were put to challenge before this Court and this Court has passed an order holding that para 4(b) in G.O.Ms.No.77, dated 12.07.2013 is struck down. The said paragraph 4(b) states if it is part time the same shall not be taken into account for calculating the pensionable service. This Court is of the considered view that even though the paragraph 4(b) is struck down, the Rule 11 (4) is still in force and the same is still holding the field. Moreover the Rule will prevail over the G.O. Therefore this Court is of the considered opinion that the service rendered from 01.12.1978 to 31.12.1990 cannot be taken into account.

7. As far as the post of Panchayat Assistant from 01.01.1991 to 31.01.1995, the respondents raised doubt whether it is a full time or part time job. On referring G.O.Ms.No.962, dated 26.11.1990 and G.O.Ms.No.963, dated 28.11.1990, wherein, it is stated that if any candidate is having minimum five years of service, is eligible for promotion. Admittedly, the petitioner was granted promotion on 01.02.1995. Therefore, this Court is of the considered opinion that the petitioner is entitled to count the service from 01.01.1991 to 31.01.1995.

8. It is submitted that the petitioner is already receiving pension by calculating the regular service from 01.02.1995 to 28.02.2015. If the 50% service from 01.01.1991 to 31.01.1995 is taking into account, then the petitioner would have 20 years of service and the petitioner will be eligible for enhanced pension as applicable to 20 years of service.

9. Therefore, this Court holds the petitioner is not entitled to count the service from 01.12.1978 to 31.12.1990. The petitioner is entitled to count the service from 01.01.1991 to 31.01.1995. Therefore, this Court directs the petitioner to submit the entire service records to the fourth respondent requesting to count the service from 01.01.1991 to 31.01.1995. The fourth respondent shall



forward the papers to the first respondent, thereafter, the first respondent shall forward the papers to the fifth respondent. Thereafter, the fifth respondent shall consider the pensionary benefits of the petitioner herein and disburse the pension within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above directions, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

sjj

To

- 1.The Secretary to Government,
Rural Development Department,
Fort St. George, Secretariat,
Chennai-9.
- 2.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai-5.
- 3.The District Collector,
Karur District, Karur.
- 4.The Block Development Officer,
(Village Panchayat),
Krishnarayapuram,
Karur District, Karur.

+1 CC to M/s.K.ABIYA, Advocate (SR-38788[F] dated 15/12/2021)

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W.M.P(MD) .No.3514 of 2021
14.12.2021

RD(12.01.2022) 4P 6C