IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.17563 of 2018
and W.M.P.No. 20847 of 2018

A.G.Karthikeyan .. Petitioner

vs

1.State of Tamilnadu
Rep. By its Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai – 9.

2.The Director,
Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai – 15.

3.The District Collector,
Thiruvallur District,
Thiruvallur. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus Calling for the records of the 1st respondent herein in G.O.Ms.No.77 Rural Development (PA-4) Department dated 12.07.2013 in so far as the modification issued in para 4(a) and (b) of the said G.O and the order dated 13.04.2018 in Na.Ka. No.13924/ 2016/ P.A-2 on the file of the 3rd respondent herein and quash the same and consequently direct the respondents herein to forthwith sanction revised pension and other retirement benefits due to the petitioner herein by counting 50% of the service rendered by the petitioner herein in the post of Panchayat Clerk during 01.10.1979 to 25.12.1990 and pay arrears of difference in pension and other monetary benefits with due interest.

For Petitioner : Mr.V.R.Rajasekaran

For Respondents : Mr.V.Nanmaran
Additional Government Pleader

ORDER

Writ petition has been in the nature of a certiorarified mandamus questioning the proceedings of the District Collector, Thiruvallur, the third respondent in Na.Ka.No.13924/2016/PA2 signed on 13.04.2018 by which, the third respondent, placing reliance on G.O.(Ms).No.77, Rural Development (PA4) Department dated 12.07.2013 rejected the claim of the petitioner herein to consider 50% of the services rendered by him from 01.10.1979 to 25.12.1990 as services to be calculated toward pension.

2. The petitioner herein had joined as part time clerk at R.K.Pettai Panchayat Union on 01.10.1979. He was posted as Record Clerk on 10.08.1990, and further, promoted as Rural Welfare Officer Grade – II on 26.12.1990, and posted at R.K.Pet Panchayat Union. He was then promoted and finally posted as Block Development Officer. He retired on 31.12.2017 as Block Development Officer. However, his services for pension were counted only with effect from 26.12.1990, the date of joining the

post of Rural Welfare Officer Grade II / Junior Assistant. The earlier services from 01.10.1979 when he joined as part time clerk at R.K.Pet Pancyayat Union till 25.12.1990 when he was promoted as Junior Assistant were not taken into consideration.

3. The petitioner had given a representation seeking that 50% of that particular period between 01.10.1979 – 25.12.1990 should be counted for the purpose of pension.

4. A counter affidavit had been filed on behalf of the third respondent wherein, it had been stated that G.O.(Ms).No.408 Finance (Pension) Department dated 25.08.2009 provided that the services rendered in non-provincialised consolidated pay, daily wages and honorarium service shall be taken into consideration along with the regular service for the purpose of pension with a condition that the employee should have been appointed between 01.01.1961 and 01.04.2003.

5. Thereafter, the first respondent had issued G.O.(Ms).No.39, Rural Department and Panchayat Raj Department dated 13.06.2011 wherein it had been stated that the persons who have worked as part time Panchayat Clerk / full time Panchayat

Clerk / Panchayat Assistant Grade I and II, services in those post would be calculated only with respect to 50% of the number of years of services for consideration of pension. They should have been, however, appointed as Junior Assistant prior to 01.04.2003.

6. It had been thereafter stated that G.O.(Ms).No.77 Rural Development and Panchayat Raj (E-4) Department dated 12.07.2013 had been passed cancelling the inclusion of Part Time Services rendered by the Panchayat Assistant / Panchayat Clerks for getting pensionary benefits.

7. It had been, therefore, contended that since G.O.(Ms).No.77 had been passed, the petitioner was not eligible for calculation of 50% of the services rendered by him as Part Time Clerk while calculating the years for pension.

8. Learned counsel for the petitioner however placed reliance on the Division Bench judgment of this Court, in W.A.No.431 of 2016 dated 11.04.2016 *[Government of Tamil Nadu, Rep. By its Secretary, Rural Development Department and Panchayat Raj and others v P.Velliyangiri and Ors]*. In that particular judgment, the Division Bench held as follows:-

"4 The State Government took a policy decision by G.O.Ms.No.39, Rural Development and Panchayat (E5) Department dated 13 June 2011, (for short "G.O. Ms.No.39") whereunder, it was clearly observed that an employee, working in Panchayat as Full Time Clerk or Part Time Clerk and having been absorbed by the Government prior to 01 April 2003, will be entitled to counting 50% of the service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. Subsequently, the said Government Order, as pleaded by the learned Special Government Pleader appearing for the appellants, was amended by G.O.Ms.No.77, Rural Development and Panchayat Raj Department dated 12 July 2013 (for short "G.O. Ms.No.77"), whereunder, counting of 50% of service in case of Part Time Clerks was withdrawn.

