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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.7839 OF 2022

N.Saroja

... Petitioner

.Vs.

1. The Tahsildar,
Office Of the Tahsildar,
Polur Taluk,
Tiruvannamalai District.

2. The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai - 600 018.

... Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to count 50 percent services rendered by the petitioners husband A.Narayanan in the post of Village Assistant from 16/09/1982 to 31/05/1995 along with regular service for the purpose of granting pension as per G.O. Ms.No. 408 Finance (Pension) Department dated 25/08/2009 with all consequential benefits and grant family pension to the petitioner.

For Petitioner : M/s.T.Hemalatha

For Respondents : Mr.S.Prabhakaran for R1
Government Advocate

ORDER

The relief sought for in the writ petition is to direct the respondents to count 50 percent services rendered by the petitioners husband A.Narayanan in the post of Village Assistant from 16/09/1982 to 31/05/1995 along with regular service for the purpose of granting pension as per G.O.Ms.No.408 Finance



(Pension) Department dated 25/08/2009 with all consequential benefits and grant family pension to the petitioner.

2. Heard both sides and perused the materials available on record.

3. The learned counsel for the petitioner has submitted that the petitioner's husband namely A.Narayann was initially appointed as Village Assistant on 16.09.1982 at the office of the 1st respondent and worked till 31.05.1995. Subsequently, he was brought into regular establishment on 01.06.1995 and retired from service on 30.06.2000. As per G.O.Ms.No.408 Finance (Pension) Department, dated 25.08.2009, the persons who were working in non-provisionalised establishment, consolidated pay, Honorarium and daily wages, subsequently followed by absorption as government service before 01.04.2003, are entitled to count 50% of their services before their absorption for the purpose of pension.

4. The learned counsel for the petitioner has further submitted in view of the aforesaid G.O., 50% of the service rendered by her husband in the post of Village Assistant has to be taken into account for calculating pensionary benefits. The petitioner has made several representations to the respondents, since there was no response from the respondents, the present writ petition has been filed.

5. The issue involved in the writ petition was already considered elaborately by the Hon'ble Division Bench of this Court in W.A(MD).Nos. 1629 of 2018 etc., batch, dated 26.02.2021 and held as follows;

"23.Learned counsel appearing for the respondents/writ petitioners made reliance upon the decision rendered in Writ Appeal (MD) Nos.1254 and 1255 of 2019 dated 19.11.2019 in the matter of the State of Tamil Nadu, rep. by its Secretary, Department of Revenue v. Chinna Karuppaiah. We are afraid that the said decision will not enable the respondents from getting the relief. As aforesaid, the relevant Rules were not brought to the notice of the Court and Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980, speaks about the status of the erstwhile Village Assistants and Village Officers such as Talaiyari and Karnams. Insofar as Talaiyaris are concerned, the part-time posts were sought to be abolished by fixing fixed compensation for the said work done and thereafter, a concession was given by bringing them under regular time scale of pay. The Government Orders



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concerned, which we discussed, followed by the Rules framed for the aforesaid purpose was not brought to the notice of the Court. We may note at the cost of repetition, but for the Government Order passed on 06.07.1995, the respondents Talaiyaris would have continued to have the status of part-time employees only. Therefore, it is not open to them to consider even from the inception that they were full-time employees, when there was no regular full-time scale of pay on a cadre basis.

24.The reliance made on the Tamil Nadu Village Servants Service Rules also is not correct, since it is to be applied prospectively for the new appointments. Therefore, there is no question of deemed permanent status contrary to the Rules and in any case, the respondents cannot approbate and reprobate.

25.Insofar as the Village Officers (Karnams) are concerned, the Act itself clearly specifies that they were part-time Village Officers and therefore, they were abolished. That is the reason why a challenge was made before the Courts. Thus, there is no ambiguity with respect to their own status. Secondly, re-employment has been made in favour of few eligible persons after due scrutiny by the Committee. A learned Single Judge (The Hon'ble Mr. Justice V.Ramasubramanian), as he then was, by order dated 09.01.2009, made in W.P.Nos.276 to 280 of 2009 and W.P.Nos.287 to 293 of 2009, in the matter of M.Annai Muthu v. State of Tamil Nadu and others, has clearly captured the history, background and their entitlement. Even for them, a separate Government Order has been passed in G.O.Ms.No.121, Revenue Department, dated 13.03.2001, giving certain pensionary benefits. In this connection, we would appropriately quote the following paragraphs:-

"17. However, by an order in G.O.Ms.No.121, Revenue, dated 13.3.2001, the Ex. Village Officers who lost their jobs on 14.11.1980 and who got appointed temporarily after 1988 by acquiring the minimum general educational qualification subsequent to the date of abolition, but who retired without completing the qualifying service of 10 years, were granted the benefit of special pension originally ordered to the Ex-Officers who lost their jobs and who never got re-employment.



