



W.P.No.5997 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.5997 of 2022
and WMP.No.6081 of 2022

1. A.Arumugham
2. E.Masi
3. Narayanan
4. Jeevarathinam
5. Perumal
6. Palanisamy
7. Asha
8. Sattiya
9. Murugan
10. Vissalatchy

... Petitioners

Vs.

1. Union of India
By its Chief Secretary

2.The Under Secretary to Government
Rural Development
Chief Secretariat
Puducherry

3.Project Director
Directorate of Rural Development
Puducherry – 605001.

4.Project Executive Officer
Directorate of Rural Development



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Block Development Office
Puducherry

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5.The Central Administrative Tribunal
Madras Bench
By its Registrar
High Court Buildings, Chennai – 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 5th respondent Tribunal in OA.No.1331/2015 dated 30.11.2021 and quash the same and consequently direct the 2nd respondent to apply the old pension scheme to the petitioner for the purpose of pensionary benefits.

For Petitioners : Mr.J.Srinivasa Mohan
for M/s.TVJ Associates.

For Respondents : Mr.R.Syed Musthafa
Spl.GP (Puducherry) for R1 to R4.
R5 – Tribunal.

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

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The lis on hand has been instituted challenging the order of the Central



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Administrative Tribunal, Chennai bench dated 30.11.2021 passed in

OA.No.1331 of 2015.

I. PETITIONERS CASE

2. The present 10 writ petitioners were engaged as Honorary Rural Organisers by the 4th respondent/Project Executive Officer, Directorate of Rural Development, Puducherry between the years 1985 & 1991. This project related rural organisers on honorary basis were appointed to assist the Gramasevak for effective implementation and monitoring of various schemes / programmes floated by the Government of India. Since, they were allowed to continue as honorary rural organisers fairly for a longer period, they made a request to the respondents to regularise them in a sanctioned post. However, the respondents engaged them as daily rated employees w.e.f. 01.10.2002. However, they were not engaged as daily rated employees in a sanctioned post or in a cadre. These petitioners were allowed to continue as daily rated employees for about four years. Again they made a representation to the Government, to observe them in regular establishment. The Government considered their request and created required number of posts of Sevak on 13.12.2005. In the newly created post of sevak all the writ petitioners were appointed in the regular establishment with effect from 01.01.2006.



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WEB COP 3. The order of appointment as honorary rural organsiers reveal that they were receiving honararium for the services rendered by them in various projects and schemes of Government of India. Subsequently, they were appointed as daily rated employees and they were engaged initially for a period of six months and continued time to time.

4. Admittedly, all the writ petitioners were appointed in a sanctioned post in the time scale of pay w.e.f. 01.01.2006 in the newly created post of sevak which were created on 13.12.2005.

5. The grievances of the writ petitioners are that they cannot be construed as newly entrant in the regular service w.e.f. 01.01.2006, since they were continuously working as honorary rural organisers and daily rated employees and those services also to be reckoned for the purpose of calculating qualifying services under the CCS pension rules for grant of old pension under the provisions of CCS pension rules.

6. Mr.Srinivasa Mohan, learned counsel appearing on behalf of the petitioners would mainly contend that the Courts have held that the temporary



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engagements/appointment cannot be treated as new appointments. The services rendered by the employees on daily rated basis and as honorary rural organiser also to be taken into consideration for the purpose of calculating the qualifying services under the pension rules. Thus the Central Administrative Tribunal committed an error in appreciating the facts.

