



W.P.(MD) No.7183 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.7183 of 2020

G.George

... Petitioner

-VS-

- 1.The State of Tamil Nadu
Rep. By its Principal Secretary
Revenue Department, Secretariat
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Revenue Administration
Ezhilagam, Chepauk, Chennai.
- 3.The Chief Accounts Officer (A&E)
361 Anna Salai
Chennai 600 018.
- 4.The District Collector,
Kanyakumari District
at Nagercoil.
- 5.The Sub Collector/revenue Divisional Officer
Padmanabhapuram Division,
Thuckalai, Kanyakumari District.



W.P.(MD) No.7183 of 2020

6.The Tahsildar,
Vilavancode Taluk
Kuzhithurai, Kanyakumari District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents to count 50% of service rendered by the petitioner as Thalaiyari from 16.09.1981 to 31.05.1995 along with his regular service as village Assistant and Village Administrative Officer for the purpose of calculation of his pension benefits and arrange to send the revised pension proposal within the time stipulated by this Court by considering his representation dated 13.03.2020 in the light of G.O.Ms.No.173 dated 29.05.2014 and G.O.Ms.No.473 dated 03.12.2018 of the revenue department.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Ms.K.Christy Theboral for R1,R2
R4 and R6
Additional Government Pleader
Mr.P.Gunasekaran for R3

ORDER

This writ petition has been filed for a direction to the respondents to count 50% of service rendered by the petitioner as Thalaiyari from 16.09.1981 to 31.05.1995 along with his regular service as village Assistant and Village Administrative Officer for the purpose of calculation of his



W.P.(MD) No.7183 of 2020

pension benefits and arrange to send the revised pension proposal by considering his representation dated 13.03.2020 in the light of G.O.Ms.No. 173 dated 29.05.2014 and G.O.Ms.No.473 dated 03.12.2018 of the revenue department

2.The petitioner was appointed as a Thalaiyari at Nattalam Village on 21.09.1981. Subsequently, he was re-designated to the post of Village Assistant from 01.06.1995 vide proceedings dated 22.01.2000. Vide G.O.Ms.No.570 dated 26.12.2014, the Government has given promotion to the persons, who have completed 10th standard and served as Village Assistants for a period of ten years, as Village Administrative Officer. Since the petitioner has possessed 10 years of service and 10th standard qualification, he was promoted as Village Administrative Officer vide proceedings dated 22.07.2016. Thereafter, the petitioner attained the age of superannuation on 30.04.2018. While so, for similarly placed persons, the Government, considering their length of service, took into account 50% of their services for the purpose of calculating pension. Accordingly, the Government passed G.O.Ms.No.408 Finance (Pension) dated 25.08.2009,



W.P.(MD) No.7183 of 2020

thereby held that the persons whose services have been regularised prior to 01.04.2003, their 50% services will be taken into consideration for calculating pension. Since the petitioner was appointed as early as on 16.09.1981 and his services were regularised from 01.06.1995 ie, prior to 01.04.2003, 50% of the petitioner's services have to be calculated for the purpose of pension. Accordingly, the petitioner sent a representation to the respondents on 13.03.2020. Since the petitioner's representation has not been considered so far, he is before this Court with this present petition.

3. The learned counsel for the petitioner would submit that since the petitioner's services were regularised prior to 01.04.2003 and he has rendered more than 19 years of service, 50% of his services have to be taken into account for the purpose of calculating pension. He would further submit that as per the Full Bench of this Court in ***Government of Tamilnadu v. R.Kaliyamoorthy [2019(6) CTC 705]***, the persons, who completed 10 years of service and appointed prior to 01.04.2003, are entitled to get pension and hence, he prays for necessary direction.