5 In the case on hand, indisputably, the respondents 1 and 2 were absorbed as Junior Assistant before 01 April 2003, subsequent to which the first respondent was promoted as Assistant and retired from service on 31 December 2009 and the second respondent retired as Cashier on 30 June 2007. Thus, the respondents 1 and 2 are entitled to the benefit as granted in G.O.Ms.No.39 and the subsequent Government Order in G.O.Ms.No.77, would not be applicable to those employees, who were entitled to the benefit before issuance of the said Government Order.

6 The learned single Judge has rightly come to the conclusion that 50% of the service period put in by the respondents 1 and 2 under the consolidated pay by way of part time employment will be computed for pensionary benefits. We do not find any reason to take a view contrary to the one taken by the learned single Judge.

With the aforestated observations, the writ appeal stands dismissed. No costs. Consequently, connected C.M.P. is closed."

9. In that particular judgment also, the respondents had been appointed as Part Time Clerks in Soundarppur Village Panchayat, Gopichettypalayam Panchayat Union and Puduperkadavu Village Panchayat, Sathyamangalam Panchayat Union, respectively on 01.10.1971 and 01.09.1974. They were subsequently appointed as Panchayat Assistant and further promoted as Assistant with effect from 19.08.2004 and as Junior Assistant on 27.12.1990, respectively.

9.1 Even in that particular case, the respondents had sought consideration of 50% of the services which they have rendered as Panchayat Clerks to be considered for calculating pension. The Division Bench had also examined G.O.(Ms.)No.39 and G.O.(Ms.)No.77 and had finally stated that the services should be taken into consideration.

9.2 It was specifically held that G.O.No.77 would not be applicable to those employees who were entitled to the benefit before the issuance of Government Orders. In effect, it was stated that G.O.No.77 was prospective in nature and not retrospective. It is to be noted that G.O.No.77 Rural Development and Panchayat Raj Department was dated 12.07.2013.

10. In the instant case, the petitioner had been promoted as Junior Assistant / RWO GR.II on 26.12.1990. Therefore, since G.O.(Ms.)No.77 is only prospective in nature from the date on which it was passed, 12.07.2013, it would not be applicable to the petitioner herein. This would effectively means that G.O.(Ms.)No.39 alone would apply by which, the services of the Panchayat Clerks have to be regularised and taken into consideration for calculation of pension, of course to the extent of 50%.

11. A similar issue had come up for consideration before me in W.P.No.4033 of 2016 dated 10.07.2023 *[V.Nagarajan v The Principal Secretary to Government, Rural Development & Panchayats Department and others].* It had been held as follows:-

> *(9)However, as a concept, recognition of grant of pensionary benefits even for the service rendered as Part Time Panchayat Assistants, had not been questioned before the Court. It is the date of applicability of the order and the date from which the monetary benefit shall start to flow which is now under challenge before the Courts.*
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> *(10)My attention has been drawn by the learned counsel appearing for the 2nd respondent to a Division Bench judgment of the Madurai Bench of this Court in a batch of writ appeals in WA [MD] No.1629/2018 batch ? State of Tamil Nadu rep.by its Principal Secretary to Government, Revenue*

Department, Chennai and Others Vs. R.Balachandran. The Division Bench was concerned with the issue of entitlement of 50% of service rendered prior to the change of status as full time Government services for Village Headman/Thalaiyari and recruitment made afresh for erstwhile Karnams [Village Officers] appointed on hereditary basis.

(11)It is the contention of the learned counsel for the 2nd respondent that though the judgment referred to a different cateogry of posts, still the Division Bench had examined the issue whether the service rendered prior to the change of status from Part Time to Full Time could be considered towards pensionary benefits and whether 50% of such services could actually be taken into consideration while granting monetary benefits under the Tamil Nadu Pension Rules, 1978.

(12)The Division Bench, had finally, held as follows:-

"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 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 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."

....

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 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.--

(13)It must be kept in mind that the Division Bench was concerned with appointment of Village Officers who are governed by Tamil NaduVillage Servants Services Rules.

(14)It was stated that Rule 11[3] of Tamil Nadu Pension Rules, 1978, would act as an embargo so far as those employees are concerned.

(15)Rule 11[3] of the Tamil Nadu Pension Rules is as follows:-

11.Commencement of qualifying service:~

[1]........

[2]........

[3]Half of the service rendered by a Government servant under non~pensionable establishment shall be counted for retirement benefits along with regular service under pensionable establishment subject to the following conditions:-

i.Service under non~pensionable establishment shall be in a job involving whole time employment.

ii.Service under non~pensionable establishment shall be on time scale of pay and

iii.Service under non~pensionable establishment shall be continuous and followed by absorption in pensionable establishment without a break.

Provided that in respect of those who retired prior to the 14th February, 1996, the retirement benefit or revised retirement benefit, as the case may be, admissible to them shall be paid from the 14th February, 1996 and there shall be no claim for arrears in any case, for the period up to the 13th February, 1996.