7. The learned counsel would mainly relied on judgment of the Division Bench of this Court in the case of **Union of India rep by the Secretary, Atomic Energy Commission, Ministry of Atomic Energy v. Punniyakoti and others** reported in **CDJ 2014 MHC 1491**, this Court observed in para 17 as follows :-

“17. The word "new entrant" has got a definite meaning, "a person, who enters recently". A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 1.1.2004, cannot be termed as "new entrant" into service. The new Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 1.1.2004. ”



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8. The comparison of Tamil Nadu Pension Rules also referred by the Division Bench in the said case in Para 20. Therefore, the interpretation of the Division Bench in the case of Punniyakoti is to be adopted for the purpose of extending the benefits of old pension scheme under the CCS pension rules. The petitioners have relied on the judgment of the learned single judge of High Court of Allahabad, wherein the similar issue was considered and temporary service rendered by an employee was taken into consideration for calculating the qualifying services.

9. The judgment of the High Court of Punjab and Haryana was also relied on in the case of **Harbans Lal v. The State of Punjab and others** in **CWP.No.2371 of 2010 dated 31.08.2010** wherein the Division Bench with reference to the Punjab and Haryana Pension Rules considered the issue.

10. In the case of **State of Himachal Pradesh and another v. Sheela Devi** in **SLP (civil) No.10399 of 2020** the Hon'ble Supreme Court of India in Para 9 held as follows :-

9. The Learned Advocate General is correct in his interpretation, inasmuch as a facial reading of Rule 2(g)



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would indicate that contractual employees are excluded from the pale of Pension Rules. However, what is significant is that the rule itself in its opening terms saves the application of other provisions of the pension rules: “Save as otherwise provided in these rules”. If the opening phrase of Rule 2 were to be understood in this context, any interpretation of Rule 17 as is urged by the State would render such substantive provision redundant. Rule 17 was engrafted essentially to cater to the eventuality, where the employees working on contract basis were regularized at a later stage. It is only for the purposes of pension that the past service as a contractual employee is to be taken into account.

11. The High Court of Delhi in the case of **Dr.Ravindra Narayan Mishra v. Sri Guru Tegh Bahadur Khalsa College and others** reported in **2023 : DHC : 3475** followed the ratio laid down by Madras High Court in *K.Punniyakoti case (cited supra)* reads as under :-

“18. In Union of India & Another v. Dalip Kumar, 2010 SCC OnLine Del 311, a Division Bench of this Court, relying on Rule 13 of Pension Rules, held that NPS is



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*applicable to all those who entered Government service post 01.01.2004 and that rights of those who were appointed prior to 31.12.2003, even though in a temporary capacity, cannot be taken away by depriving them of pension under OPS. Madras High Court in **Union of India and Another v. K. Punniyakoti and Others, 2014 SCC OnLine Mad 695**, held that the expression “new entrant” will not include a person already in service even though in temporary capacity and statutory rights cannot be denied only because an employee though appointed prior to 01.01.2004, is permanently absorbed post the said date. In **Harbans Lal v. The State of Punjab and Others, 2010 SCC OnLine P&H 8181**, the High Court of Punjab and Haryana held that entire daily wage service of the Petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension and he will be deemed to be in Government service prior to 01.01.2004. Against the said decision, SLP(C) No. 23578/2012 was dismissed by the Supreme Court on 30.07.2012. With regard to employees appointed on ad-hoc basis in PGIMER Chandigarh, the*



Central Administrative Tribunal (hereinafter referred to as “the Tribunal”) in O.A. 105/2018 decided on 13.03.2018 held that ad-hoc appointees appointed after following due process of selection would be covered by OPS, prevalent at the time of their appointment. The order of the Tribunal was challenged before the High Court of Punjab and Haryana in CWP No. 26482/2018, Union of India v. Dr. Neelam Aggarwal & Ors. and the High Court, upholding the order of the Tribunal, held that Respondents cannot be treated as “fresh appointees” appointed on or after 01.01.2004 by ignoring their initial ad-hoc service and deprivation of pensionary benefits under OPS was not justified. SLP(C) Diary No.43765/2019, challenging the judgment of the High Court was dismissed by the Supreme Court on 10.01.2020 on the ground of delay, leaving the question of law open.”

