



W.P(MD)No.1372 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD)No.1372 of 2019
and
W.M.P(MD)No.1184 of 2019

M.Manoharan

... Petitioner

Vs.

1.The Principal Secretary
to Government of Tamilnadu,
Rural Development and Panchayat Raj,
Secretariat,
Chennai - 600 009.

2.The Commissioner,
Directorate of Rural Development and Panchatraj Department,
Panagal Building,
Saidapet,
Chennai-600 015.



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3.The Principal Accountant General,
Accounts and Establishment,
361, Anna Salai,
Tenampettai,
Chennai - 600 018.

4.The District Collector,
Pudukkottai.

5.The Block Development Officer,
Office of Panchayat Union,
Aranthangi,
Pudukkottai District.

... Respondents

PRAYER : 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 of the third respondent, dated 06.12.2017 and quash the same as illegal and arbitrary and further direct the respondents to take into account of 50% of the service of the petitioner as Panchayat Assistant and Panchayat Clerk from 14.04.1983 to 31.01.1995 for pensionary benefits and refix the pension and award the arrears of the pension.



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For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.A.Kannan - for R1, R2 & R4

Additional Government Pleader

Mr.P.Gunasekaran - for R3

Mr.A.K.Baskara Pandian - for R5

ORDER

Heard Mr.P.Ganapathi Subramanian, learned counsel for the petitioner, Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents 1, 2 and 4, Mr.P.Gunasekaran, learned Standing Counsel appearing for the third respondent and Mr.A.K.Baskara Pandian, learned Standing Counsel appearing for the fifth respondent and perused the materials available on record.

2. The grievance of the Writ Petitioner raised in this Writ Petition is for not taking into account of 50% of the service of the petitioner as Panchayat Assistant and Panchayat Clerk from 14.04.1983 to 31.01.1995 for calculating pensionary benefits and to refix the pension and award the arrears of pension.



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3. The case of the petitioner is that he was appointed as Panchayat Clerk on 14.04.1983 in the office of Koovilur Village Panchayat and the nature of work assigned to him was full time and from 01.09.1991 onwards he was worked as Panchayat Assistant till 31.01.1995 and thereafter, he was promoted as Junior Assistant in the office of Panchayat Union, Aranthangi and then promoted as Assistant on 11.10.2000 and further promoted as Deputy Block Development Officer and joined duty at the office of the Panchayat Union, Aranthangi. He retired from service on September, 2017 on attaining the superannuation.

4. The learned counsel for the petitioner submits that the fifth respondent vide proceedings, dated 15.11.2017 sent a proposal to the third respondent by taking into account 11 years 18 months and 18 days of the petitioner's service as Panchayat Assistant and 50% of the same was treated as qualifying service for pensionary benefits. But the third respondent while granting pension benefits to him by order dated 06.12.2017 failed to take into account of the service rendered by him as Panchayat Assistant for grant of pensionary benefits. Aggrieved by the



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same, the petitioner has filed this Writ Petition.

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5. The learned Additional Government Pleader appearing for respondents 1, 2 and 4 and the learned Standing Counsel appearing for respondents 3 and 5 submitted that the petitioner is not entitled for the relief sought in the Writ Petition, in view of the fact that he was worked as part time Clerk from 14.04.1983 to 31.01.1995. As per the amended Rule 11(4) of the Tamil Nadu Pension Rules, any part time service of the employees cannot be taken into account for considering the pensionary benefits.

6. In the present case, admittedly the petitioner worked as part time Panchayat Clerk from 14.04.1983 to 31.01.1995 and as such, it is clear that the petitioner is not entitled for the benefit of 50% of the qualifying service for pensionary benefits.

7. The learned Additional Government Pleader placed a copy of the order, dated 14.12.2021 in W.P.(MD)No.6486 of 2017 and order, dated 05.04.2022 in W.P.(MD)No.1654 of 2021.



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8. On careful perusal of the said orders, it appears that in identical case, the Full Bench of this Court in ***Government of Tamil Nadu and others Vs. R.Kaliyamoorthy*** reported in **2019 (6) CTC 705** has observed as extracted herein under :-

"6.Rule 11(4) unambiguously stipulates that the job must be whole time employment. Therefore, the temporary employees appointed for whole time job alone are entitled for counting of 50% of their services. The part time employment cannot be considered for counting of the service as per Rule 11(4) of the Rules. Thus, the Division Bench judgment cannot be followed, as it was overruled by the Hon'ble Full Bench of this Court and further Rule 11(4) also categorically enumerates that the temporary employees appointed in full time employment are alone eligible for counting of 50% of their services for the purpose of reckoning the required service for grant of pensionary benefits."



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9. In W.P.(MD) No.6486 of 2017, this Court observed as extracted herein under :

"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 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.



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Therefore this Court is of the considered opinion that the service rendered from 01.03.1986 to 31.12.1990 cannot be taken into account."

10. In view of the facts and circumstances of the case that the petitioner was worked as only part time Clerk from 14.04.1983 to 31.01.1995 is not entitled to count the said service for pensionary benefits, as per the Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

11. Accordingly, for the reasons stated above, this Writ Petition is dismissed.

12. No costs.

13. Consequently, connected miscellaneous petition is closed.

22.08.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No
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BATTU DEVANAND, J.

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