



WEB COPY

W.P(MD) No.497 of 2020 and

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2022

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.497 of 2020 and

WMP(MD) No.6626 of 2021

1.S.Perumal
2.S.Balakrishnan
3.K.Mariappan
4.M.Poolipandian
5.S.Gurusamy
6.M.Rajan
7.S.Pichammal

Petitioners

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
School Education Department,
Fort St George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.

3.The District Education Officer,
O/o the District Educational Office,
Opp.Ratna Theatre,
Tirunelveli District -1.

4.The District Education Officer,
O/o the District Educational Office,
Gomathiammal Government Boys High School,
Sankarankovil, Tenkasi District.

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, for a direction directing the respondents 1 to 4 to include 50% of the petitioner's service rendered on consolidated wages as per Rule 11 (2) of the Tamil Nadu Pension Rules, 1978 and refix the pension and disburse the pension and other benefits within the time frame stipulated by this Court.

For Petitioner

:Mr.T.Lajapathi Roy

For Respondents

:Mr.A.Kannan

Additional Government Pleader



O R D E R

This Writ Petition is filed for a Mandamus to direct the respondents 1 to 4, to include 50% of the petitioners' service, rendered on consolidated wages, as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, for their pension calculation.

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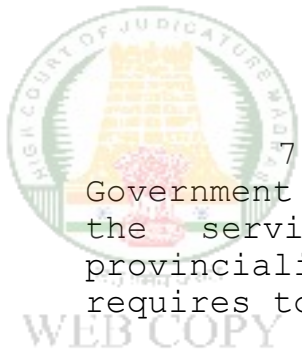
2.The case of the petitioners is that they were recruited through Employment Exchange and they were appointed as part time sanitary workers, on consolidated wages in the respondent Department, during 1993. Though the petitioners have completed 13 years of service, they were not regularized. Hence, they filed W.P (MD) No.11707 of 2006. and as per order of this Court, the petitioners were appointed as Sweeper and Watchmen in various Government Schools, in the regular vacancy. Thereafter, pursuant to the proceedings in Ref.Na.Ka.No.135/A1/2007, dated 07.02.2011, passed by the District Education Officer, Tirunelveli, the petitioners' services were regularized, with effect from 07.12.2007. Subsequently, the petitioners 1 & 3 were promoted as Junior Assistant and the petitioners 2,4,5,6,7 were promoted as Record Clerk. The grievance of the petitioners is that though the petitioners rendered service from the year 1993, their names were included only under Contributory Pension Scheme. Hence, the petitioners have given representation to the respondents citing Rule 11(4) of Tamil Nadu Pension Rules, which provides giving weightage to the services rendered on consolidated wages from the year 1993. Since the petitioners' representation was not considered by the respondents so far, the petitioners are before this Court, with the present writ petition.

3.The learned counsel appearing for the petitioners relied upon Rule 11(2) of Tamil Nadu Pension Rules, which provides weightage to the services rendered on consolidated wages.

4.Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents by relying upon the judgment passed by this Court in ***W.A.No.158 of 2016, etc., batch, dated 03.12.2019***, in the case of ***Government of Tamil Nadu, Rep. by its Secretary and Others v. R.Kaliyamoorthy and Others***, strongly opposed the contention raised by the petitioners' counsel. He further submits that as per the above judgment, the petitioners are not entitled for the relief that 50% of the services rendered by them on consolidated wages to be taken into account for pension calculation.

5.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6.Admittedly, the petitioners were appointed during 1993 and their services were regularized with effect from 07.12.2007. Since the petitioners are going to retire from service, they have submitted a representation to the respondents to count 50% of their past service for determination of pension, as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978.



7. As rightly contended by the learned Additional Government Pleader, as per the decision of the Hon'ble Full Bench, the service rendered by the Government employees in non-provincialised services or being consolidated pay or on daily wages requires to be taken into consideration, as per the below terms:-

- 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 regularized 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 services 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."

8. In view of the ratio laid down in the above judgment as cited supra, by the Hon'ble Full Bench of this Court, the petitioners are not entitled to the relief as prayed for. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

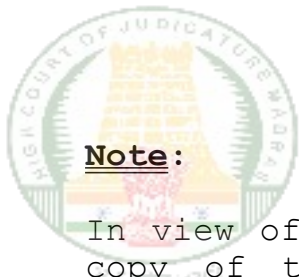
Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to the Government of Tamilnadu,
School Education Department,
Fort St George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus,
College Road,
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3.The District Education Officer,
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4.The District Education Officer,
O/o the District Educational Office,
Gomathiammal Government Boys High School,
Sankarankovil, Tenkasi District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-1986[F] dated
21/01/2022)

W.P(MD) No.497 of 2020 and
WMP(MD) No.6626 of 2021
20.01.2022

RK(21/03/2022) 4P 6C