II. REPLY BY RESPONDENTS

12. Mr.Syed Musthafa, learned Special Government Pleader (Puducherry) would strongly oppose by stating that the findings in *Punniyakoti case cited supra* has no application with reference to the facts of the present



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case. In the case of Punniyakotti out of 50 casual labourers, 34 casual labourers were regularised and brought on to the permanent establishment prior to 01.11.2004 against the vacant posts. Private respondents numbering 16 who were granted temporary status could not be accommodated.

13. However, in para 8 of the order, this Court recorded the submissions of the private respondents, that the private respondents initial date of appointment in whatever capacity should be taken as a date of appointment in IGCAR and they were also granted temporary status from 31.12.1999 with a specific direction to count 50% of the temporary service for the purpose of pension.

14. The scheme contemplated and the temporary status and the qualifying service for pension are considered by the Division Bench in para 14 as under :--

“14. Thus, it is to be noted at this juncture that Respondents 1 to 16 having been granted temporary status from 13.1.2000, they are entitled to get more than 2½ years of temporary status service as qualifying service for pension purpose, prior to absorption in the year 2005 in permanent establishment, viz., Group 'D' post. The said more than 2½



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years of service cannot be wiped out or cannot be denied merely because new Pension Scheme was introduced by the Government of India from 1.1.2004. It is inequitable on the part of the Petitioners to contend that Respondents 1 to 16 having been absorbed in permanent establishment after the new Pension Scheme introduced, which came into force with effect from 1.1.2004, they are not entitled to get retirement benefits under GPF Rules/CCS (Pension) Rules, 1972. ”

15. The learned Special Government Pleader would contend that the facts in **Punniyakoti's case** have no application with reference to the issues raised in the present case. Thus the said judgment is of no avail to the writ petitioners to secure the relief as such sought for by them in the OA.

III. DISCUSSIONS

16. We have considered the rival submissions made between the parties to the lis on hand.

17. The question arises, whether the honorary service and daily rated



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service rendered by the writ petitioners are to be counted as qualifying service under the provisions of CCS Pension rules for granting the benefit of Old pension scheme.

18. The facts are not in dispute between the parties. All the writ petitioners were initially engaged as honorary rural organisers. They had received honorarium pay and assisted the Grama Sevak in implementing and monitoring the Government of India Scheme and programme. It was not an appointment made against the sanctioned post and it is purely a honorarium service rendered for a fixed monetary pay. Subsequently, they were engaged as daily rated employees w.e.f. 01.10.2002.

19. However, all the writ petitioners were appointed in sanctioned post of sevak in the time scale of pay w.e.f. 01.01.2006. It is not in dispute that the post of sevak itself was newly created by respondents w.e.f. 13.12.2005.

20. In the above back drop, let us consider the pension rules with reference to the old pension scheme. The new pension scheme was introduced by the Government of India w.e.f. 01.01.2024. The persons appointed on and



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after 01.01.2004 are brought under the new pension scheme and they are not eligible to avail the old pension scheme under the CCS pension rules.

21. As far as the facts of the present case is concerned it cannot be compared with the facts considered by the Division Bench of this Court in *Punniyakotti case (cited supra)*. In *Punniyakotti case* in Para 5 it is stated that 34 casual labourers were regularised and brought on to the permanent establishment prior to 01.01.2004 against the vacant post. Therefore, the posts were available during the relevant point of time in the said case and the casual labourers were regularised prior to 01.01.2004, in respect of 16 casual labourers they were granted temporary status from 31.12.1999, with a specific direction to count 50% of the temporary service. Therefore, the said facts have no application with reference to the present case and the judgment relied on is of no avail to the petitioners.

