



WEB COPY



W.P.No.10335 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **29.09.2023**

CORAM

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.10335 of 2021
and W.M.P.No.10916 of 2021

N.Saradha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 600 005.

3.The Commissioner,
Pollachi Municipality,
Pollachi – 642 001,
Coimbatore District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent pertaining to the impugned order passed in Na.Ka.No.4521/2018/B4, dated 23.10.2018 and quash the same and consequently direct the respondents to provide all the retirement benefits including pension with appropriate interest which are due to the petitioner's



W.P.No.10335 of 2021

husband namely Dr.A.Narayanasamy, who died on 24.05.2020 to the petitioner and further direct them to sanction family pension to the petitioner from the date of death of her husband on 24.05.2020 and to pay along with arrears and appropriate interest.

For Petitioner : Mr.L.Chandrakumar
for Mr.M.Vijaya Ragavan

For Respondents 1 & 2 : Mr.M.Shahjahan,
Special Government Pleader

For Respondent 3 : Mr.B.Anand

ORDER

The petitioner has filed this writ petition seeking to call for the records of the third respondent pertaining to the impugned order passed in Na.Ka.No.4521/2018/B4, dated 23.10.2018 and quash the same and consequently direct the respondents to provide all the retirement benefits including pension with appropriate interest which are due to the petitioner's husband namely Dr.A.Narayanasamy, who died on 24.05.2020 to the petitioner and further direct them to sanction family pension to the petitioner from the date of death of her husband on 24.05.2020 and to pay along with arrears and appropriate interest.

2. The case of the petitioner is that the petitioner's husband viz.,



W.P.No.10335 of 2021

Dr.A.Narayanasamy (Late) has completed Modern Medicine and Indigenous Medicine (Siddha) in the year 1955 at the Government College of Indigenous Medicine, Madras and registered as a Medical Practitioner with the Board of Integrated Medicine, Madras and his Certificate Number is No.416 dated 07.10.1965. His husband was appointed as a Medical Practitioner (Siddha) in Singanallur Panchayat Union Dispensary (Siddha) vide Ref.No.7600/63/A2 dated 17.08.1963 by the Panchayat Union Commissioner, Singanallur and the same was approved by the Director of Medical Services vide Letter B.No.248285/P&D III/63 dated 15.06.1964 and he took charge on 21.08.1963 and paid a fixed subsidy of Rs.100/- per month.

2.2. In the year 1965, the Singanallur Panchayat Union was upgraded as Municipality and converted as a full time dispensary and her husband continued as a Medical Officer of the said dispensary. Additionally, the petitioner's husband has also attended the Peelamedu Dispensary, whenever its Medical Officer went on leave. In these circumstances, on 25.06.1975, his husband was ousted from service without any notice and one B1 Class



W.P.No.10335 of 2021

Ayurvedic Practitioner was appointed with full scale of pay in his place by the order of the Inspector of Municipalities, Madras vide ROC No.14170/75/J1 dated 25.06.1975. However, the said order was passed mistakenly because, it was taken by the authorities as Ayurvedic Dispensary instead of Siddha Dispensary and also the order was passed without the knowledge of Panchayat Union Council, Singanallur. Hence, the Municipality Panchayat Union Council had passed a resolution No.316 dated 06.08.1975 stating that the above said order passed erroneously and the dispensary continued as Siddha Dispensary. This being so, the petitioner's husband has filed a W.P.No.1603 of 1979, before this Court and based on the order of this Court dated 01.04.1983, the petitioner's husband was re-appointed as a full time Medical Practitioner in Vellore Municipality Siddha Dispensary vide Proceedings No.18376/92/71 dated 01.03.1983.

2.3. In the meanwhile, the petitioner's husband sent several representations to the Director of Municipality Administration stating that due to the erroneous order of the authorities, there was a break of service from 25.06.1975 to 01.04.1983 and requested to treat that period as a duty



period and pay the arrears of salary. Subsequent to the said representations, the Government of Tamil Nadu vide G.O.RT.No.475 dated 30.11.1984, ordered to pay the backwages for the period from 02.07.1975 to 31.03.1983 at Rs.100/- per month for the total period of seven years eight months. Thereafter, her husband was transferred to Pollachi Municipality from Vellore Municipality on 04.06.1984 and retired from his service, after attaining the age of superannuation on 31.01.1989. Her husband had completed five years and ten months of continued service in both Vellore and Pollachi Municipality.

