



W.P(MD)No.21662 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.21662 of 2017

T. Ebenezar

...Petitioner

Vs.

1. The Secretary to Government,
Social Welfare & Nutritious Meal
Programme Department,
Government of Tamil Nadu,
Secretariat, Chennai – 9.
2. The Director,
Directorate of Social Welfare,
Government of Tamil Nadu,
Guindy, Chennai -32.
3. The District Social Welfare Officer,
Tirunelveli District,
Tirunelveli.
4. The Block Development Officer,
Shenkottai Panchayat Union,
Shencottai,
Tirunelveli District.
5. The Accountant General,
No. 361, Anna Salai,
Chennai – 600 015.

....Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records in respect of the proceedings of the first respondent in Letter 4461/SW7/(1)/2017-1 dated 04.04.2017 and consequently directing the respondents to grant pension to the petitioner from the date of retirement taking into account the entire period of service as Rural Welfare Officer (Woman) from 01.10.2008 to 30.06.2010 and the 50 % of the service rendered by her as Child Welfare organizer from 05.02.1981 to 30.09.2008.

For Petitioner : Mr.V.Kannan

For R1 to R3 : Mr.P.Subbaraj
Special Government Pleader

For R4 : Mr.P.Athimoolapandian

For R5 : Mr.P.Gunasekaran

ORDER

Heard Mr.V.Kannan, learned counsel for the petitioner, Mr.P.Subbaraj, learned Special Government Pleader appearing for the respondents 1 to 3, Mr.P.Athimoolapandian, learned counsel for the 4th respondent and Mr.P.Gunasekaran, learned Standing Counsel appearing for the 5th respondent and perused the materials available on record.



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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 Child Welfare Organizer from 05.02.1981 to 30.09.2008 for calculating pensionary benefits and to refix the pension and award the arrears of pension.

3. The case of the petitioner is that the petitioner was appointed as Balasevika on 24.08.1978 at Tenkasi Panchayat Union and from 05.02.1981 onwards she was worked as Child Welfare Organizer and thereafter, she was promoted as Rural Welfare Officer in Shencottai Panchayat Union on 30.09.2008. She retired from service on 30.06.2010 on attaining the superannuation.

4. The learned counsel for the petitioner submits that the 4th respondent vide proceedings, dated 05.08.2010 sent a proposal to the fifth respondent. The fifth respondent returned the pension proposal stating that the petitioner was promoted only with effect from 30.09.2008 i.e after 01.04.2003 and therefore, the petitioner was governed by contributory pension scheme only and not under Tamilnadu Pension



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Rules. The petitioner sent a representation dated 22.12.2016 requesting the respondents to grant pension from the date of her retirement taking into account the entire period of service. Since no action was taken on her representation, the petitioner has filed W.P(MD)No.3547 of 2017 and this Court by order dated 01.03.2017 directed the first respondent to consider the representation dated 22.12.2016. In pursuance thereof, the first respondent rejected the claim of the petitioner by the impugned order dated 04.04.2017. Aggrieved by the same, the petitioner has filed this Writ Petition.

5. The learned Special Government Pleader appearing for respondents 1 to 3 basing on the averments in the counter affidavit submitted that since there were contrary decisions rendered in Principal Seat as well as in this Bench, the matter was referred to a larger bench in W.P(MD)Nos.1553 to 1561 of 2016 and hence, the petitioner is not entitled for the relief sought in the Writ Petition.

6. The learned Special Government Pleader placed a copy of the common judgment made in W.A(MD)Nos.587 and batch dated



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03.12.2014 and the order dated 22.08.2023 passed in W.P(MD) No.1372 of 2019. Paragraph Nos.7 to 9, of the order dated 22.08.2023 is extracted herein under:

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.

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



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purpose of reckoning the required service for grant of pensionary benefits."

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. Therefore this Court is of the considered opinion that the service



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rendered from 01.03.1986 to 31.12.1990 cannot be taken into account."

7. In view of the facts and circumstances of the case that the petitioner worked as Child Welfare Organizer from 05.02.1981 to 30.09.2008, she is not entitled to count the said service for pensionary benefits, as per the Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

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

9. No costs.

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Index : Yes / No
NCC : Yes / No
CM



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BATTU DEVANAND, J.

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