



W.P. No. 7034 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

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

W.P. No. 7034 of 2023

S. Saravanan

... Petitioner

-VS-

1. The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Finance (Pension) Department,
Fort St. George, Chennai – 9.
2. The Additional Chief Secretary to Government,
Industries Investment Promotion and Commerce Department,
Secretariat, Chennai – 600 009.
3. The Commissioner,
Department of Geology and Mining,
Guindy, Chennai – 600 032.
4. The Director,
Department of Geology and Mining,
Guindy, Chennai – 600 032.

...
Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Second Respondent to consider the Third Respondent vide letter Rc.No. 1968/PM1/2020 dated 18.12.2022 and bring the Petitioner under the Old Pension Scheme Prevailed prior to implementation of Contributory Pension Scheme (CPS) vide G.O. No. 259 Finance (Pension) Department dated 06.08.2003 and transfer the pension contribution collected already from the Petitioner to Old Pensions



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For Petitioner : Mr. V.Prakash, Senior Counsel
for Mr. M.Karthikeyani

For Respondents : Mr. B.Vijay,
Additional Government Pleader

ORDER

Heard Mr. V.Prakash, Learned Senior Counsel appearing for the Petitioner and Mr. B.Vijay, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that he was selected for the post of Chemist in the recruitment conducted by the Tamil Nadu Public Service Commission in furtherance to the Notification dated 12.10.1999, but his appointment was made by Proceedings in Rc.No.4292/PM/1997 dated 27.05.2008 by the Fourth Respondent. Since the actual date of joining duty is after 01.04.2003, the Petitioner is not eligible for pension as per the Rule 11(4) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Pension Rules' for short). It is further brought to notice that taking into account the appointment of certain others prior to 01.04.2003 under the same recruitment notification, the Third Respondent by Proceedings in Rc.No.1968/PM1/2020 dated 18.12.2022 has



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recommended to the Second Respondent that the Petitioner may be extended the benefit of granting pension under the Pension Rules.

3. At this juncture, reference may be made to Rule 11(4) of the Pension Rules, 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 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;*



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(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



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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.*
- (iv) *Those Government servants who were appointed in the aforesaid four categories before the cut off date and*



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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.

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



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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



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considered. ...”

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It is informed that the Petitioner has also made a representation dated 13.03.2023 to the Respondents relying on the ruling of the Hon'ble Supreme Court of India in ***P.Ranjitharaj -vs- State of Tamil Nadu*** (Order dated 25.04.2022 in Civil Appeal Nos.3176-3177 of 2022) in respect of relief granted to persons similarly placed to him.

5. In such circumstances, the Writ Petition is disposed on the following terms:-

- (i) the concerned authority shall immediately examine the claim made by the Petitioner in his representation dated 13.03.2023 with reference to the relief granted by the Hon'ble Supreme Court of India in the decision in ***P.Ranjitharaj -vs- State of Tamil Nadu*** (Order dated 25.04.2022 in Civil Appeal Nos.3176-3177 of 2022) and the recommendation in the Proceedings in Rc.No. 1968/PM1/2020 dated 18.12.2022 made by the Third Respondent to the Second Respondent, as having been made 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 Pension Rules;



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- (ii) if it is found that the Petitioner has 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;
- (iii) 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;
- (iv) the report of such compliance shall be filed by 31.10.2023 before the Registrar (Judicial) of this Court; and
- (v) there shall be no order as to costs.

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sgl/skr

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 31.07.2023.



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To

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1. The Secretary to Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George, Chennai – 9.
2. The Additional Chief Secretary to Government,
Industries Investment Promotion and Commerce Department,
Secretariat,
Chennai – 600 009.
3. The Commissioner,
Department of Geology and Mining,
Guindy, Chennai – 600 032.
4. The Director,
Department of Geology and Mining,
Guindy, Chennai – 600 032.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600104.



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P.D. AUDIKESAVALU, J.

sgl/skr

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