



W.P.No.2323 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

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P.Velayutham

...Petitioner

-Vs-

1. The Government of Tamilnadu
Rep. By its Principal Secretary,
Environment and Forest Department,
Fort St., George, Chennai-600 009.
2. The Principal Chief Conservator of Forest,
Panagal Building, Saidapet,
Chennai-15.
3. The District Forest Officer,
Vellore Forest Division,
Vellore-9.
4. The Accountant General of Tamilnadu,
Office of the Accountant General (A&E),
Teynampet, Chennai-18.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 3 to count half of service rendered by petitioner as plot watcher on daily wage basis from 07.08.2009 (supernumerary post) and from 10.04.2017 Regular post



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as forest watcher) till the date of his retirement on 31.01.2021 as qualifying service for purpose of granting pension benefits to petitioner and the same was sent a proposal to the 4th respondent.

For petitioner : Mr.P.Ganapathy
For respondents : Dr.T.Seenivasan,
Special Government Pleader

ORDER

This writ petition has been filed for direction to the respondents 1 to 3 to count half of service rendered by petitioner as plot watcher on daily wage basis from 01.07.1983 till 06.08.2009 along with regular service from 07.08.2009 and from 10.04.2017 in regular post as Forest Watcher.

2. The petitioner was appointed as Plot Watcher on 01.07.1983 on daily wage basis. As per G.O.Ms.No.64, Environment and Forest Department, dated 08.03.1999, thereby seniority list was prepared for the purpose of providing permanent appointment to the plot watchers. Accordingly, G.O.Ms.No.95, Environment and Forest Department dated 07.08.2009 was issued thereby permitting regularization of plot watchers.



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Accordingly, the petitioner was regularized in the cadre of Supernumerary post as Plot Watcher by proceedings dated 29.08.2009 and he was fixed time scale of pay.

3. Thereafter, G.O.Ms.No.46, Environment and Forest Department (FR-2-II) dated 10.04.2017 informed as one time measure to 206 supernumerary plot watchers, who are below 163cm as required height and they are regularized as forest watcher and fixed service benefit of regular mali in the scale of pay. Accordingly, the petitioner was allotted to Social Forestry Circle, Vellore. Now, the petitioner seeks to consider 50% of his service as plot watcher on daily wage basis from 01.07.1983 till his regularization. As per the Rule 11(2) and 11(4) iii of TamilNadu Pension Rules 1978, the petitioner service was regularized only from 29.08.2009 and subsequently absorbed to the post of Forest Watcher only from 10.04.2017. Tamilnadu Pension Rule 11(2) indicated that the half of service period from contingencies shall be allowed to be counted towards qualifying service for pension along with regular service with following conditions:



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i) *Service paid from contingencies shall be in a job involving whole time employment and not part-time for a portion of the day.*

ii) *Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned.*

4. As per Tamilnadu Pension Rule 1978 in Rule 11(4) iii, indicate as to half of the services rendered under the State Government in non-provincialised services, consolidated pay, honorarium or daily wages on or after 1st January 1961.

5. Therefore, for the service rendered in non-provincialised services, consolidated pay, honorarium or daily wages on or before 01.04.2003 without a break, the cut-off date fixed as persons recruited on or after 01.04.2003 are not eligible to get old pension scheme. In this regard, in the W.A.No.1491 of 2014, this Court referred order in W.A.No.158 of 2016 dated 03.12.2009 by Full Bench of this Court wherein the following reference was made:



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"46. 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 the 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 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 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."

5. Clause (iv) of the above paragraph specifically stated that the Government servants, who are appointed after the cut-off date of 01.04.2003, will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension. Admittedly, the first respondent / writ petitioner was regularised



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only on 07.08.2009. Hence, he will not be entitled to the above benefits.

6. The learned counsel appearing for the second respondent / third respondent also conceded to the fact that the decision of the Hon'ble Full Bench is applicable to the facts of the case.

7 In view of the decision of the Hon'ble Full Bench (cited supra), the Writ Appeal stands allowed and the order of the learned Single Judge is set aside. No costs. Consequently, connected Miscellaneous Petition is closed."

6. Thus it is clear that those government servants appointed in the feeder category before 01.04.2003 and were absorbed in the regular service after 01.04.2003, may not be entitled for half of the past service for the purpose of determination of qualifying service pension. Therefore, the case of the petitioner cannot be considered and the writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs.

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Index : Yes/No

Internet: Yes/No

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G.K.ILANTHIRAIYAN,J.
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