(16)It applied to those who had retired prior to the date of the Government Order which Government Order was G.O.Ms.No.283, Finance [Pension] Department, dated 15.04.1996. In the very same Division Bench judgment, at paragraph No.21, it had been stated by the Division Bench as follows:-

"21.We are quite convinced with the entitlement of the respondents in the light of the discussions made. Our above said conclusion is also strengthened by the judgment of the Full Bench of this Court in Government of Tamil Nadu and others v. R.Kaliyamoorthy reported in 2019(6) CTC 705...".

(17)The one paragraph which would be relevant for the discussion in this particular case would

be paragraph No.42 of the Full Bench judgment which reads as follows:-

"42.The cut off date i.e. on or after 01.04.2003 in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 will not per se bar a person from getting pension if such a person had joined the service in accordance with the provisions of Tamil Nadu State and Subordinate Service Rules i.e in the cadre whether on temporary or permanent basis. Services rendered before the cut off date of 01.04.2003, can be added to the regular service only if the service was regularised before the said date for determining the qualifying service. Therefore, in our opinion, it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service."

(18)The question which was referred to the Full Bench was as follows:-

"Whether half of the past service rendered by Government servants whose appointments were regularised after 1.4.2003 can be counted for the purpose of grant of Pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O.Ms.No.259, Finance [Pension] Department, dated 06.08.2003 and G.O.Ms.No.41, Finance [Pension] Department, dated 08.02.2010."

(19)This had been answered by the Full Bench by stating that 50% service rendered by Government servants whose appointments were regularised after 01.04.2003 are not eligible for that particular service to be counted while granting pension. In the corollary, it would only mean that those who had been regularised before 01.04.2003 should be

granted the said benefit. This very judgment, would only come to the assistance of the petitioner herein. The Reference has been answered as follows:-

"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 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 employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such 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 before 01.04.2003 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"

(20)45[i] of the above very clearly states that

those who have been appointed prior to 01.04.2003 whether on temporary or permanent basis, will be entitled to get pension as per Tamil Nadu Pension Rules, 1978.

(21)Reference had also been drawn to Rule 11[4] of the Pension Rules. Rule 11[4] is as follows:-

"11[4] Half of the service rendered under the Sate Government in non-provincialised service, consolidated pay, honorarium or daily wage basis on or after 1st January 1961 in respect of Government employees absorbed in 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 wages basis on or after 1st January 1861 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.

(22)Though the learned counsel for the 2nd respondent stated that [i] above would apply, that may not be applicable since the other two aspects, namely service rendered on consolidated pay, honorarium or daily wages and those who had been subsequently absorbed in service alone would be eligible for absorption in regular service.

(23)In the instant case, the petitioner had been working as Part Time Panchayat Assistant from 07.01.1983 till 12.12.1990. He was appointed as full time Panchayat Assistant on 12.12.1990. He was absorbed in the Government service and promoted as Junior Assistant on 01.10.1995. Since he had been absorbed prior to 01.04.2003, applying the ratio above, he is entitled for pensionary benefits.

(24)Whether the petitioner is entitled for the monetary benefits and as from the passing of Government Order in G.O.Ms.No.99 or not, is an issue which will have to be examined by the respondents depending on the final outcome of the writ petitions which are now presently pending, questioning the date on which monetary benefit should be applicable. But, as a concept, I hold that the petitioner is entitled for 50% of his service rendered as Part Time Panchayat Assistant to be counted for grant of pension.

(25)Learned Government Advocate appearing for respondents 1, 3 and 4 stated that a learned Single Judge of this Court has taken a different view from the view taken by the Full Bench. But, as on date, the judgment of the Full Bench holds. Therefore, I hold that the petitioner is entitled to count the service rendered by him in the post of panchayat Clerk/Panchayat Assistant from 07.01.1983 to 28.12.1990 as qualifying service for pension. However, as regards calculation of the pension payable to the petitioner, I leave it to the

wisdom of the respondents.
(26)The writ petition stands allowed. No costs."

11.1 That particular writ petition was with respect to a petitioner, who had been originally appointed as Part Time Panchayat Clerk on 07.01.1983 and then was appointed as Full Time Panchayat Assistant on 28.12.1990 and subsequently as Junior Assistant on 01.10.1995. He was also promoted as Assistant and Deputy Block Development Officer. He retired, on attaining the age of superannuation, on 30.04.2015.

11.2 The issue which was examined was whether 50% of his service rendered between 07.01.1983 and 28.12.1990 can be counted for pensionary benefits.

11.3 After examining the issues as aforementioned, it had been held that it can be so counted for the purpose of pension.

12. The ratio stated above, applies with force to the facts of the present case.

13. In view of the above observations and also in view of the order of the Division Bench, I hold that the writ petition

deserves to be allowed and is accordingly allowed. The respondents herein are directed to count services rendered by the petitioner herein as Panchayat Clerk between 01.10.1979 – 25.12.1990 as qualifying service. Necessary proceedings should be issued within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

10.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

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Fort St.George, Chennai – 9.

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C.V.KARTHIKEYAN,J.

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