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W.P. No. 8660 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 8660 of 2019

M. Periyasamy

... Petitioner

Vs.

1.The State of Tamil Nadu rep., by its
Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.

2.The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

3.The Accountant General (A&E),
Teynampet, Chennai – 18.

4.The Revenue Divisional Officer,
Virudhachalam,
Cuddalore District.

5.The Tahsildar,
Taluk Office,
Tittagudi,
Cuddalore District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records connected in Ref.A1/37/2018, dated 23.04.2018 of the fourth respondent and quash the same and direct the respondents to count half of service rendered by the petitioner from



W.P. No. 8660 of 2018

17.01.1982 to 31.05.1995 along with regular service from 01.06.1995 to 31.08.2002 for the purpose of pension and grant pension and pay arrears to the petitioner within a reasonable time.

For Petitioner : Mr. A.R. Suresh,
for Mr. K. Arumugam
For Respondents : Mrs. V. Yamuna Devi,
Special Government Pleader for RR1, 2, 4 & 5

ORDER

This Writ Petition has been filed for the issuance of a writ of certiorarified mandamus, to call for the records connected in Ref.A1/37/2018, dated 23.04.2018 of the fourth respondent and quash the same and direct the respondents to count half of service rendered by the petitioner from 17.01.1982 to 31.05.1995 along with regular service from 01.06.1995 to 31.08.2002 for the purpose of pension and grant pension and pay arrears to the petitioner within a reasonable time.

2. The case of the petitioner is that, he was initially appointed as Village Servant on 17.01.1982 on contract basis. He was provisionalized by the Government on 01.06.1995 and was given salary on time scale of pay. He retired from service on attaining the age of superannuation on 31.08.2002. After his retirement, he was not paid any kind of pension except the ex-gratia amount. The respondents have calculated the service of the petitioner for sanctioning pension only from 01.06.1995 onwards. They did not take the service period prior to 01.06.1995. The Government



issued several orders to count half of the service rendered under non-pensionable scheme along with regular service for calculating pension. According to the petitioner, similarly placed person approached this Court and filed writ petition seeking to count earlier service rendered as Village Servant prior to 01.06.1995 along with regular service for the purpose of pension. This writ petition was allowed by an order dated 10.02.2014 and an appeal that was filed against the same was also dismissed by the Division Bench of this Court on 23.06.2015. Thereafter, SLP was filed and the same was also dismissed on 07.09.2015. Thereafter, the respondents have implemented the Court order and sanctioned pension and family pension to the petitioner's family in those cases.

3. It is the further case of the petitioner that, after receiving the High Court order, the fourth respondent has rejected his claim in his Pro.No.Ref.A1/37/2018, dated 23.04.2018 that the service rendered by the petitioner prior to 01.06.1995 were on part time basis and not involving whole time employment. Aggrieved by the same, the present writ petition has been filed.

4. On behalf of the respondents 3 and 4, a counter affidavits have been filed. In the said counter affidavit, it is averred that, the payment of pension to the Village Servant was regulated as per provisions of G.O.3D No.9 dated 28.02.2006. It is



stated that his part time service before 01.06.1995 cannot be treated as full time service as per G.O.Ms.No.408 dated 25.08.2009. In para 2 (i) of the said G.O., it is clearly mentioned that the non-provincialised / consolidated / daily wage service period cannot be treated as full time service.

5. It is further averred in the counter that the petitioner had earlier filed writ petition in W.P. No.27673 of 2016 before this Court seeking for a direction to count 50% of the past service along with regular service for the purpose of pension in the light of Mr.Raju's case and this Court by order dated 09.08.2017 disposed of the writ petition. On the basis of the said order, the petitioner was informed by the respondent in proceedings No.A1/37/2018 dated 23.04.2018 stating that the claim to count half of service rendered prior to 01.06.1995 along with regular service for the purpose of pension was analysed in detail and the claim is found inadmissible as per Rule 11(2)(i) of Tamil Nadu Pension Rules, 1978 as the service rendered prior to 01.06.1995 was part time basis, not involving whole time employment.

6. Learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents have advanced their arguments based on the averments made in the affidavit filed along with the writ petition and the counter affidavits.



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7. During the course of hearing, the learned counsel for the petitioner has placed reliance of the order dated 15.03.2024 in W.P. Nos.12033 and 19550 of 2020 and order dated 18.03.2024 in W.P. No. 18734 of 2020 and batch of the learned Single Judge of this Court and he would submit that the issue involved in the present writ petition is squarely covered by the said orders.

8. On careful perusal of the said orders, this Court is of the considered opinion that, the issue covered in the present writ petition is squarely covered by the orders stated supra, the relevant paragraphs of the said orders are extracted herein under: -

“33. So the rationale of the latest Full Bench judgment in the above judgment in my view would override the position taken by the earlier Division Bench for depriving the benefit of including the past services of the village assistant for pensionary benefit.

34. In the background of the above judgment of the full bench and in the absence of any rule in the Village Assistant Pension Rules to include the past service of a village assistant who got regularized on 01.06.1995 and also considering the saving clause present in the said rules the Village Servants Service Rules 1980 that those rules would not adversely affect the persons covered therein, I feel recourse can be had to the general rules of Tamil Nadu Pension Rules, 1978, so far it relates to the computation of past services for all those village assistants whose services have been regularized as on 01.06.1995 and who continued in the employment as village



assistants or promoted as Office Assistants and Village Administrative Officers and retired accordingly.

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35. In view of the above discussions these batch of writ petitions are disposed with the following observation and directions:

(i) Those who lost their job on 14.11.1980 and who never got re-employment were given with a special pension with effect from 05.12.1986. Hence, there is no question of granting any further relief for them than what has already been granted.

(ii) For those village assistants whose services have been regularised as on 01.06.1995 but continued to be in service, till retirement, half of their past services shall be included along with the whole of their services rendered subsequent to their regularisation till retirement and computed as qualifying years of service for the purpose of pensionary benefit.

(iii) The respondents are directed to consider the representations of all those petitioners who are qualified as above (ii), for inclusion of 50% of their past services for the purpose of pensionary benefits and pass revised orders for sanctioning and disbursing the same within a period of 8 weeks from the date of receipt of the copy of this order.”

9. While passing the orders stated supra, the learned Single Judge has considered the entire case law relevant to the issue and the relevant service rules and passed reasoned and detailed order and as such, this Court intends to follow the same order in the present case.

10. Accordingly, this Writ Petition is disposed of, in terms of the order dated



W.P. No. 8660 of 2017

18.03.2024 in W.P. No. 18734 of 2020 and batch.

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11. The respondents are directed to count half of service rendered by the petitioner from 17.01.1982 to 31.05.1995 along with regular service from 01.06.1995 to 31.08.2002 for the purpose of pension and grant pension and pay arrears to the petitioner, within a period of six weeks from the date of receipt of copy of this order.

12. There shall be no order as to costs.

26.09.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

1.The Secretary to Government,
State of Tamil Nadu, Revenue Department,
Secretariat, Chennai – 9.

2.The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.

3.The Accountant General (A&E),
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