

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.15761 of 2014

D.Jayabal

... Petitioner

Vs.

1.The Principal Accountant General  
(Accounts & Entitlements) Tamil Nadu,  
361, Annasalai, Teynampet,  
Chennai - 600 018.

2.The Block Development Officer,  
Thoppampatti,  
Panchayat Union,  
Dindugal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to Letter No.Pr.AG (A&E)/PEN/P03/10309169/1/RO309169 dated 20.08.2013 of the first respondent herein and quash the same and further, direct the first respondent to grant pension by counting 50% of service rendered by the petitioner in the contingent establishment as Social Welfare Worker in Social Forest Range, Manamadurai between 01.06.1984 and 06.12.1990 with all consequential benefits such as arrears of pension etc.

For Petitioner : Mr.K.S.Viswanathan

For Respondents: Mrs.Hemamuralikrishnan [R1]  
No appearance [R2]

O R D E R

The petitioner claims counting 50% of service rendered by him in the contingent establishment as Social Welfare Worker in Social Forest Range, Manamadurai between 01.06.1984 and 06.12.1990 with all consequential benefits.

2. The petitioner was initially appointed in the contingent service in the forest department as Social Welfare Worker in Social Forest Range, Manamadurai, between 01.06.1984 and 06.12.1990. Immediately, on 08.12.1990, the petitioner was appointed as Junior Assistant in Revenue Department and served as a temporary Government servant between the period 08.02.1990 and 03.02.1993 and thereafter, he was terminated from service as his appointment was on temporary basis. Subsequently, on 03.02.1997, the petitioner was appointed as Junior Assistant in the Rural Development Department and further, promoted to the cadre of Assistant and thereafter, to the post of Deputy Block Development Officer and retired from service on attaining the age of superannuation on 30.06.2013.

3. The grievance of the petitioner is that the contingent services of the petitioner between 01.06.1984 and 06.12.1990 were not taken into consideration for the purpose of reckoning the qualifying service under Rule 11(4) of the Tamil Nadu Pension Rules. As per the said rules, 50% of the contingent service is to be counted as qualifying service for the purpose of pensionary benefits.

4. Learned counsel appearing on behalf of the petitioner mainly contended that as far as the case of the petitioner is concerned, he had rendered contingent service between 01.06.1984 and 06.12.1990, which was followed by temporary service as Junior Assistant upto 03.02.1993 and thereafter, got terminated. Learned counsel reiterated that the temporary services of the petitioner in the post of Junior Assistant from 08.02.1990 to 03.02.1993 were already reckoned as qualifying service for the purpose of calculation of pension and therefore, 50% of the contingent services are to be taken into consideration for the purpose of calculating the qualifying service of the petitioner.

5. Learned counsel appearing on behalf of the first respondent objected the said contention by stating that admittedly, the petitioner, on completion of contingent service, was appointed on temporary basis as Junior Assistant. Therefore, any contingent service followed by a temporary service cannot be taken into consideration for the purpose of reckoning the qualifying service. For all purpose, the petitioner was appointed as regular employee on 03.02.1997 and the said service was taken into consideration for calculating the qualifying service and pension was also sanctioned. Thus, there is no merit in the writ petition and accordingly, the same is liable to be rejected.

6. Rule 11(1) of the Tamil Nadu Pension Rules contemplates "subject to the provisions of these rules, qualifying service of

a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating of temporary capacity." Even before amendment to Rule 11(4) of the Tamil Nadu Pension Rules, the temporary services were taken into consideration for the purpose of calculating the qualifying services. Therefore, the temporary services of the petitioner between 08.12.1990 and 03.12.1993 were taken into consideration as qualifying services under Rule 11(1) of the Tamil Nadu Pension Rules and accordingly, pension was sanctioned.

7. The question arises when contingent services are followed by a temporary services in the post of Junior Assistant and when such temporary services are taken into account as qualifying services then, it is to be construed that the petitioner is eligible to avail the benefit of amendment to Rule 11(4) of the Tamil Nadu Pension Rules for the purpose of reckoning the qualifying service. In other words, the contingent services ended on 06.12.1990 and on 08.12.1990, the petitioner was appointed as Junior Assistant and the said services were taken into account for calculating the qualifying services and therefore, the benefit of Rule 11(4) of the Tamil Nadu Pension Rules is to be extended to the petitioner for the purpose of counting 50% of the services in the contingent services.

8. Thus, Rule 11(2) of the Tamil Nadu Pension Rules would not be applicable to the case of the petitioner. However, Rule 11 (1) of the Tamil Nadu Pension Rules had already been complied by the respondents for the purpose of counting the service and therefore, the petitioner is entitled to get the benefit envisaged under Rule 11 (4) of the Tamil Nadu Pension Rules. Accordingly, the petitioner is entitled to succeed in the writ petition.

Accordingly, this Writ Petition stands allowed and the order impugned passed by the first respondent in Letter No.Pr.AG (A&E)/PEN/P03/10309169/ 1/RO309169 dated 20.08.2013 is quashed. The respondents are directed to count 50% of the contingent services rendered by the petitioner i.e. from 01.06.1984 to 06.12.1990 and accordingly, revise all the pensionary benefits and pension and pay the arrears due to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

gm

To

1.The Principal Accountant General  
(Accounts & Entitlements) Tamil Nadu,  
361, Annasalai, Teynampet,  
Chennai - 600 018.

2.The Block Development Officer,  
Thoppampatti,  
Panchayat Union,  
Dindugal District.

+1cc to Mrs.Hemamuralikrishnan, Advocate SR.No.42690

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JPL(CO)  
GMY(26/07/2022)