IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.05.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.37373 of 2016

Thiraviyam ...Petitioner

vs.

1. The Principal Secretary
Finance Department (Pension)
Secretariats
Chenni – 600 009

2. The Member Secretary
Tamilnadu Pollution Control Board
76, Mount Road, Guindy
Chennai – 600 032.

3.The Scheme Officer
Integrated Child Development Scheme (ICDS)
District Scheme Office
Salem. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the respondents 1 and 2 to pay the retirement benefit, such as pension to the petitioner as per the salary at the time of the petitioner's retirement from the 2nd respondent and from the date of retirement of the petitioner.

For Petitioner	: Mr.T.Ganesan
For Respondents	
R1	: Ms.Sangamithrai Additional Government Pleader.
R2(TNPCB)	: Ms.Vijayakumari Natarajan
R3	: No Appearance.

ORDER

The petitioner Thiraviyam who retired from the Tamil Nadu Pollution Control Board (herein after referred as "TNPCB") as Lab Assistant on 30.06.2010, being aggrieved by the Order passed by the 3rd respondent/Scheme Officer, Integrated Child Development Scheme(ICDS), Salem, refusing to grant her pension through the letter dated Na.Ka.No.238-A2-2011 dated 04.02.2012 has filed this writ petition.

2. The petitioner was appointed as an Anghanwadi worker under the 3rd respondent on 21.06.1992 on consolidated pay basis. Thereafter, she joined as Lab Assistant in Tamil Nadu Pollution Control Board, Salem through the District Employment Office, Salem on 05.12.2007. She retired from service on 30.06.2010. She was informed by the 2nd respondent through letter in Letter No.OMu/TNPCBOARD/PANI/Pa 0/021377/2010 dated 09.09.2010 stating that she is not eligible for pension because she joined the regular service after 01.04.2003. She was informed that there is no provision to add her other

Government services with her present service. Hence, this writ petition.

3.1 The details of counter affidavit of the 2nd respondent/TNPCB Board in brief is tabulated as follows:

The details of the Department in which the petitioner has worked is given hereunder:

S.No.	Department	Designation	Period - Worked
1.	O/o. Integrated Child Development Scheme (ICDS), District Scheme Officer, Salem.	Anghanwadi Worker	01.07.82 to 31.12.1995 (worked on consolidated pay)
2.	O/o. Integrated Child Development Scheme (ICDS), District Scheme Office, Salem.	Anghanwadi Worker	01.01.96 to 4.12.2007 (worked on regular basis)
3.	TNPCB through District Employment Exchange, Salem.	Lab Assistant	5.12.2007 to 30.06.2010' 2 year 6 months and 25 days (worked on temporary basis)

3.2. The petitioner was appointed as Lab Assistant in TNPCB through District Employment Exchange, Salem on 05.12.2007 on temporary basis and superannuated on 30.06.2010. The petitioner has not mentioned about her past service and details of date of relief at the time of joining in the service. The

Service Register book was opened afresh in TNPCB by the 2nd respondent.

3.3 As per the Rule 23 of Tamil Nadu Pension Rules, 1978, as she resigned from the post of Anganwadi worker, she is not entitled for pension for the past services. It has been further stated that she was appointed under New Pension Scheme. The petitioner comes under the Contribution Pension Scheme as per G.O.No.59 Finance (PGC) Department, dated 22.02.2016. For settlement of accumulation, she shall submit an application under the prescribed format.

4. The said counter affidavit details have been adopted by the 1st and 3rd respondent herein.

5. Heard Smt.C.Sangamithrai, the learned Government Advocate appearing for the 1st and 3rd respondent and Ms.Vijayakumari Natarajan, the learned counsel appearing for the 2nd respondent.

6. As regards the employment details of the petitioner is concerned, the petitioner worked as an Anghanwadi worker under the Integrated Child Development Scheme from 01.07.1982 to 31.12.1995 on consolidated pay and worked as Anghanwadi worker on regular basis from 01.01.1996 to 04.12.2007. Admittedly, she resigned the said post on 04.12.2007 and joined as Lab

Assistant on 05.12.2007 in TNPCB through District Employment Exchange, Salem and superannuated on 30.06.2010.

7. When she gave requisition for granting of pension to the 3rd respondent, her request was turned down by stating that she has resigned the job of Anghanwadi worker and joined as Lab Assistant in TNPCB. When she made a representation for pension through RTI to the Secretary, Finance Department (Pension)/1st respondent, the 1st respondent through his letter: letter No.15332/FINANCE(Po.Ma.Ka)/2011 dated 18.04.2011 informed her that as per Rule 23 of Tamil Nadu Pension Rules, 1978, as she resigned her previous job and had she applied for the post of Lab Assistant in a proper way, her previous employment period could have been taken into account for the purpose of computing pension.