2.4. After his retirement, her husband made several representations to the authorities to provide pension and other terminal benefits to him, but they were repeatedly asked her husband to produce certain documents, even though the documents were produced several times at earlier. Finally, her husband made a representation dated 24.08.2018 by requesting the third respondent to sanction pension to him, but through impugned proceedings Na.Ka.No.4521/2018/B4 dated 23.10.2018, the third respondent rejected her husband's claim on the ground that he has been worked in permanent service



W.P.No.10335 of 2021

only for 5 years and 10 months in Vellore and Pollachi Municipality from 01.04.1983 to 31.01.1989 together. The order further asserts that her husband had not completed 10 years of permanent service for getting pension.

2.5. As against the order of rejection dated 23.10.2018, the petitioner's husband has preferred an appeal before the authorities and since, no order was passed, her husband preferred a writ petition vide W.P.No.4541 of 2020, seeking direction to dispose of the appeal. This Court vide its order dated 26.02.2020, dismissed the said petition as withdrawn with a liberty to challenge the rejection order passed by the second respondent. Thereafter, the petitioner's husband died on 24.05.2020 due to ill health. Thereafter, she could not approach this Court due to Covid-19 Pandemic situation and she is aged about 77 years and a Senior Citizen. After the retirement, till the date of his death, the petitioner's husband was doing social service by providing free treatment to some poor patients and by receiving minimum fee from some patients. Even till the year 2020, he received Rs.10/- as fee from poor peoples. Hence, challenging the aforesaid order dated 23.10.2018, the petitioner has come forward with the present writ petition.



WEB COPY

3. Learned counsel for the petitioner submitted that as per the G.O.No.437 Finance (Pension) dated 23.06.1988, the orders have been issued to count half of the service rendered under contingent establishment along with regular service for pensionary benefits and this Government Order is also applicable to all the Tamil Nadu Government Servants, Employees of Local Bodies and Aided Educational Institutions.

4. Learned counsel for the petitioner further submitted that based on the aforesaid Government Order, in a similar case, this Court in its reported judgment (2012) 4 MLJ page 539, directed the Secretary to Government, Finance Pension Department to pay pension adding half of the service rendered on part time basis with that of regular service. This Court has also referred G.O.Ms.No.39 dated 31.06.2011 that the Government reiterated the earlier instructions that the half of the part time service to be counter for pensionary benefits.

5. Learned counsel for the petitioner further contended that as per the



Rule 11(4) of the Tamil Nadu Pension Rules, 1978, 50% service rendered by the petitioner's husband before the date of regularization of his service has to be taken into account for the purpose of calculation of pension. In number of similar cases, this Court has ordered by directing the respondents therein to count 50% period of service rendered by the employees on Temporary/Part time along with regular service while calculating the pension benefits. Even though there are number of judgments, the petitioner is relying only on three judgments of this Court and the same is reads as follows:

(i) Reported judgment in (2012) 4 MLJ page 539

(ii) W.A.(MD) No.370 of 2019 in the case of K.Velmayil Vs., the Secretary to the Government & Others.

(iii) W.P. (MD) Nos. 14245 of 2018 batch.

6. Learned counsel for the petitioner has also relied on the judgment of the Full Bench of this Court in ***W.A.Nos.158 of 2016 etc., batch dated 03.12.2019*** and contended that due to erroneous order of the authorities, there was a break in service from 25.06.1975 to 01.04.1983 and the fundamental rights guaranteed under Article 14 and 21 are flagrantly violated. Hence, he prayed for allowing this writ petition.



7. Learned counsel appearing for the respondents has filed a counter affidavit dated 14.12.2022. For better appreciation, the relevant paragraphs are extracted hereunder:

“5. It is not correct that the petitioner’s husband was mistakenly ousted on 25.06.1975. It is true that the petitioner’s husband filed W.P.No.1603 of 1979. As per the orders of this Court and the letter of the second respondent bearing Na.Ka.No.18376/82/H1 dated 01.03.1983, the petitioner’s husband was appointed as full time Medical Practitioner on scale of pay of Rs.600-30-750-35-890-40-1050. Only from the said date, the petitioner’s husband worked as full time Medical Practitioner.

6. There is no representation of the petitioner’s husband available in the files of the respondents. As per the orders of this Court and by G.O.Ms.No.475 of Municipal Administration and Water Supply dated 30.11.1984, the petitioner’s husband was paid Rs.100/- per month for the period from 02.05.1975 to 31.03.1983. But, there is no order regularizing the said break in period. No order was passed to treat the period of 7 years 8 months as duty period.

7. The petitioner’s husband on 04.06.1984 was transferred to this respondent and retired on 31.01.1980 on attaining the age of superannuation and had put in only 5 years 10 months of regular service as admitted by the petitioner herself.”



