



W.P.No.13452 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2023

PRONOUNCED ON : 06.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.13452 of 2021

J.Dayalan

... Petitioner

-Vs-

1.The Government of Tamil Nadu
Represented by its Secretary
Forest and Environment Department
Secretariat, Chennai - -9.

2. The Principal Chief Conservator of Forest
Having office at Panagal Maaligai
Saidapet, Chennai -15.

3.The District Forest Officer,
Villupuram Division,
Villupuram.

4.The Accountant General of Tamil Nadu
Office at DMS Compound,
Teynampet, Chennai-18.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 to 3 to count half of the service rendered by the petitioner from 14.12.1984 to



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06.08.2009 along with service rendered by the petitioner as Supernumerary plot Watcher so as to enable the petitioner to get family pension and consequently direct the respondents 1 to 3 to send revised pensionary proposal to the fourth respondent, direct the fourth respondent to pay family pension to the petitioner with all consequential benefits, retirement benefit, Pension, SPF and leave salary within a specified period as determined by this Court.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents : Mr.V.Ramesh,
Government Advocate for R1 to R3.
R4 – Served.

ORDER

Heard both sides and perused the records.

2. The case of the petitioner is that he was appointed as plot watcher (Daily wages) for Tindivanam Area, Department of Forest on 14.12.1984 and worked there till 06.08.2009 on daily wages. Subsequently, he was promoted as Supernumerary Plot Watcher and worked from 07.08.2009 to 11.05.2018. Thereafter, he was promoted as Night Watchman on 11.05.2018 and he retired from service on 30.11.2020. The grievance raised by the petitioner in this writ petition is with regard to inaction of the respondents to count half of



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the service rendered by him as plot watcher on daily wage basis from 14.12.1984 to 06.08.2009 along with his regular service as plot watcher (Supernumerary post) from 07.08.2009 to 11.05.2018.

3. The learned counsel for the petitioner submits that as per G.O.MS.No.408 Finance (Pension) department, Tamil Nadu Government dated 25.08.2009, 50% of the service of the petitioner as daily wagger, plot watcher from 14.12.1984 to 06.08.2009 should have been taken into account for calculating retirement benefit and pension. But, the respondents did not consider 50% of the petitioner's service as daily wage plot watcher i.e., from 14.12.1984 to 06.08.2009. Though, the petitioner retired from service on 30.11.2020, till date he did not receive any retirement benefits or pension.

4. The learned counsel further submits that the petitioner has submitted a representation dated 07.01.2021 to the first respondent requesting to count his 50% of service as plot watcher from 14.12.1984 to 06.08.2009. The said representation has not been considered by the respondents.



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5. The learned counsel would further submits that in an identical issue raised in WP.No.11949 of 2015 and the said writ petition was disposed of with a direction to the respondents 1 to 3 therein to count half of the service of the petitioner's husband as plot watcher on daily wage basis along with his regular service rendered as plot watcher (Supernumerary post) as qualifying service for the purpose of family pension. The learned counsel would further submits that the respondents have implemented the judgment in WP.No.11949 of 2015 vide G.O.(3D).No.20 Environment and Forest (FR-2) Department dated 28.04.2016 and thereby took into consideration 50% of the service and the period worked on daily wage for calculation of pension and consequential benefits. The learned counsel for the petitioner contends that the petitioner has rendered more than 35years of service with the respondents and he retired from service on 30.11.2020. But, he did not receive any retirement benefits viz., pension, SPF, leave salary, till date and due to that reason the petitioner is suffering for all these years.

6. On behalf of the 3rd respondent a counter affidavit has been filed.



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7. The learned counsel for the respondents contends that there were 5442 plot watcher in the seniority list prepared as per GO.Ms.No.64 Environment and Forests (FR.2) Department, dated 08.03.1999. They are all appointed in the regular post, subject to their qualification and as and when vacancy arises. The appointments made after 01.04.2023 in the Department have been granted pension and 50% of the daily wage service have been taken into account under Tamil Nadu Pension Rules. Thus the counting of 50% service of the daily wage to the petitioner would amount to discrimination.

8. It is further contended that there is no post of regular plot watcher and no service rules to the category of plot watcher. The petitioner was only engaged as plot watcher on daily basis. The petitioner who has not rendered regular service is not entitled for pension and the same is not provided in the Tamil Nadu Pension Rules.

9. Having heard the submissions of the respective counsel and on careful examination of the material available on record, it is clear that as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, 50% of the contingency



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services will be taken into account for the purpose of pension, if the employee is subsequently absorbed in regular service. This Court has passed orders in various writ petitions following the said rule.

10. In **R.Yuvaraj Vs. Government of Tamil Nadu, Rep by Secretary to Government** in **WP.No.33732 of 2014** dated **19.12.2014**, this Court directed the respondents therein to count half of the service of the petitioner therein as casual labourer along with regular service for the purpose of pension. The said order was implemented by the Tamil Nadu Veterinary and Animal Sciences University by issuing proceedings dated 24.02.2015.

11. In an identical issue in the case of **M.Gopal Vs. Government of Tamil Nadu, Rep by Secretary to Government** in **WP.No.8205 of 2011** dated **19.04.2011**, the order of the learned single judge was confirmed by the Division Bench of this Court in **WA.Nos.27 and 28 of 2012** dated **13.02.2012** in the case of **Government of Tamil Nadu, Rep by Secretary to Government Vs. M.Gopal.**



12. It appears that the Government had issued G.O.3D(20) Environment and Forest (FR-2) Department dated 28.04.2016, in compliance of the orders passed by the High Court Madras and Madurai Bench of Madras High Court in various writ petitions filed by 90 petitioners by taking into account 50% of service rendered by them as plot watchers on daily wages along with regular service for calculation of pension.

13. On a careful perusal of the earlier orders passed by this Court, in our considered view, the said orders are directly applicable to the facts and circumstances of the petitioner's case.

14. In our considered opinion, the respondents have committed mistake by not adopting the same analogy in the case of the petitioner to take into account 50% of the service rendered by him as plot watcher on daily wages from 14.12.1984 to 06.08.2009. It is the legitimate duty of the respondents to consider the representation dated 07.01.2021 submitted by the petitioner with a request to count his 50% of service as daily wage plot watcher to grant pension and other retiral benefits. But it was not considered.



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15. Under these circumstances, the writ petition is disposed of, with a direction to the respondents 1 to 3 to count 50% service of the petitioner as plot watcher on daily wage basis i.e, from 14.12.1984 to 06.08.2009 along with his regular service rendered as qualifying service for the purpose of calculating family pension and other monetary benefits, SPF, leave salary etc., within a period of three weeks from the date of receipt of a copy of this order.

16. No costs.

17. Consequently, connected miscellaneous petitions are closed, if any.

06.06.2023

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Index: Yes/No

Speaking order/Non Speaking order

Neutral Citation: Yes/No



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To
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BATTU DEVANAND, J.

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Pre-Delivery Order in

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