8. Tmt.C.Sangamithrai, the learned Special Government Pleader, appearing for the 1st respondent and Tmt.Vijayakumari Natarajan, the learned counsel appearing for the 2nd respondent would invariably argue that she did not seek for NOC from the previous employer and she resigned the job of Anghanwadi worker and as per Rule 23 of Tamil Nadu Pension Rules, 1978, she is not entitled to claim pension.

9. It is beneficial to extract the relevant provisions of Tamil Nadu

Pension Rules, 1978 namely,

Rule 5. Regulation of claims to pension or family pension

(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.

Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under clauses (d) and (e) of Rule 56 of the Fundamental Rules or Rule 42 of these Rules, as the case may be, the date of retirement shall be treated as a non-duty day.

(3) The Government reserves to themselves the right of changing these rules regarding pension, from time to time at their discretion and of interpreting their meaning in case of dispute.

Rule 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 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;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government.

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break;

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits".

***Rule 23. Forfeiture of service on resignation.** (1) Resignation from a service or post entails forfeiture of past service:*

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to

the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.

Rule 43. Amount of pension- (1) *In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years the amount of service gratuity shall be calculated at the uniform rate or half month's emoluments for every completed six monthly period of service*

(2) In the case of a Government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below namely:

(B) PENSION

Completed six monthly period of qualifying service (1)	***Scale of Pension (2)***
20	*15.00/80ths of average emoluments*
21	*15.50/80ths of average emoluments*
22	*16.00/80ths of average emoluments*
23	*16.50/80ths of average emoluments*
24	*17.00/80ths of average emoluments*
25	*17.50/80ths of average emoluments*
26	*18.00/80ths of average emoluments*
27	*18.50/80ths of average emoluments*
28	*19.00/80ths of average emoluments*
29	*19.50/80ths of average emoluments*
30	*20.00/80ths of average emoluments*
31	*20.50/80ths of average emoluments*
32	*21.00/80ths of average emoluments*

Completed six monthly period of qualifying service (1)	*Scale of Pension (2)*
33	*21.50/80ths of average emoluments*
34	*22.00/80ths of average emoluments*
35	*22.50/80ths of average emoluments*
36	*23.00/80ths of average emoluments*
37	*23.50/80ths of average emoluments*
38	*24.00/80ths of average emoluments*
39	*24.50/80ths of average emoluments*
40	*25.00/80ths of average emoluments*
41	*25.50/80ths of average emoluments*
42	*26.00/80ths of average emoluments*
43	*26.50/80ths of average emoluments*
44	*27.00/80ths of average emoluments*
45	*27.50/80ths of average emoluments*
46	*28.00/80ths of average emoluments*
47	*28.50/80ths of average emoluments*
48	*29.00/80ths of average emoluments*
49	*29.50/80ths of average emoluments*
50	*30.00/80ths of average emoluments*
51	*30.50/80ths of average emoluments*
52	*30.60/80ths of average emoluments*
53	*30.90/80ths of average emoluments*
54	*31.20/80ths of average emoluments*
55	*31.50/80ths of average emoluments*
56	*31.80/80ths of average emoluments*
57	*32.10/80ths of average emoluments*
58	*32.40/80ths of average emoluments*
59	*32.70/80ths of average emoluments*
60 and above	*33.00/80ths of average emoluments*

(2A) In respect of persons who retire on or after 31st October 1979, the amount of pension shall be the appropriate amount as set out below:

(a) In the case of a Government servant retiring in

accordance with the provisions of these rules, after completing qualifying service of not less than thirty three years the amount of pension shall be determined as follows, namely:

Average emoluments (1)	*Amount of monthly pension (2)*
Upto first Rs.1000	*50 per cent of average emoluments*
Net Rs.500	*45 per cent of average emoluments*
Balance	*40 per cent of average emoluments subject to a maximum of Rs.1,500 per mensem*

[Provided further that in the case of Government servant who retires on or after the 14th December 1987. Pension shall be calculated at the rate of 50 per cent of average emoluments].

10. To give explanation of Rule 5, 11, 23 & 43, it is useful to refer to the observations made by this Court in the following judgments:

i) *D.Vijayarangan vs. Secretary, Sales Tax Tribunal(Addl. Bench), Mad-20 and ors.* in W.P.No.13048 of 2006 dated 17.11.2008, the Hon'ble Division Bench of this Court held that when the employee is allowed to resign to join in some other post in the Government, then his services cannot be forfeited and the employee is entitled to the benefits of Rule 23 of Tamil Nadu Pension Rules.

ii) *E.Jebamani vs. Government of Tamil Nadu* in W.P.No.1727 of 2012 dated 17.12.2014, the Hon'ble Division Bench of this Court held that the petitioner has rendered more that 10 years of service which is a minimum qualifying service for the sanction of pension under Rule 43 of the Tamil Nadu

Pension Rules, 1978 and as per proviso to Rule 23(1), the appellants earlier service will not be forfeited and concluded that the appellant having claimed for pension after his actual date of superannuation, that was on 31.07.2008, the appellant is entitled to get pension and other benefits from 01.08.2008.