W.P.(MD) No.7183 of 2020

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4. Per contra, the learned Additional Government Pleader and the learned standing counsel for the third respondent would submit that the issue arises in the writ petition has already been decided in W.A(MD) No. 1629 of 2018 etc., batch on 26.02.2021, wherein, it is categorically held that the petitioner has rightly availed the benefit granted to village assistant, who have put in 10 years of service and passed 10th standard vide G.O.Ms.No. 570. They would further submit that the post of village assistant is a part time employment and therefore, they are not entitled to count their 50% of services prior to 31.05.1995 and hence, the petitioner's case has to be rejected.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is not in dispute that the petitioner was appointed on 16.09.1981 as Thalaiyari and subsequently he was re-designated as Village Assistant and thereafter, promoted as Village Administrative Officer and retired on attaining the age of superannuation on 30.04.2018. It is pertinent



W.P.(MD) No.7183 of 2020

to note that the persons, who have completed ten years of service as full time employees in the departments, their 50% of the services have to be calculated for the purpose of pension as per G.O.Ms.No.408 dated 25.08.2009. It is pertinent to note that the petitioner, who served as Village Assistant from 16.09.1981 to 01.06.1995 and though the petitioner was regularised prior to 01.04.2003, his appointment as Village Assistant was on part time basis only and hence the part time employees were not entitled to be considered for pension. Though the learned counsel for the petitioner has relied upon the Full Bench judgment (supra), the said judgment is with regard to full time employees, whose services were regularised prior to 01.04.2003. However, the petitioner, being part time employee, is not entitled to pension.

7. The issue arises in the writ petition is no longer res integra, which has already been decided by the Division Bench of this Court in WA(MD) No.1629 of 2018 etc., batch dated 26.02.2021 in the case of the ***State of Tamil Nadu and others v. E.Balachandran [2021 (3)MLJ 92]***. For better appreciation, the relevant paragraphs are extracted as under:



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W.P.(MD) No.7183 of 2020

“25.Insofar as the Village Officers (Karnams) are concerned, the Act itself clearly specifies that they were part-time Village Officers and therefore, they were abolished. That is the reason why a challenge was made before the Courts. Thus, there is no ambiguity with respect to their own status. Secondly, re-employment has been made in favour of few eligible persons after due scrutiny by the Committee. A learned Single Judge (The Hon'ble Mr. Justice V.Ramasubramanian), as he then was, by order dated 09.01.2009, made in W.P.Nos.276 to 280 of 2009 and W.P.Nos.287 to 293 of 2009, in the matter of M.Annai Muthu v. State of Tamil Nadu and others, has clearly captured the history, background and their entitlement. Even for them, a separate Government Order has been passed in G.O.Ms.No.121, Revenue Department, dated 13.03.2001, giving certain pensionary benefits. In this connection, we would appropriately quote the following paragraphs:-

“17. However, by an order in G.O.Ms.No.121, Revenue, dated 13.3.2001, the Ex. Village Officers who lost their jobs on 14.11.1980 and who got appointed temporarily after 1988 by acquiring the minimum general educational qualification subsequent to the date of abolition, but who retired without completing the



W.P.(MD) No.7183 of 2020

qualifying service of 10 years, were granted the benefit of special pension originally ordered to the Ex-Officers who lost their jobs and who never got re-employment. Paragraphs-7 and 8 of the said order read as follows:-

"7. The Government have after careful consideration of the request of the Retired Village Administrative Officers and the recommendation of the Principal Commissioner and Commissioner of Revenue Administration, direct that the pensionary benefits ordered in G.O.(Ms) No.828, Revenue, dated 23.8.1996 and enhanced in G.O.(Ms) No.629, Revenue, dated 22.7.1998 be extended to the Ex-Village Officers who lost their jobs on 14.11.1980 and who did not possess minimum general educational qualification at the time of abolition of the posts of Village Officers (i.e.) 14.11.1980, but obtained the educational qualification, subsequent to 20.2.1982 and appointed as Village Administrative Officers under Rule 10(a)(i) basis with reference to G.O.(Ms) No. 1287, Revenue, dated 6.7.1988 and retired without completing 10 years of qualifying service. 8. The Government also direct that the



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W.P.(MD) No.7183 of 2020

said category of Ex-Village Officers are eligible for pension sanctioned in paragraph-3 above, with effect from 5.12.1986, excluding for the period they worked as Village Administrative Officers."

