IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13251 of 2020

G.Arumugam ... Petitioner

Vs.

1.The State of Tamilnadu,
represented by its Secretary,
Handlooms, Handicrafts, Textiles & Khadi Department,
Secretariat, Fort. St.George,
Chennai – 9.

2.The Director,
Department of Sericulture,
Hasthampatty, Salem.

3.Regional Deputy Director,
Department of Sericulture,
Room No.512 – 515, B-Block, 5th floor,
Collector Office Campus,
Vellore 632 009.

4.The Assistant Director of Sericulture,
District Sericulture Centre,
Khaderpet, Vaniyambadi – 635 751.

5.The Principal Accountant General,
Office of the Accountant General,
Anna Salai, Chennai – 18. ... Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the respondents 1 to 4 to count 50% of the petitioner's service as a daily wage worker from 16.04.1992 to 23.02.2010 (9 years one month) with his regular service from 24.02.2010 to 31.01.2017 (6 years 11 months), the date of retirement as qualifying service in order to grant pension and to direct the respondent 2 to 4 to send the pension proposal accordingly, with in time frame to the respondent-5 to authorize the same with all consequential benefits including arrears of pension to the petitioner.

For Petitioner	: Mr.P.A.Sudesh Kumar
For RR1 to R4	: Mr.A.M.Ayathurai Government Advocate
For R5	: Mrs.J.Sreevidya

O R D E R

This Writ Petition has been filed to direct the respondents 1 to 4 to count 50% of the petitioner's service as a daily wage worker from 16.04.1992 to 23.02.2010 (9 years one month) with his regular service from 24.02.2010 to 31.01.2017 (6 years 11 months), the date of retirement as qualifying service in order to grant pension and to direct the respondent 2 to 4 to send the pension proposal accordingly, within time frame to the respondent-5 to authorize the same with all consequential benefits including arrears of pension to the petitioner.

2.Brief facts of the case:

(i).Initially, the writ petitioner was appointed as a daily wager on 16.04.1992 in the third respondent Department by its proceedings No.2039/A/91, dated 16.04.1992 and consequently, his service was absorbed into regular employment on 24.02.2010 by proceedings No.997/A/2020-9, dated 08.03.2010 issued by the third respondent Department. Thereafter, on 24.11.2014 he was promoted as a Junior Inspector by the second respondent and the same was regularized by the third respondent and further on 31.01.2017 he reached the age of superannuation and retired from his service on 31.01.2017.

(ii)Further, for the purpose of retirement benefits, as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, 50% of the petitioner's service on daily wages basis i.e., from 16.04.1992 to 23.02.2010 shall be counted along with his service after absorption in regular employment i.e., from 24.02.2010 to 31.01.2017 till his retirement. If it is counted, his service would be 16 years and accordingly he is entitled to all the pensionary benefits provided under the old Pension Scheme of GPF under the Tamil Nadu Pension Rules, 1978. But the respondents have denied the benefit of old Pension Scheme and applied the new Pension Scheme, which came into force on 01.01.2004 by stating that the petitioner was absorbed in regular employment on 23.02.2010, after the commencement of new Pension Scheme on 01.01.2004. Hence, the present writ petition.

3.The learned counsel appearing for the petitioner submitted that the petitioner was appointed as a daily wager on 16.04.1992 in the third respondent department and he was absorbed in regular employment on 23.02.2010 and subsequently, he was promoted as Junior Inspector and it was regularized on 24.11.2014. Further, he submitted that as per Rule-11 of the Tamil Nadu Pension Rules, 1978, the petitioner is eligible for the pension benefits under the old pension scheme by computing 50% of service of the petitioner as a daily wage worker with his regular employment service. Further the respondents have wrongly applied the new pension scheme, which came into force on 01.01.2004 to the petitioner, who was already in employment on daily wages from 16.04.1992, but absorbed in regular employment on 23.02.2010, by ignoring the catena of decisions of this Court as well as Hon'ble Supreme Court.

4.The learned Government Advocate appearing for the respondents 1 to 4 would submit that in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, the Government have directed that the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006, be regularized by appointing them in the Special time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post. As per the said G.O. the petitioner was promoted as Junior Inspector of Sericulture by the second respondent proceedings dated 24.11.2014 in the fourth respondent office and subsequently, he was retired from service on 31.01.2017.

