



WEB COPY



W.P.No.29194 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.29194 of 2017

V.Bhoopathi

... Petitioner

Vs.

1.The Government of Tamilnadu
rep by it Principal Secretary to Government
Rural Development and Panchayat Raj Department
Fort St.George, Chennai-600 009

2.The Principal Secretary to
Government of Tamilnadu
Finance Department,Fort St.George,
Chennai-600 009

3.The Commissioner of Rural Development and
Panchayat Raj
Panagal Buildings,
Saidapet, Chennai-600 015

4.The Principal Accountant General (A&E)
Tamilnadu,No.361, Anna Salai, Chennai-600 018.

5.The District Collector
Thiruvannamalai
Thiruvannamalai District-600 064

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of
Writ of Mandamus directing the respondents to count service from 20.11.1982 to



W.P.No.29194 o.

26.11.1996 14 years by implementing G.O.Ms.No.39 Rural Development and Panchayat Raj Development dated 13.06.2011 granting pensionary benefit for the purpose of pension and of which 50 % of his service is 7 years to be counted for the purpose of pension.

For Petitioner : Mrs.D.Malarvizhi

For Respondents : Dr.T.Seenivasan, Spl.G.P

ORDER

This Writ petition has been filed for issuance of Mandamus directing the respondents to count service from 20.11.1982 to 26.11.1996 14 years by implementing G.O.Ms.No.39 Rural Development and Panchayat Raj Development dated 13.06.2011 granting pensionary benefit for the purpose of pension and of which 50 % of his service is 7 years to be counted for the purpose of pension.

2. The case of the petitioner is that he was appointed as Part Time Clerk in Tahnipadi Panchayat in Thanderampattu Panchayat Union on 20.11.1982 on consolidated salary. The BDO, Tahndarampattu designated him as Panchayat Assistant on 01.01.1991. the petitioner was sponsored by Employment Exchange, Thiruvannamalai on 27.11.1996 as Physical Educational Teacher and posted in Palayanoor Government High School and retired on 30.09.2014. Pension was sanctioned for his service in the AG proceedings No.AG (A&E) PEN P10/11015216/2/R1015216 dated 01.12.2014 counting service from 27.11.1996 till



W.P.No.29194 o.

the date of retirement 30.09.2014 and prayed for part time clerk from 20.11.1982 to 26.11.1996 was not counted for the purpose of pension. The Government of Tamilnadu passed G.O.No.408 dated 25.08.2000 G.O.Ms.No.39, Rural Development Panchayat Raj Department dated 13.06.2011 for pensionary benefit wherein 50% of service rendered as a part time clerk has to be counted for the purpose of pension and prayed that part time clerk in the Panchayat from 20.11.1982 to 26.11.1996 14 years out of which 50% of the said service is 7 years should have been counted for sanction of pension. Hence, the present Writ Petition.

3. Dr.T.Seenivasan, learned Special Government Pleader appearing for the respondents 1 to 5 would submit that the petitioner has filed the petition in the cadre of Panchayat Assistant from 20.11.1982 to 26.1.1996 on consolidated pay basis along with his regular service as Physical Education Teacher in Education Department from 27.11.1996 till the date of his retirement on 30.09.2014 and to send necessary revised pensionary proposals to the 4th respondent to pay pension to the petitioner with all consequential benefits. As per G.O.Ms.No.408, Finance Department dated 25.08.2009, Government have ordered to count 50% of services rendered by Government services prior to 01.04.2003 for pension and other terminal benefits provided that said on contingent service should be a full time in nature, not part time. Though G.O.Ms.No.39, Rural Development and Panchayat (E5) Raj Department, dated 13.06.2011, Government have ordered that for those Panchayat



Assistants (Grade I & II) who have joined in Government Service as Junior Assistant prior to 01.04.2003, 50% of their consolidated pay service as Panchayat Assistant be included for pension calculation, subsequently in G.O.Ms.No.77, Rural Development & Panchayat Raj Department dated 12.07.2013, Government have ordered only full time employment under consolidated pay only countable for 50% calculation for pension and part time service does not qualify for counting pension. In the present case the petitioner as a sponsoree of Employment office appointed as Physical Education Teacher in Education Department. The petitioner was not absorbed as Junior Assistant in Rural Development Department under 20% quota for Panchayat Assistants. Hence, G.O.Ms.No.39, Rural Development & Panchayat (E5) Department dated 13.06.2011, cannot be applied and hence the petitioner does not qualify for counting 50% of part time service for pension calculation.