18. To summarise, the vexed question of grant of pension for the services rendered by the erstwhile Village Officers has undergone a metamorphosis over the past three decades and step by step the Government have yielded to the demand, categorywise as follows:-

(a) FOR THOSE WHO NEVER GOT REEMPLOYED:- A special pension of Rs.175/- per month later enhanced to Rs.250/- per month with attendant benefits to all those living Ex-Village Officers, who lost their jobs on 14.11.1980 but who never got re-employed was first sanctioned with effect from 5.12.1986. For the families of those who were dead, a special family pension of Rs.100/- per month later enhanced to Rs.150/- per month, was similarly sanctioned.

(b) FOR THOSE WHO GOT RE-EMPLOYED IN 1982:- For persons who lost their jobs on 14.11.1980 and who were



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W.P.(MD) No.7183 of 2020

appointed as Village Administrative Officers in the year 1982, by virtue of possessing minimum general educational qualification, but who retired without completing 10 years of service in the new category, their services were directed to be counted not from the date of their appointment in 1982 but directed to be counted with effect from 14.11.1980, so that they get 10 years of qualifying service in the new category to get at least minimum pension. If these persons did not get 10 years of service, even after counting the service from 14.11.1980, then they were directed to be granted the special pension as per G.O.Ms.No.828, Revenue, dated 23.8.1996, with effect from 5.12.1986, but excluding the period of their non-employment.

(c) FOR THOSE WHO GOT RE-EMPLOYED AFTER 1988:- Persons who lost their jobs on 14.11.1980 and who got appointed temporarily under Rule 10(a)(i) after 1988, by virtue of acquiring minimum general educational qualifications after the date of abolition, the special pension granted to those who were never re-employed, was granted with



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W.P.(MD) No.7183 of 2020

effect from 5.12.1986, excluding the period of their re-employment on temporary basis.” In our considered view, the learned Single Judge, as he then was, has correctly applied the law by taking note of the fact even for the recruitment of part-time re-employment. Therefore, in the process, there were separate sets of Rules dealing with pensionary benefits. Now, there is no separate sets of Rules. They can recourse to the regular course of Rule applicable to Government servants under the Tamil Nadu Pension Rules, 1978. Incidentally, this being a reemployment, even otherwise Rule 11(3) would act as an embargo.

26.Having considered the entire issues involved, we also find that there is no application of Article 14 of the Constitution of India by comparing the respondents with those who got the relief albeit without taking note of the relevant provisions of law. Granting the relief would amount to setting aside two pension Rules without even a challenge especially when the respondents got the benefit of regular employment and permanent posts under the subsequent orders passed, on their request.

27.In the result, the appeals filed by the



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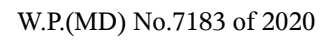
W.P.(MD) No.7183 of 2020

Government of Tamil Nadu stand allowed by setting aside the orders passed by the learned Single Judge and consequently, the appeal filed by the Writ Petitioner in W.A.(MD) No.831 of 2020 stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

8. The said judgment has challenged before the Apex Court in SLP Nos.736 to 766 of 2021, wherein, the decision of the Division Bench was upheld. Since the petitioner also stands like that of the respondents in WA(MD) Nos.1629/2018 etc., batch, in view of the above decision, the writ petition stands dismissed. No costs.

20.12.2022

Index : Yes/No
Internet : Yes
RR



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Revenue Department, Secretariat
Fort St. George, Chennai 600 009.

3.The Chief Accounts Officer (A&E)
361 Anna Salai
Chennai 600 018.

5. The Sub Collector/revenue Divisional Officer
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W.P.(MD) No.7183 of 2020

M.DHANDAPANI, J.

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W.P.(MD) No.7183 of 2020

20.12.2022