



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.1654 of 2021

and WMP (MD) No.1397 of 2021

WEB COPY

I.Shanthi

... Petitioner

Vs.

1.The Principal Secretary to
Government of Tamilnadu
Rural Development & Panchayat Raj Department
Fort St. George,
Chennai 600 009.

2.The Director of Rural Development & Panchayat Raj
Panagal Building,
Chennai.

3.The District Collector,
Office of the District Collector,
Dindigul.

... Respondents

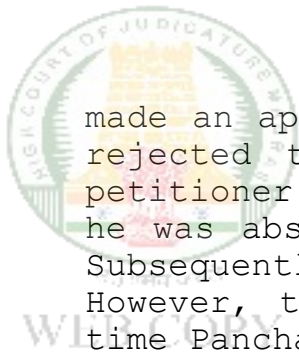
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records in connection with the impugned order passed by the 3rd respondent vide Na.Ka.No.6904/2020/Vu.Vaa3 order dated 23.10.2020 and quash the same and consequently direct the 1st respondent to count the service rendered by the petitioner's husband in the post of part time panchayat clerks for the purpose of pension and other benefits together with all consequential benefits within the time stipulated by this Court.

For Petitioner	: Mr.A.R.Kannappan
For Respondents	: Mr.P.S.Nedunchezian
	Government Advocate

ORDER

The husband of the writ petitioner was working as part time panchayat clerk. Subsequently his services were regularised and brought under the regular establishment.

2. The grievance of the writ petitioner is that the part time service rendered by her husband in the post of Panchayat Clerk was not taken into consideration for the purpose of reckoning the qualifying service for grant of pensionary benefits. The petitioner



made an application before the authority and the District Collector rejected the claim on the ground that the husband of the writ petitioner was appointed as part time Panchayat Clerk and thereafter he was absorbed as Panchayat Assistant and served till 05.04.1995. Subsequently he was promoted to the post of Junior Assistant. However, the husband of the writ petitioner was appointed as part time Panchayat Clerk.

3. The learned counsel for the petitioner made a submission that part time services were also taken into consideration in respect of some other cases. The learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court passed in W.A.No.1111/2016 dated 22.03.2018. In the said judgment, the 50% of the part time services were taken into consideration for the purpose of calculating pension for grant of pensionary benefits. Therefore, the said benefits is to be extended to the husband of the writ petitioner for revision of pension and pensionary benefits.

4. The learned Additional Government Pleader made a submission that the affidavit itself is vague and bereft of service particulars of the husband of the writ petitioner. Further, the husband of the writ petitioner was appointed as part time Panchayat Clerk and for such time period, the petitioner is not eligible for counting 50% of the services.

5. Considering the arguments, this Court is of the considered opinion that the judgment of the Hon'ble Division Bench dated 22.03.2018 cited supra was overruled, as the issues were referred before the Hon'ble Division Bench of the Madras High Court and batch of writ appeals and writ petitions were decided by the Full Bench of this Court, in **Government of Tamil Nadu and others v. R.Kaliyamoorthy** reported in **2019 (6) CTC 705**. The Hon'ble Full Bench answered the references by holding that the 50% of the services are to be counted in accordance with the amended Rule 11(4) of the Tamil Nadu Pension Rules, 1978 and the eligibility of the employees appointed prior to 01.04.2003 was also taken into consideration. Therefore, this Court has to consider Rule 11(4) of the Rules for the purpose of extending the benefit of counting of 50% of the part time services. Rule 11(4) of the Tamil Nadu Pension Rules reads as under:

"11(4)....

(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 wages 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.]”

6. Rule 11(4) unambiguously stipulates that the job must be whole time employment. Therefore, the temporary employees appointed for whole time job alone are entitled for counting of 50% of their services. The part time employment cannot be considered for counting of the service as per Rule 11(4) of the Rules. Thus, the Division Bench judgment cannot be followed, as it was overruled by the Hon'ble Full Bench of this Court and further Rule 11(4) also categorically enumerates that the temporary employees appointed in full time employment are alone eligible for counting of 50% of their services for the purpose of reckoning the required service for grant of pensionary benefits.

7. In the present case, the husband of the writ petitioner admittedly was appointed as part time panchayat clerk and therefore, 50% of the services cannot be taken into consideration. As per Rule 11(4) of the Rules, the husband of the writ petitioner would be eligible for the benefits only in respect of the service rendered as full time and therefore, there is no infirmity in rejecting the request of the petitioner and the order of rejection passed by the respondents is in consonance with the Rules. Accordingly, the writ petition stands dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar (CS)

RR

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To

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+1 CC to M/s.A.R. KANNAPPAN, Advocate (SR-16884[F] dated 06/04/2022)

+1 CC to M/s.SPL.GP (SR-17003[F] dated 06/04/2022)

W.P. (MD)No.1654 of 2021
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RD(21.04.2022) 4P 6C