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W.P.No.18678 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.18678 of 2012
and
M.P.Nos.1 and 2 of 2012

R.S.Sambanthamorthy

Vs.

..Petitioner

1. Government of Tamil Nadu,
Rep. By its Secretary to Government,
Revenue Department,
Chennai – 600 009.
2. The Collector,
Vellore District,
Vellore – 9.
3. The Accounts Officer,
Principal Accountant General,
(A&E) Tamil Nadu,
361, Anna Salai,
Chennai – 600 018.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of writ of certiorarified mandamus calling for the records of the proceedings of the second respondent in O.Mu.(A5)5547/12 dated 16.02.2012 and quash the same and consequentially directing the respondents to count the service of the petitioner in the post of Maniam from the period 21.10.1976 to 14.11.1980 and sanction pension and



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disburse the arrears along with interest.

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For petitioner	:	Mr.A.Sundaravadanan
For R1 & R2	:	Mr.M.Murali
		Government Advocate
For R3	:	Mr.Vijaya Shankar

ORDER

This writ petition is filed seeking to quash the proceedings in O.Mu.(A5)5547/12 dated 16.02.2012 and consequentially directing the respondents to count the service of the petitioner in the post of Maniam from the period 21.10.1976 to 14.11.1980 and sanction pension and disburse the arrears along with interest.

2. The facts in brief as culled out from the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner was appointed as Maniam at Ramanaickenpettai Village, for the period from 21.10.1976 to 14.11.1980 and he was working without any blemishes.

2.2. According to the ordinance of Government of Tamil Nadu, the



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post of Maniam and Karnam were abolished and subsequently, the petitioner was removed from the post of Maniam. As per Act 3 of 1981, the post of Village Administrative Officer was created and persons who possess the required qualifications could apply. While so, similarly placed persons who were removed from service as Karnam / Maniam and who possessed the required qualifications, were also appointed to the post of Village Administrative Officer. The petitioner was also appointed as Village Administrative Officer and was working from 23.12.1988.

2.3. The petitioner, on attaining the age of superannuation, retired on 31.08.2003 and was receiving his pension. But, the petitioner's grievance is that his pension was calculated by taking into account the service rendered by him from the date of his appointment as a Village Administrative Officer and not by reckoning his service as a Maniam from 21.10.1976 to 14.11.1980. Hence, aggrieved, the petitioner addressed a representation to the second and the third respondents to count his service in the post of Maniam for the period 28.08.1969 to 14.11.1980 for the purpose of pension. Whereas, the petitioner's request was rejected stating that G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, is not applicable to him and hence, the service rendered by him in the post of



Maniam cannot be reckoned for the purpose of determining his qualifying service for computation of his pension.

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3. It is submitted by the learned counsel for the petitioner that the Tamil Nadu Pension Rules, 1978, has been amended and the amended Rule 11 (4) was not considered in the case of the petitioner. The petitioner was paid an honorarium on monthly basis from the date of his initial appointment as Maniam but, the respondents failed to consider the amended rule and did not count the petitioner's service in the post of Maniam and hence, this writ petition seeking the relief as stated in the opening paragraph.

4. When this matter was taken up for hearing, Mr.Vijaya Shankar, learned counsel for the third respondent, circulated a judgment of a Division Bench of this Court in State of Tamil Nadu and others Vs. E.Balachandran, reported in (2021) 3 MLJ 92, the relevant portion of which is extracted for better appreciation and understanding:

“18. We have already took note of the relevant Rules. A perusal of the Tamil Nadu Village Servants Conduct Rules, 1983, clearly states the status and position of Writ Petitioners. Certainly, they come under the definition 'Village Assistants'. However, Rule 3, which facilitate a Village Servant to take job



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of part-time work or occupation, makes it abundantly clear that he is only a part-time Government Servant. Similarly, Rule 14 of Tamil Nadu Village Servants Service Rules, 1980, which gives a succour to a part-time Government servant, as that of the respondents, gives a specific compensation. A conjoint reading of the aforesaid Rules would show that a Village Servant/Assistant was having a part- time service alone.

19.Now, let us go into the subsequent Government Orders passed, followed by Rules viz., Tamil Nadu Village Assistants Pension Rules, 1995. We have already discussed the Government Order, which came into existence only at the instance of the respondents Village Assistants, who were working in such capacity as part timers. For the first time, under the said Government Order, a regular time scale of pay came into existence. This is a very important point to be noted with respect to the status of the respondents as part-time Talayaris and they have been brought into regular Government Service. Therefore, regular time scale of pay was fixed with effect from 01.06.1995. The subsequent Rules have been framed to take care of their interest. We may note that Rule 2 to reiterate the aforesaid position, which does not create any doubt in our mind. Under Rule 7, the eligibility of a Village Assistant would arise only when a Village Assistant renders qualifying service. Similarly, under Rule 4(a), the length of service for calculation of pension and gratuity, temporary, officiating and0 permanent (full-time) service alone should be reckoned as qualifying service. Now, this Rule has been given a go-bye. Resultantly, what the respondents (Talayaris) seek is a relief contrary to their regularization order, by which, they were brought under the regular time scale of pay with effect from 01.06.1995 and the Rules framed thereafter. Therefore, they cannot approbate and reprobate and it is only on their request, part-time service was converted into full-time service



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prospectively, creating the status of regular post with regular time scale of pay.”

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5. Heard both sides and perused the materials available on record.
6. The issue involved in this writ petition lies in a very narrow compass, i.e, whether the petitioner's service in the post of Maniam from 21.10.1976 to 14.11.1980 has to be reckoned while determining the qualifying service for the purpose of calculating his pension.
7. The aforesaid issue is no longer *res intergra* in view of the Division Bench judgment in E.Balachandran, *supra*, relied upon by Mr.Vijaya Shankar, the learned Senior Counsel for the third respondent.
8. In the light of the foregoing discussion and the ratio laid down by the Division Bench of this Court, this Court is of the considered view that the writ petitioner is not entitled to the relief sought for by him and the writ petition is liable to be dismissed.
9. In the result, this writ petition stands dismissed. Connected

M.Ps are closed. No costs.



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Index : Yes/No
Internet : Yes/No
Citation : Yes/No
Speaking Order : Yes/No

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