



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

CORAM:

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

W.P. (MD)Nos.23344, 23345 and 23350 of 2017

WEB COPY

Baskaran

.. Petitioner
in W.P.(MD).No.23344 of 2017

Chinnathambi

.. Petitioner
in W.P.(MD).No.23345 of 2017

C.Thangaraj

.. Petitioner
in W.P.(MD).No.23350 of 2017

Vs.

1.The State rep. by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai-600009.

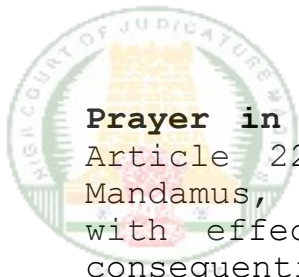
2.The Director of Public Health and Preventive Medicine,
359, DMS Building, Annasalai,
Chennai-600006. .. 1st and 2nd Respondents in
all writ petitions

3.The Block Medical Officer,
Government Primary Health Centre,
Somanur
Coimbatore District .. 3rd Respondent
in W.P.(MD).No.23344 of 2017

4.The Block Medical Officer,
Government Primary Health Centre,
Muthanendal,
Sivagangai District-630602. .. 3rd Respondent
in W.P.(MD).No.23345 of 2017

5.The Block Medical Officer,
Government Primary Health Centre,
Mannavanur,
Dindigul District-624 103. .. 3rd Respondent
in W.P.(MD).No.23350 of 2017

Prayer in W.P. (MD) .No.23344 of 2017: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Mandamus, directing the respondents to grant the service pension with effect from 30.4.2017 as per 7th pay commission with all consequential pension benefits.



Prayer in W.P. (MD) .No.23345 of 2017: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Mandamus, directing the respondents to grant the service pension with effect from 28.2.2017 as per 7th pay commission with all consequential pension benefits.

Prayer in W.P. (MD) .No.23350 of 2017: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Mandamus, directing the respondents to grant the service pension with effect from 30.4.2017 as per 7th pay commission with all consequential pension benefits as per the representation dated 17.11.2017.

In all writ petitions:

For Petitioner : Mr.L.Rajiah
For Respondents : Mr.M.Muthugeethayan
Special Government Pleader

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, these writ petitions are taken up together and disposed of by a common order.

These writ petitions have been filed for a direction to the respondents to grant the service pension with effect from their date of retirement as per 7th pay commission with all consequential pension benefits.

2. The case of the petitioners is that the petitioners were working as Leprosy Inspectors in Non Governmental Organisation running with Government Grant-in-Aid and rendered service for more than 22 years. Thereafter, at request of the petitioners' union, the government has appointed them into government service as Health Inspectors Grade-II in the year 2012 as fresh candidates and after attaining the age of superannuation, they retired from service. Though they have rendered more than 22 years of service in the Non Governmental Organisation, this services were not taken into consideration for granting pension. Hence, the petitioners sent representations to the respondents to get the above said relief. Since the same were not considered so far, the present writ petitions have been filed.

3. The learned counsel for the petitioners would submit that as per Rule 11(4)(iii) of Tamil Nadu Pension Rules, 50% of the petitioners' service rendered in the Non Governmental Organisation have to be computed for calculating pension. Therefore, the petitioners are entitled for payment of service pension. He would further submit that this Court may issue a direction to the respondents to grant service pension to the petitioners by



considering their representations.

4. The learned Special Government Pleader appearing for the respondents would submit that initially the petitioners rendered more than 22 years of service in Non Governmental Organisation on consolidated pay and since they were absorbed in regular service after 2003, they are not entitled for receiving service pension as per Rule 11(4) (iii) of the Tamilnadu Pension Rules, wherein it is made clear that 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 services before 1st April 2003 are entitled for service pension. The issue arises in the present case has already been settled before this Court in **Government of Tamil Nadu and Others vs R. Kaliyamoorthy**, reported in **2019 (6) CTC 705** wherein this Court has held that the Government servants, who were absorbed in regular service after 01.04.2003 are not entitled for service pension.

5. Heard the learned counsel appearing on either side and perused the materials available on records.

6. The facts in the present case are not disputed. The core issue involved in the present case is whether the petitioners are entitled to service pension as per Rule 11(4) (iii) of the Tamil Nadu Pension Rules. Similar issue has already been settled before this Court in **Government of Tamil Nadu and Others vs R. Kaliyamoorthy**, reported in **2019 (6) CTC 705**. For better appreciation, the relevant portion is extracted hereunder:

" 6. Before dealing with the various submissions made by the learned counsel on both sides, it is necessary to elucidate certain factual aspects. The factual scenario involved in these batch of cases has a chequered history to be narrated. In the State of Tamil Nadu, several persons came to be employed on daily wage basis in various Departments of the Government from the year 1980. Those daily wage employees joined the service under the staunch belief that their services will be eventually regularised by the Government in future and that they could be inducted into the permanent rolls of the Government. Some were fortunate to get their service regularised before 01.03.2003 while others could not get their services regularised till they attained the normal age of superannuation. For some others, even though they could get their service regularised, at the time of their regularisation, they had very little left in terms of period of service and therefore, after their retirement, from the cadre post, they could not get pension inasmuch as they did not have the minimum



qualifying years of service for the purpose of grant of pension. Thus, the employees, who were originally appointed on daily wage basis and got their service regularised after 01.04.2003, could not get pension, after their retirement. The Government wanted to do away with the Government pension by announcing a Contributory Pension Scheme to the Tamil Nadu State Government employees with effect from 01.04.2003. Under these circumstances, G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003 amended the Tamil Nadu Pension Rules 1978. It introduced a proviso to Rule 2 of the Tamil Nadu Pension Rules, which reads as follows:

"Provided that these rules shall not apply to Government servants appointed on or after the 01.04.2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent".

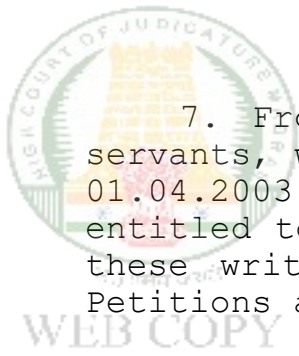
7. A further amendment was introduced to the said Rules in the year of 2010 vide G.O.No.41, Finance (Pension) Department dated 08.02.2010. By virtue of the said Government Order, a new Sub-Rule (4) was added after Sub-Rule (3) to Rule 11 of the said Rules, which reads as follows:-

(4) 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 the following conditions, namely:-

"i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break."



7. From the above decision, it is clear that the Government servants, who are appointed in the above said four categories before 01.04.2003 and were absorbed to regular service after 2003 will not be entitled to get the 50% of service. Hence, the prayer sought for in these writ petitions cannot be granted. Accordingly, these Writ Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary, State of Tamilnadu,
Department of Health and Family Welfare,
Fort St.George, Chennai-600009.

2.The Director of Public Health and Preventive Medicine,
359, DMS Building, Annasalai,
Chennai-600006.

3.The Block Medical Officer,
Government Primary Health Centre,
Somanur
Coimbatore District

4.The Block Medical Officer,
Government Primary Health Centre,
Muthanendal,
Sivagangai District-630602.

5.The Block Medical Officer,
Government Primary Health Centre,
Mannavanur,
Dindigul District-624 103.

+1 CC to M/s.SPL GP (SR-10554[F] dated 11/03/2021)

W.P(MD).Nos.23344, 23345and 23350 of 2017
10.03.2021

MJ(CO)

KB(12.05.2021) 5P 7C