



W.P. No. 5856 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

W.P. No. 5856 of 2023

G.Rajendran

... Petitioner

-VS-

1. The Government of India
Director,
Directorate General of Health Service,
Ministry of Health and Family Welfare,
Room No.446 Am Nirman Bhavan,
Moulana Azead Road, New Delhi – 110 108.
- 2.The Secretary to Government of Tamil Nadu
Health and Family Welfare Department,
Fort St. George, Chennai – 600 009.
- 3.Director of Public Health and Preventive Medicine
Directorate of Public Health and Preventive Medicine,
Chennai – 600 006.
- 4.Project Director,
Tamil Nadu State Blindness Control Society,
Rukmani Lakshmipathy Salai,
Egmore, Chennai – 600 008.
- 5.The Account General (A&E)
O/o. Account General,
Teynampettai,
Annasalai, Chennai – 600 018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the



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records pertaining to the impugned order issued R.No.71528/VM/A3/2021 dated 26.06.2022 the Director of Public Health and Preventive Medicine, Chennai-6/the 3rd Respondent herein and to quash the same or alternatively it is open to the petitioner to make representation to the 2nd respondent for rounding of the period as 10 years by taking note of his service as 8 years 6 months based on the petitioner was working daily rated employee from the period 01.10.1995 to 29.02.2016.

For Petitioner : Mr. M.Digvijayapandian

For Respondents : Mrs. P.J.Anitha
Central Government Standing Counsel
for R1

: Mr. B.Vijay
Additional Government Pleader
for R2 to R4

: Mr. S.Balaji for R5

ORDER

Heard Mr. M.Digvijayapandian, Learned Counsel for the Petitioner and Mrs. P.J.Anitha, Learned Central Government Standing Counsel for the First Respondent, Mr. B.Vijay, Learned Additional Government Pleader for the Second to Fourth Respondents and Mr. S.Balaji, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. The Petitioner had been engaged as Driver initially on daily wages from 01.10.1995 and his services were regularized with effect from 29.02.2016 as per G.O. (Ms.) No. 70, Health and Family Welfare (AB2) Department dated 20.02.2016. The Petitioner had made a representation dated 02.08.2021 to the Third Respondent to regularize his service as daily rated employee from 01.10.1995 to 29.02.2016, but it was rejected by Order in R. No. 71528/VM/A3/2021 dated 26.06.2022 passed by the Third Respondent as not feasible. The Petitioner has filed this Writ Petition challenging the said order with consequential direction to the Respondents to count half of the service rendered by him from 01.10.1995 to 29.02.2016 along with the regularized service rendered by him for payment of pension on his retirement from service.

3. At this juncture, reference may be made to Rule 11(4) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Pension Rules' for short), which has been introduced by way of amendment by G.O. (Ms) No. 41, Finance (Pension) Department dated 09.02.2010, and provides 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



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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.



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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*



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as per the Tamil Nadu Pension Rules, 1978.

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- (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. ”*



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In view of the aforesaid legal position, the claim made by the Petitioner 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:-



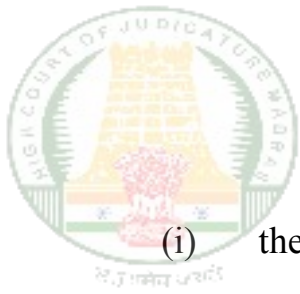
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“25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled 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 Petitioner had been absorbed in regular service after 01.04.2003, there is nothing precluding him 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:-



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(i) the Petitioner may make necessary 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 him for grant of pension;

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

(v) 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



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acknowledgment; and

(vi) 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, if any, 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.

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Sgl/kv

Index: Yes/No

Note: Issue order copy by 31.07.2023.

To

1. The Principal Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai – 600 003.
2. The Senior Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai – 600 003.
3. The Post Commander,
Railway Protection Force,
Gummidipoondi,



Tiruvallur District.

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P.D. AUDIKESAVALU, J.

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