11. This Court in *M.Rajalakshmi Vs. The State of Tamil Nadu and 5 others* in W.P.No.4189 of 2018 dated 14.07.2022 similar, to this matter, the petitioner after resigning the job of Noon Meal Organizer joined as Junior Assistant on the next day before the 3rd respondent on 09.07.2003, wherein it was held that she is entitled to invoke Rule 11(4) of the Tamil Nadu Pension Rules, 1978 and accordingly the writ petition was ordered.

12. In the matter of *R.Kaliyamoorthy Vs. The Government of Tamil Nadu rep. by Secretary to Government Public Works Department and 2 others reported in 2018 SCC Online Mad 9946,* wherein, the petitioner joined the service in the Office of the Assistant Executive Engineer, Public Works Department, Cauvery Basin Sub Division, Mailaduthruai on 01.09.1994 as N.M.R Grade II and continued to serve as such till Feb 2005. His service was regularised by the proceedings of 2nd respondent dated 19.11.2007. In the light of G.O. Ms.No.334, Public Works Department dated 19.10.2007. He was absorbed as irrigation Assistant and joined duty as Irrigation Assistant on

02.01.2008 and retired from service on 31.10.2013. The petitioner had rendered continuous service from 01.09.1994 to 31.10.2013 as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978 and he is entitled to count half of the service rendered by him on daily wages basis i.e. from 01.09.1994 to 18.10.2007 for calculating pension. The petitioner had submitted a representation dated 02.03.2015 to take into account half of the service rendered by him from 01.09.1994 to 18.10.2007 on daily wage basis along with regular service as Irrigation Assistant from 19.10.2007 to 31.10.2013 and the writ petition was allowed and the 1st respondent was directed to count half of service rendered by the petitioner on daily wage basis from 01.09.1994 to 18.10.2007 along with this regular service from 19.10.2007 to 31.10.2013 to reckon the total qualifying service for pension, to sanction pensionary benefits under the Tamil Nadu Pension rules 1978 and to disburse all terminal benefits within a period of twelve weeks.

13. Full Bench was constituted by the Honourable the Chief Justice pursuant to the Order dated 29.08.2018 passed by the Division Bench of this Court in W.A.No.1218 of 2018 etc., batch, reference was made which is as follows:

> "In view of the provisions of the Tamil Nadu Pension Rules, as amended, if a government servant is regularised in service after 01.04.2003 whether such a person will be entitled to count 50% of

the past service rendered prior to regularisation for the purpose of computing his pension under the old pension scheme"

The said reference was paraphrased as follows:

"Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003 and G.O.Ms.No.41, Finance (Pension) Department dated 08.02.2010."

14. After elaborate discussions about the relevant Rules and G.Os., the reference was answered and details are extracted as follows:

45.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 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 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 Tamil Nadu State and Subordinate Service Rules before 01.04.2003 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."

15. The petitioner had served as Anghanwadi worker from 01.07.1982 to 31.12.1995 on consolidated pay and she was made permanent in the said post with effect from 01.01.1996 and worked on regular basis as Anghanwadi worker till 04.12.2007. She resigned the said job and joined as Lab Assistant in TNPCB through District Employment Exchange, Salem on 05.12.2007 and superannuated on 30.06.2010. She had joined as Lab Assistant on the very next day after resigning the post of Anghanwadi worker. The petitioner's

resignation was accepted. However, Rule 5 of Tamil Nadu Pension Rules would come to the rescue of the petitioner which deals with regulation of claims of pension or family pension.

16. The petitioner has worked as Anghanwadi worker under District Scheme Officer, Office of Integrated Child Development Scheme (ICDS), Salem from 11.07.1982 to 31.12.1995 on consolidated pay. Therefore, as per Rule 11(4) of Tamil Nadu Pension Rules, 1978, he is entitled to count half of the service rendered by him for the purpose of calculating pension.

17. It is relevant to note that in view of the G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003 that those persons who are appointed in regular service after 01.04.2003 are not entitled for such pensionable benefits and they are entitled only for Contribution Pension Scheme.

18. In the facts and circumstances and based on the aforesaid discussions, this writ petition is allowed and the 2nd respondent is directed to count half of service rendered by the petitioner on consolidated pay from 01.07.1982 to 31.12.1995 along with her regular service from 01.01.1996 to 30.06.2010 to reckon qualifying service for the purpose of calculating pension and sanction the pensionary benefits under the Tamil Nadu Pension Rules, 1978 and shall disburse all terminal benefits within a period of twelve (12)

weeks from the date of receipt of copy of this Order. Consequently, the connected miscellaneous petitions if any, shall stand closed. No costs.

16.05.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

dpa

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