

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 25386 of 2017

1. B.Balakumar
2. S.Annadurai
3. P.Arunmozhi
4. J.Antoniamma
5. A.C.Balan
6. V.Boopathy
7. S.Chokkalingam
8. M.S.Desappan
9. K.S.Devaraj
10. M.Kanniappan
11. S.Mahendran
12. P.T.Mani Pallavan
13. T.Ravimohan
14. S.Sainskumar
15. C.B.Sridhar
16. K.Subramani
17. S.A.Syed Altaf
18. V.Venketesan

...Petitioners

-vs-

1. The Principal Secretary to Government,
Health and Family Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine,
DMS Complex,
Teynampet,
Chennai - 600 018.
3. The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai - 600 002.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to allot GPF (General Provident Fund) Account Number to the Petitioners for grant of

pension to the Petitioners under the Tamil Nadu Pension Rules, 1978, (Old Pension Scheme) by counting 50% of the services rendered by them on daily wages/consolidated pay basis in Chennai Corporation along with their regular Government Service.

For Petitioners : Mr. R.Prem Narayan
For Respondents : Mr. P.Balathandayutham,
Special Government Pleader (for R1 to R2)
Mr. R.Gopinath (for R3)

O R D E R

Heard Mr. R.Prem Narayan, Learned Counsel for the Petitioners, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First to Third Respondents and Mr. R.Gopinath, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners had been engaged as Multi Purpose Health Worker/Basic Health Worker initially on consolidated pay basis and subsequently on daily wage basis on 16.05.1994, 09.12.1994, 16.05.1994, 29.07.1994, 08.09.1993, 26.04.1995, 16.05.1994, 25.11.1993, 01.09.1993, 01.09.1993, 16.05.1994, 16.05.1994, 01.09.1993, 16.05.1994, 16.05.1994, 25.03.1997, 01.09.1993 and 01.09.1993 respectively and they were appointed as Health Inspector Grade II on 15.11.2006, 16.11.2006, 04.03.2011, 16.11.2006, 16.11.2006, 16.11.2006, 21.11.2006, 15.11.2006, 15.11.2006, 23.11.2006, 22.11.2006, 17.11.2006, 18.11.2006, 16.11.2006, 16.11.2006, 21.11.2006, 16.11.2006 and 15.11.2006 respectively and subsequently promoted as Health Inspector Grade I. However, as the appointment of the Petitioners in regular service was after 01.04.2003, they had been denied pension. In that backdrop, the Writ Petition has been filed for directing the Respondents to count half of the service rendered by the Petitioners as Multi Purpose Health Worker/Basic Health Worker on consolidated pay wage/daily wage basis along with regular service rendered by them as Health Inspector Grade II and Health Inspector Grade I as qualifying service and allot General Provident Fund Account Number to the Petitioners for grant of pension to them under the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Pension Rules' for short).

3. In order to examine the claim made by the Petitioners, it would be necessary to extract Rule 11(4) of the Pension Rules, which has been introduced by way of amendment by G.O. (Ms) No. 41, Finance (Pension) Department dated 09.02.2010, as follows:-

" 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.

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wage basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

The Full Bench of this Court in Government of Tamil Nadu -vs- R.Kaliyamoorthy (Order dated 03.12.2019 in W.A. Nos. 158 of 2016 etc., batch) has examined the question as to whether the persons who had been appointed in regular service after 01.04.2003 would be entitled to receive pension under the Rules and answered the same 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 the 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 employees/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such service were regularised before 01.04.2003, half of 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 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.
- "

In view of the aforesaid legal position, the claim made by the Petitioners cannot be countenanced.

4. At the same time, it would be relevant to point out here that Rule 82 of the Pension Rules provides as follows:-

"82. Power to relax:-- Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department."

While construing a similar provision contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in Union of India -vs- Gandiba Behera (Order dated 08.11.2019 in Civil Appeal No. 8497 of 2019) has observed as follows:-

"25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. ..."

This would obviously mean that though the Petitioners had been absorbed in regular service after 01.04.2003, there is nothing precluding them from seeking relaxation of the requirements of the Pension Rules for granting pension in the prescribed manner before the concerned authority, who would have to examine whether the conditions for the same have been fulfilled in this case.

5. In such circumstances, the following order is passed:-

- (i) the Petitioners may make necessary individual representation along with supporting documents to the concerned authority under Rule 82 of the Pension Rules for relaxing the relevant rules so as to entitle them for grant of pension;
- (ii) if such representation is made, the concerned authority shall immediately consider the claim made by the Petitioners for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by them in terms of Rule 82 of the Pension Rules;
- (iii) if it is found that the Petitioners have not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to them requiring the same to be furnished within a time frame of not less than 15 working days;
- (iv) in the event of the concerned authority not being satisfied with the compliance of the requirements thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioners to explain their position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioners under written acknowledgment; and

- (v) if the Petitioners are found entitled to the relaxation of the relevant rules for grant of pension as claimed, it shall be ensured that the eligible amount of arrears of pension is paid within three months from the date of passing of that order, apart from monthly pension for future months on the due dates;

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

skr

To

1. The Principal Secretary to Government,
Health and Family Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Public Health and Preventive Medicine,
DMS Complex,
Teynampet,
Chennai - 600 018.
3. The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai - 600 002.

+1cc to Mr.R.Prem Narayan, Advocate, Sr.No.39976
+1cc to Mr.R.Gopinath, Advocate, Sr.No.40262
+1cc to Government Pleader, Sr.No.40367

W.P. No. 25386 of 2017

SKM(CO)
KKV/08/07/2022