



W.P.No. 33043 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.33043 of 2018

and

W.M.P.No.20142 of 2021

Mrs. Moideen Fathima

.. Petitioner

Versus

1. The Principal Accountant General (A&E), Tamil Nadu,
O/o of the Principal Accountant General (A&E), Tamil Nadu,
361, Anna Salai, Teynampet, Chennai 600 018.

2. The District Collector
Thiruvallur District, Thiruvallur.

3. The Block Development Officer,
Poonamallee Panchayat Union,
Tiruvallur District.

.....Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to impugned letter dated 22.10.2013 in No.P3/10309279/420 of the first respondent and quash the same and



W.P.No. 33043 of 2018

further direct the respondents to count the services rendered by the petitioner's husband, Mr.H.M.Anwar for the period from 01.01.1982 to 07.02.1995 in the post of clerk along with regular service for the purpose of pension and other benefits and pass orders.

For Petitioner :M/s. A. Raja Mohamed

For Respondent-1 :Mr. V. Murali

For Respondent -2 : Mr.T.M. Rajangam

For Respondent -3 : Mr.S. Ravi Kumar

ORDER

This writ petition is filed seeking a writ of Certiorarified Mandamus to call for the records pertaining to impugned letter dated 22.10.2013 in No.P3/10309279/420 of the first respondent and quash the same and further direct the respondents to count the services rendered by the petitioner's husband, Mr.H.M.Anwar for the period from 01.01.1982 to 07.02.1995 in the post of clerk along with regular service for the purpose of pension and other benefits.



W.P.No. 33043 of 2018

WEB COPY

2. The case of the petitioner is that her husband by name H.M.Anwar(late) worked as a clerk for a period of 13 years i.e from 01.01.1982 to 07.02.1995 for a consolidated pay and thereafter his services was regularized only on 08.02.1995 and he superannuated on 28.02.2013. The grievance of the petitioner is that while arriving the pension amount the service rendered by her husband from 01.01.1982 to 07.02.1995 was not taken into account and the services rendered from 08.02.1995 to 28.02.2013 was alone taken into account.

3. Before adverting further it would be relevant to go through the Judgment passed by this Court while dealing with the identical facts of the case in a batch of petitions in W.P.Nos.23847, 23848, 26583, 26785 and 28878 of 2013 wherein they have allowed the writ petitions. For better appreciation, relevant portion of the said order is extracted below:

8. In this context, it is useful to refer the unreported Judgment of the Madurai Bench of this Court dated 19.11.2013 made in W.P.No.16711 of 2013, wherein this Court has held that if in terms of clause 4(c) of G.O.Ms.No.77 dated 12.07.2013, rights have been accrued to the persons, who have retired



prior to the issuance of the G.O.Ms.No.77 dated 12.07.2013, the same cannot be taken away by means of subsequent G.O., it is useful to refer the relevant portion of the said Judgment.

*“13. Regarding the contention of the learned counsel for the fifth respondent that neither G.O.Ms.No.39 nor G.O.Ms.No.77 can override the statutory rule, I have to say that at the same time, the Fundamental Right which is sacrosanct as guaranteed under Article 14 of the Constitution of India cannot be violated by a Statutory Rule. When the Government itself has taken a policy decision to extend the benefit of G.O.Ms.No.39 to some persons, there cannot be any discrimination in respect of the petitioner alone. Therefore, in my considered opinion, in respect of those persons who have retired prior to the issuance of G.O.M.S.No.77, **since right had accrued in them under G.o.Ms.No.39, the services rendered by them as part Time Panchayat clerks should be taken into account and 50% of the services should be counted for the purpose of pension.** This is in tune with the equality clause of Article 14 of the Constitution of India. Such a course alone will avoid discrimination.*

4. On a perusal of records, this Court observed that the facts in the present case and the facts of the case in the above Judgment is one and the same. Therefore, this Court is of the view that the benefits extended to other persons in the decision rendered by this Court in the similar facts of the case may be extended to the petitioner herein.



W.P.No. 33043 of 2018

WEB COPY

5. In the result, this writ petition is allowed. No order as to costs.

Consequently, connected miscellaneous petitions is closed.

31.10.2023

Speaking order : Yes/No

Neutral citation : Yes/No

Index : Yes/No

smn

To.

1. The Principal Accountant General (A&E), Tamil Nadu,
O/o of the Principal Accountant General (A&E), Tamil Nadu,
361, Anna Salai, Teynampet, Chennai 600 018.

2. The District Collector
Thiruvallur District, Thiruvallur.

3. The Block Development Officer,
Poonamallee Panchayat Union, Tiruvallur District.



WEB COPY



W.P.No. 33043 of 2018

V.BHAVANI SUBBAROYAN, J.

smn

W.P.No.33043 of 2018
and
W.M.P.No.20142 of 2021

31.10.2023