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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

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

W.P. No. 29471 of 2017

A.Velu … Petitioner

-vs-

1. The Government of Tamil Nadu
   Rep. by its Principal Secretary
   Environment and Forest Department
   Fort St. George, Chennai – 600 009.

2. The Principal Chief Conservator of Forest
   Panagal Building, Saidapet
   Chennai – 600 015.

3. The District Forest Officer
   Vellore Forest Division
   Vellore – 9.

4. The Accountant General of Tamil Nadu
   Office of the Accountant General (A&E)
   Teynampet, Chennai – 600 018. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, direct the First to Third Respondents to count half of service rendered by the Petitioner as 'Plot Watcher' on daily wage basis from 01.08.1982 till 06.08.2009 along with regular service rendered by him as 'Plot Watcher' (Supernumerary post) / mali (regular post) with effect from 07.08.2009 and 10.04.2017 till the date of his retirement on 30.09.2017 as qualifying service and send the revised proposal to the Fourth Respondent to grant pension to the Petitioner with all consequential monetary benefits.

For Petitioner : Mr. P.Ganapathy

For Respondents : Mr. K.H.Ravikumar (For R1 to R3)
Government Advocate (Forest)

R4 – No appearance

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O R D E R

Heard Mr. P.Ganapathy, Learned Counsel for the Petitioner and Mr. K.H.Ravikumar, Learned Government Advocate (Forest) appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had been engaged as Plot Watcher on daily wage basis from 01.08.1982 to 06.08.2009 and his service had been subsequently regularized with effect from 07.08.2009 pursuant to G.O. Ms. No. 95, Environment and Forest Department dated 07.08.2009 and he was granted the scale and service benefits of regular Mali as per G.O. Ms. No. 46, Environment and Forest Department dated 10.04.2017 and he continued in that post till he had retired from service on 30.09.2017 on attaining the age of superannuation. However, as the appointment of the Petitioner in regular service was after 01.04.2003, he had been denied family pension. In that backdrop, the Writ Petition has been filed for directing the First to Third Respondents to count half of the service rendered by the Petitioner as Plot Watcher on daily wage basis from 01.08.1982 to 06.08.2009 along with regular service rendered by him as Plot Watcher (supernumerary post) with effect from 07.08.2009 and as Mali (regular post) with effect from 10.04.2017 till the date of his retirement on 30.09.2017 as qualifying service and send the revised proposal to the Fourth Respondent to grant pension to the Petitioner with all consequential monetary benefits.

3. Learned Government Advocate appearing for the First to Third Respondents contends that such claim made by the Petitioner cannot be granted in view of the decision of the Division Bench of this Court in Government of Tamil Nadu -vs- A.Packiam (Order dated 18.01.2021 in W.A. (MD) No. 1491 of 2014) denying such relief to a person similarly placed to the Petitioner as in this case.

4. Before proceeding further, it would be necessary to extract Rule 11(4) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules' for short), 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,

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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.

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(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 Petitioner cannot be countenanced.

5. At the same time, it would be relevant to point out here that Rule 82 of the 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. ...”

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This would obviously mean that though the Petitioner had been absorbed in regular service after 01.04.2003, there is nothing precluding him from seeking relaxation of the requirements of the 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.

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

(i) the Petitioner may make necessary representation along with supporting documents to the concerned authority under Rule 82 of the Rules for relaxing the relevant rules so as to entitle him for grant of pension;

(ii) if such application is made, the concerned authority shall immediately consider the claim made by the Petitioner for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by him in terms of Rule 82 of the Rules;

(iii) if it is found that the Petitioner has 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 him 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 Petitioner to explain his 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 Petitioner under written acknowledgment; and

(v) if the Petitioner is 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(CS-II)

//True Copy//

Sub Assistant Registrar

Maya

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To

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   Vellore Forest Division
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4. The Accountant General of Tamil Nadu
   Office of the Accountant General (A&E)
   Teynampet, Chennai - 600 018.

+2cc to Mr.P.Ganapathy, Advocate, S.R.No.16191

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JPL(CO)
SB(26/05/2022)

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