22. Importantly, Section 2 of CCS Pension Rules provides application of the pension rules and reads as under :-

“2. Application .— Save as otherwise provided in these rules, these rules shall apply to the Government servants appointed on or before 31st day of December, 2003, including



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civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to,—

- (a) railway servants;*
- (b) persons in casual and daily rated employment;*
- (c) persons paid from contingencies;*
- (d) persons entitled to the benefit of a Contributory Provident Fund;*
- (e) members of the All India Services;*
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;*
- (g) persons employed on contract except when the contract provides otherwise; and*
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.*

The case of the petitioners are not covered under the explanation clause.

23. Necessary amendments were made through notification dated



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30.12.2003 and the said amendment was effected from 01.01.2004, the date on

which the new pension scheme was implemented. The Central Services pension rules i.e., old pension scheme would be applicable only in respect of the Government servants appointed on or before 31.12.2003. The rules further enumerates that the persons appointed prior to 31.12.2003 substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to persons in casual and daily rated employment.

24. When Rule 2 regarding application of pension rules specifically exclude the casual and daily rated services, there is no scope for including those services under the pensionable establishment for the purpose of grant of old pension scheme. It is not in dispute that CCS pension rules is to be applied for old pension scheme and when the rules excludes the casual and daily rated services, such services cannot be construed as qualifying services within the meaning of Section 14 of CCS pension rules.

25. As per the rules qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The



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said rule indicates that an appointment to be made in a post (i.e) sanctioned post either substantively or in an officiating or temporary capacity. Therefore a member of a service appointed in a sanctioned post either substantively or in an officiating capacity alone is to be considered for reckoning of the period of service as qualifying service within the meaning of Section 13 of CCS pension rules.

26. As far as the honorary, casual and daily rated services are concerned, they were not appointed under the recruitment rules in force. The scheme related engagements based on certain terms and conditions would not confer any right on the employees to claim the benefit of old pension scheme under the CCS pension rules.

27. Rule 14 of CCS Pension Rules stipulates conditions subject to which service qualifies. Sub Rule(2) stipulates that “for the purposes of Sub Rule 1, the expression “service” means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in an non pension establishment, unless such service is treated as qualifying service by that Government.



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WEB COPY 28. Honorary, casual and daily rated appointments are not made under the pensionable establishments. Therefore, the services of the writ petitioners cannot be considered as a qualifying service for the purpose of considering their earlier services rendered as honorary rural organisers and daily rated employees.

29. The Government of India decision “2” deals with counting half of the service paid for contingencies with regular service. Accordingly under Article 368 of CSR (Rule 14) the periods of service paid from contingencies do not count as qualifying service for pension. In some cases employees paid from contingencies are employed in types of work required in service of full time worker and are paid in monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. In those cases, the Government of India granted the benefit of counting of 50% of such casual temporary or daily rated services for the purpose of calculating the qualifying services.

30. Even the said rule cannot be applied in the case of the writ petitioners, since they are not falling under the CCS pension rules at all. The



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counting of 50% of the services would arise only to those employees who all are eligible to get pension under the CCS Pension Rules. Once the CCS Pension Rules itself is not applicable to the employees who were appointed on or after 01.01.2004, there is no question of application of any other rules under the CCS Pension Rules. Therefore, the said benefit also cannot be granted to the writ petitioners.

IV. CONCLUSION

31. The Tribunal has considered the issues with reference to the rules applicable and we do not find any infirmity in the present case. The CCS Pension Rules itself is in-applicable to the writ petitioners. Since, there is an express exclusion clause of casual and daily rated employees under Rule 2(b) of CCS Pension Rules. The writ petitioners, since falling under the exclusion clause under the CCS Pension Rules, they are not eligible to avail any benefit under the old pension scheme, more specifically under the CCS Pension Rules.

32. Thus the order of the Central Administrative Tribunal stands confirmed and the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

[S.M.S., J.]

[M.J.R., J.]

11.12.2024



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Index: Yes/No

Speaking/Non-speaking order

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To

1. Union of India

By its Chief Secretary

2.The Under Secretary to Government

Rural Development

Chief Secretariat

Puducherry

3.Project Director

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Puducherry – 605001.

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