



W.P.No.15383 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.15383, 15384 & 15389 of 2023

W.P.No.15383 of 2023

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|-------------------|--|
| 1. M.Kannan | ... Petitioner in W.P.No.15383 of 2023 |
| 2. M.Durai. | ... Petitioner in W.P.No.15384 of 2023 |
| 3. K.Pannerselvam | ... Petitioner in W.P.No.15389 of 2023 |

-Vs-

- 1.The Government of Tamil Nadu,
Rep. by its
Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Rural Development and Panchayat Raj,
Panagal Buildings, Saidapet,
Chennai - 600 115.
- 3.The Principal Accountant,
General (A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.
- 4.The District Collector,
Thanjavour District,
Thanjavour.



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5. The Block Development Officer,
Block Development Office,
Peravuran,
Thanjavour District.

... Respondents in all W.P.s'

Common Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Mandamus, directing the respondents herein to calculate the petitioners service rendered as Part Time Clerk as qualifying service for the purpose of Pension alone and direct the 3rd Respondent herein to pay the revised pension by counting 50% of his service as Part Time Panchayat Clerk from 01.06.1987 to 14.01.1999, 01.04.1979 to 03.01.1991 & 01.04.1983 to 31.12.1990 forenoon and Panchayat Assistant from 01.01.1991 to 17.02.1995 forenoon.

(In all W.P.s')

For Petitioners : Mr.R.Chellamuthu

For Respondents 1,2 & 4: Dr.T.Seenivasan
Special Government Pleader

For Respondent 3 : Mr.S.Balaji

For Respondent 5 : Mr.S.J.Mohammed Sathik
Government Advocate

ORDER

These writ petitions have been filed for direction to the 3rd respondent to calculate the service rendered as part time clerk as qualifying service for the purpose of pension and pay revised pension by counting service as part time Panchayat Clerk 01.06.1987 to 14.01.1999, 01.04.1979 to 03.01.1991 & 01.04.1983 to 31.12.1990 forenoon and Panchayat Assistant from 01.01.1991 to 17.02.1995 forenoon respectively.



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2. All the writ petitioners had joined as part time Panchayat Clerks.

Thereafter, they were promoted as Junior Assistant. Subsequently, they were promoted as Assistant. On attainment of age of superannuation, they were retired from their respective service. They were receiving pension and attendant benefits for the service rendered as Junior Assistant. However, their service rendered as part time Panchayat Clerk had not been taken into consideration while fixing the pension. It is a violation of G.O.Ms.No.39 Rural Development Panchayat Department dated 13.06.2011 by which the State Government extended the benefit of counting 50% of the services rendered in the Government service for the purpose of pensionary benefits. In fact, the said G.O.Ms.No.39, Rural Development and Panchayat Department dated 13.06.2011 was challenged before this Court in W.P.Nos.2697 & 2743 of 2014 dated 27.08.2014. The learned Single Judge of this court allowed the said writ petitions by an order dated 27.08.2014. The same was also confirmed by the Division Bench of this Court at Madurai Bench. Thereafter, amendment was made in the G.O.Ms.No.77, Rural Development and Panchayat Department (PA-4) dated 12.07.2013 thereby counting 50% of service in case of a Part Time Clerk was withdrawn, as per paragraph 4 (B) of the said Government order. The said order was challenged before this Court in W.P.No.2697 of 2014 dated 27.08.2014 and the same was allowed by this Court. Though,



Hon'ble Division Bench of this Court in W.A.(MD).105 of 2015 by order dated

13.06.2016 dismissed the writ appeal and confirmed the G.O.Ms.No. 39, Rural

Development and Panchayat Department dated 13.06.2011 and referred for

hearing before the Full Bench. The Hon'ble Full Bench of this Court by order

dated 03.12.2019 held 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 Tamilnadu 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 Tamilnadu State and Subordinate Service Rules will be entitled to get pension as per the Tamilnadu 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 regularized before 01.04.2003, half of such 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 Tamilnadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitle 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."



3. Thus, it is clear that Government servant who were appointed in the aforesaid categories before the cut-off date and later appointed under Rule 10(a)(i) of TamilNadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled for past service for the purpose of determination of qualifying service for pension. Thus, it is clear that Government employee had rendered non-provincialised service, or on consolidated pay or on honorarium or daily wage basis before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits. Though, Para.4(b) in G.O.Ms.No.77, Rural Development and Panchayat Department, dated 12.07.2013 have been quashed by this Court, Rule 11(4) of Tamilnadu Pension Rules is still in force. Rule 11(4) of Tamilnadu Pension Rules reads as follows:

"11(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment."



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4. Therefore, beyond the statutory provision of rule 11(4) of Tamilnadu Pension Rules 1978, the period of service rendered as part time Panchayat Clerk and Panchayat Assistant cannot be reckoned as qualifying service for pension. Hence, the request made by the petitioner dated 25.08.2020 cannot be considered.

5. Accordingly, these Writ Petitions are dismissed. No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
gvn



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