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

9. The petitioner's husband was initially appointed as Medical Practitioner (Siddha) on 17.08.1963 by the Panchayat Union Commissioner, Singanallur and the same was approved by the Director of Medical Services. Due to the erroneous order passed by the Inspector of Municipalities, Madras vide Roc.No.14170/75/J1 dated 25.06.1975, the petitioner's husband was ousted from his service without any notice and wrongly appointed one Ayurvedic Practitioner. On 01.04.1983, her husband was re-appointed in Vellore Municipality Siddha Dispensary as a full time Medical Practitioner. This being so, her husband sent several representations to treat the period of break in service as duty period and pay arrears of salary. However, on 30.11.1984, the Government of Tamil Nadu vide G.O.Rt.No.475 dated 30.11.1984 ordered to pay her husband's backwages for the period from 02.07.1975 to 31.03.1983 at the rate of Rs.100/- per month for the total period of 7 years and 8 months. **Thereafter, her husband was transferred from Vellore Municipality to Pollachi Municipality on 04.06.1984 and**



retired on his superannuation on 31.01.1989. Her husband had completed only 5 years and 10 months of continued service in both Vellore and Pollachi Municipality.

10. The impugned order clearly asserts that her husband has not completed 10 years of permanent service for getting pension. In this regard, learned counsel for the petitioner has relied on the orders passed by this Court in a similar case and the same is reads as follows:

(i) Reported judgment in (2012) 4 MLJ page 539

(ii) ***W.A.(MD) No.370 of 2019 in the case of K.Velmayil Vs., the Secretary to the Government & Others.*** For better appreciation, the relevant portion of the order is extracted hereunder:

“17. In such circumstance, the judgment of Hon’ble Mr.Justice Vaidyanathan in M.Vellaian Vs. Secretary to Government, Department of Revenue and others may not hold good having regard to the specific provisions of Tamil Nadu Village Assistants Pension Rules, 1995. Leave alone the provisions of the Rules which have been given effect to our interpreted in several precedents including the two judgment relied upon by the learned Single Judge in this case in several judgments of Division Bench, this Court has taken a consistent view that the petitioners are entitled to count



50% of their past service they have rendered as Thalayaris upto 31.05.1995 along with the regular service for the purpose of pension. It is admitted that the decisions of this Court by the Division Bench have been confirmed by the Hon'ble Supreme Court in Several cases. It is also admitted that the Government has implemented the consistent view expressed by this Court in several individual cases. It was on account of the fact that some of the precedents and the applicable rules have not been brought forth by the Government Pleaders properly before some of the learned Judges of this Court, the issue which has been raised by the Government has been answered against the Government in several precedents and the ration settled by this Court has been followed and implemented in several individual cases by the Government. In such circumstances, this Court is of the view that there is no scope for reference to a larger Bench and that the order impugned in W.P.(MD)No.70 of 2019 is set aside. The writ petition in W.P.(MD)No.70 of 2019 stands allowed in tune with the earlier precedents of this Court. The first respondent is directed to pass orders counting 50% of the services of the appellant put in by him as Thalayari for the period from 07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant and Village Administrative Officer."

(iii) W.P. (MD) Nos. 14245 of 2018 batch.

11. Learned counsel for the petitioner further drew the attention of this Court to the last judgment passed by the Full Bench of this Court in



W.A.No.158 of 2016 etc., batch dated 03.12.2019. It is relevant to extract the paragraph 45 of the said order:

“45. In the light of the above, we answer the reference 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.

(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.”

The second clause applies to the case of the petitioner.

12. In view of the above factual matrix of the case and the ratio laid down by the Hon’ble Full Bench of this Court in W.A.No.158 of 2016 etc., batch dated 03.12.2019, this Court is of the considered view that the order passed by the third respondent in Na.Ka.No.4521/2018/B4,



W.P.No.10335 of 2021

dated 23.10.2018 is liable to be quashed and the same is hereby quashed.

WEB COPY

13. In the result, this writ petition stands allowed and the respondents are directed to provide all the retirement benefits including pension with 6% interest, which are due to the petitioner's husband who died on 24.05.2020 to the petitioner and to sanction family pension to the petitioner from the date of death of her husband on 24.05.2020 along with arrears along with 6% interest, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

vm

Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citations : Yes/No



WEB COPY



W.P.No.10335 of 2021

J.SATHYA NARAYANA PRASAD,J.

vm

To:

- 1.The Secretary to the Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 600 005.
- 3.The Commissioner,
Pollachi Municipality,
Pollachi – 642 001,
Coimbatore District.

W.P.No.10335 of 2021



WEB COPY



W.P.No.10335 of 2021

29.09.2023