5.Further he submitted that the benefit of counting 50% of the service rendered prior to the regularized service can be claimed under the condition that the concerned employee must have been brought into the regular service before 01.04.2003. The New Pension Scheme was introduced for employees who were recruited after 01.04.2003 into the Government Service. Accordingly, the Tamil Nadu Pension Rules are not applicable to the employees who were recruited after 01.04.2003. Therefore, the question of counting the petitioner's temporary service prior to 23.02.2010 for pensionary benefits does not arise. The petitioner herein is not eligible for the pensionary benefits sanctioned to the other Government employees who come under old pension scheme.

6.Heard the learned counsels on either side and perused the materials placed on record.

7.The case of the petitioner is that the decision rendered by the Hon'ble Full Bench of this Court has not considered the provision of Section 11(4) of the Tamil Nadu Pension Rules but on a careful reading of the decision of the Hon'ble Supreme Court, the Hon'ble Full Bench of this Court has given its answer in W.A.No.158 of 2016 and batch, dated 03.12.2019. For better appreciation, relevant portion of the decision rendered by the Hon'ble Full Bench of this Court in the aforesaid case is extracted hereunder:

> “*This Full Bench was constituted by the Honourable The Chief Justice pursuant to the order dated 29.08.2018 passed by the Division Bench of this*

Court in W.A. No. 1218 of 2018 etc., batch to refer the below mentioned issue for an authoritative pronouncement:-

> *"In view of the provisions of the Tamil Nadu Pension Rules, as amended, if a government servant is regularised in service after 01.04.2003 whether such a person will be entitled to count 50% of the past service rendered prior to regularisation for the purpose of computing his pension under the old pension scheme."*

2. For the sake of clarity, we are paraphrasing the above reference as follows:-

> *"Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O. Ms. No.259, Finance (Pension) Department dated 06.08.2003 and G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010."*

3. G.O. Ms. No.259, Finance (Pension)

Department dated 06.08.2003 introduced a proviso to Rule 2 to the aforesaid Pension Rules, while G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010 introduced sub-rule 11 (4) to the aforesaid Rules to which we shall be referring after giving a brief background which has led to the present reference.

4. Such a reference came to be made by the Division Bench on noticing that there are two conflicting decisions rendered by the Division Benches of this Court. In one of the judgments rendered by the Division Bench of the Madurai Bench of this Court in W.A. (MD) Nos. 587, 605, 606 and 1024 of 2014 on 03.12.2014, it was held that persons who were absorbed and/or regularised to service after 01.04.2003 were not entitled to count half of the past service rendered by them for the purpose of conferment of pensionary benefits along with the service rendered by them after regularisation. Another Division Bench of the Madurai of this Court, in its Judgment dated 09.09.2015 in W.A. (MD) No. 760 of 2013 held that such persons, whose service came to be regularised after 01.04.2003 were entitled and/or eligible to count half of the services rendered by them on daily wage basis prior to their *regularisation, for the purpose of conferment of pensionary benefits. Thus, this contrary view taken by two Division Bench of this Court has led to the present reference to this Full Bench.*

5. For the sake of convenience, the daily wage employees covered in these batch of cases are referred to as "Writ Petitioners" and the State Government or instrumentalities of the Government, wherever they are arrayed in these batch of cases, can be referred to as 'respondents', collectively.

.....

45. In the light of the above, we answer the reference as follows:

(i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii).In case, a government employee/servant

had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv).Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v).Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension." (emphasis supplied)

Therefore, this Court by following the aforesaid decision of the Hon'ble Full Bench of this Court, found that the petitioner case falls under the category of clause 5 of the paragraph No. 45 and therefore, the petitioner is not entitled for the relief sought for.

8.Accordingly, this writ petition stands dismissed in the light of the decision of the Hon'ble Full Bench of this Court passed in W.A.No.158 of 2016 and batch, dated 03.12.2019. No costs.

08.02.2022

Dua
Internet:Yes

To

1.The Secretary,
State of Tamilnadu,
Handlooms, Handicrafts, Textiles & Khadi Department,
Secretariat, Fort. St.George,
Chennai – 9.

2.The Director,
Department of Sericulture,
Hasthampatty, Salem.

3.Regional Deputy Director,
Department of Sericulture,
Room No.512 – 515, B-Block, 5th floor,
Collector Office Campus,
Vellore 632 009.

4.The Assistant Director of Sericulture,
District Sericulture Centre,
Khaderpet, Vaniyambadi – 635 751.

5.The Principal Accountant General,
Office of the Accountant General,
Anna Salai, Chennai – 18.

D.KRISHNAKUMAR, J.

Dua

W.P.No.13251 of 2020

08.02.2022