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Paragraphs-7 and 8 of the said order read as follows:-

"7. The Government have after careful consideration of the request of the Retired Village Administrative Officers and the recommendation of the Principal Commissioner and Commissioner of Revenue Administration, direct that the pensionary benefits ordered in G.O.(Ms) No.828, Revenue, dated 23.8.1996 and enhanced in G.O.(Ms) No.629, Revenue, dated 22.7.1998 be extended to the Ex-Village Officers who lost their jobs on 14.11.1980 and who did not possess minimum general educational qualification at the time of abolition of the posts of Village Officers (i.e.) 14.11.1980, but obtained the educational qualification, subsequent to 20.2.1982 and appointed as Village Administrative Officers under Rule 10(a)(i) basis with reference to G.O.(Ms) No.1287, Revenue, dated 6.7.1988 and retired without completing 10 years of qualifying service.

8. The Government also direct that the said category of Ex-Village Officers are eligible for pension sanctioned in paragraph-3 above, with effect from 5.12.1986, excluding for the period they worked as Village Administrative Officers."

18. To summarise, the vexed question of grant of pension for the services rendered by the erstwhile Village Officers has undergone a metamorphosis over the past three decades and step by step the Government have yielded to the demand, categorywise as follows:-

(a) FOR THOSE WHO NEVER GOT REEMPLOYED:-

A special pension of Rs.175/- per month later enhanced to Rs.250/- per month with attendant benefits to all those living Ex-Village Officers, who lost their jobs on 14.11.1980 but who never got re-employed was first sanctioned with effect from 5.12.1986. For the families of those who were dead, a special family pension of Rs.100/- per month later enhanced to Rs.150/- per month, was similarly sanctioned.



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(b) FOR THOSE WHO GOT RE-EMPLOYED IN 1982:-

For persons who lost their jobs on 14.11.1980 and who were appointed as Village Administrative Officers in the year 1982, by virtue of possessing minimum general educational qualification, but who retired without completing 10 years of service in the new category, their services were directed to be counted not from the date of their appointment in 1982 but directed to be counted with effect from 14.11.1980, so that they get 10 years of qualifying service in the new category to get at least minimum pension.

If these persons did not get 10 years of service, even after counting the service from 14.11.1980, then they were directed to be granted the special pension as per G.O.Ms.No.828, Revenue, dated 23.8.1996, with effect from 5.12.1986, but excluding the period of their non-employment.

(c) FOR THOSE WHO GOT RE-EMPLOYED AFTER 1988:-
Persons who lost their jobs on 14.11.1980 and who got appointed temporarily under Rule 10(a) (i) after 1988, by virtue of acquiring minimum general educational qualifications after the date of abolition, the special pension granted to those who were never re-employed, was granted with effect from 5.12.1986, excluding the period of their re-employment on temporary basis."

In our considered view, the learned Single Judge, as he then was, has correctly applied the law by taking note of the fact even for the recruitment of part-time re-employment. Therefore, in the process, there were separate sets of Rules dealing with pensionary benefits. Now, there is no separate sets of Rules. They can recourse to the regular course of Rule applicable to Government servants under the Tamil Nadu Pension Rules, 1978. Incidentally, this being a reemployment, even otherwise Rule 11(3) would act as an embargo.

26. Having considered the entire issues involved, we also find that there is no application of Article 14 of the Constitution of India by



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comparing the respondents with those who got the relief albeit without taking note of the relevant provisions of law. Granting the relief would amount to setting aside two pension Rules without even a challenge especially when the respondents got the benefit of regular employment and permanent posts under the subsequent orders passed, on their request.

27. In the result, the appeals filed by the Government of Tamil Nadu stand allowed by setting aside the orders passed by the learned Single Judge and consequently, the appeal filed by the Writ Petitioner in W.A.(MD) No.831 of 2020 stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

6. In the light of the above said decision of the Hon'ble Division Bench of this Court, the relief sought for by the petitioner in the present writ petition cannot be considered and the same is liable to be dismissed.

7. In the result, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Tahsildar,
Office Of the Tahsildar,
Polur Taluk,
Tiruvannamalai District.
2. The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai - 600 018.

+1cc to Mr.K.S.Viswanathan, Advocate, S.R.No.27666

+1cc to the Government Pleader, S.R.No.27163

W.P.NO.7839 OF 2022

SSD(CO)
PBS/31/05/2022