4. Having regard to the rival submissions made, the contentious dispute narrows down to the question as to whether the petitioner is entitled to count service from 20.11.1982 to 26.11.1996 14 years by implementing G.O.Ms.No.39, Rural Development and Panchayat Raj Development dated 13.06.2011 granting pensionary benefit for the purpose of pension and of which 50% of his service is 7 years to be counted for the purpose of pension.



5. Learned Special Government Pleader would rely on the Tamil Nadu Pension

Rules, 1978, wherein Sec.11(4) states as follows:

WEB COPY

“ 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 condition namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages 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 in subsequently absorbed in regular service under the State Government:-

(iii) Services rendered in non-provincialised service, consolidated pay, honorarium or daily wages shall be followed by absorption in regular service before 1st April 2003 without a break. ”



WEB COPY

6. The above 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.

7. Learned Special Government Pleader relied on the judgment of the Madurai Bench of Madras High Court in ***D.Nagarajan Vs. The Secretary to Government and Ors***, wherein it has been held as follows:

6. The said G.O.Ms.No.39, dated 13.06.2011 it was held that an employee, working in Panchayat as Full Time Clerk or Part Time Clerk and having been absorbed by the Government prior to 01.04.2003, will be entitled for counting 50% of service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. This G.O. is against Rule 11 (a) and therefore, the Government has issued another G.O.Ms.77, dated 12.07.2013, stating that the full time service alone can be considered for calculation of pensionary benefits. But these two G.Os were put to challenge before this Court and this Court



WEB COPY



W.P.No.29194 o.

has passed an order holding that para 4(b) in G.O.Ms.No.77, dated 12.07.2013 is struck down. The said paragraph 4(b) states if it is part time the same shall not be taken into account for calculating the pensionable service. This Court is of the considered view that even though the paragraph 4(b) is struck down, the Rule 11 (4) is still in force and the same is still holding the field. Moreover the Rule will prevail over the G.O.

8. The prayer of the petitioner to count 50% of service from 20.11.1982 to 26.11.1996 for pension cannot be considered as he was not absorbed as Junior Assistant under 20% quota and also his services were part time in nature.

9. Learned Special Government Pleader also relied on the judgment of this Court in W.P.No.9561 of 2014 dated 10.06.2022, wherein this Court has held as follows:

3.As per the amended Rule 11 (4) of the Tamil Nadu Pension Rules, temporary services can be taken into consideration to the extent of 50%. However, part time services cannot be taken into



WEB COPY



W.P.No.29194 o.

consideration for the purpose reckoning the qualifying services. The Full Bench of this Hon?ble Court also settled the principles in this regard. As per the amended Rule 11 (4) of the Tamil Nadu Pension Rules, the part time services rendered by an employee cannot be taken into consideration for the purpose of counting of 50% of their services. Thus, the petitioner is not entitled for counting of the part time services for the purpose of reckoning the qualifying service for pensionary benefits in accordance with the Tamil Nadu Pension Rules and thus, the writ petition is devoid of merits.

4. Accordingly, this Writ Petition stands dismissed. No costs. ”

10. It is submitted that the petitioner served as part time clerk from 20.11.1982 to 26.11.1996 which was a part time service. Hence, as per Rule 11(4) of Tamilnadu Pension rule and the judgments of this Court, the petitioner does not qualify for counting 50% of part time service for pension calculation.



W.P.No.29194 o.

WEB COPY

11. In view of the above said position, the petitioner is not entitled to the relief as prayed for and accordingly, the Writ Petition is dismissed. No costs.

20.11.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
kpr

To
1.The Principal Secretary to Government
Government of Tamilnadu
Rural Development and Panchayat Raj Department
Fort St.George, Chennai-600 009

2.The Principal Secretary to
Government of Tamilnadu
Finance Department,Fort St.George,
Chennai-600 009

3.The Commissioner of Rural Development and
Panchayat Raj
Panagal Buildings,
Saidapet, Chennai-600 015

4.The Principal Accountant General (A&E)
Tamilnadu,No.361, Anna Salai, Chennai-600 018.

5.The District Collector
Thiruvannamalai
Thiruvannamalai District-600 064



WEB COPY



W.P.No.29194 of 2017

V.BHAVANI SUBBAROYAN J.

kpr

W.P.No.29194 of 2017

20.11.2023