



W.P.No.16034 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1. L.Vajjiram
2. M.Gunasekaran
3. K.R.Chitra
4. N.Kalaiselvi
5. K.V.Thulasiraman .. Petitioners

Versus

1. State of Tamil Nadu,
Represented by Secretary,
Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai - 600 009.
2. The Director,
Tamil Nadu Housing and Urban Development Department,
CMDA Building,
E&C Market Road, Koyambedu,
Chennai - 600 107. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus directing the respondents to calculate the petitioners' pension by taking note of 50% services rendered as temporary employee till the petitioners' regularization and disburse the amounts, together with arrears.

For Petitioners : Mrs.V.Srimathi



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For Respondents : Mr.D.Veerasekaran

ORDER

Mr.D.Veerasekaran, learned Counsel takes notice on behalf of the respondent.

2. The petitioners have filed this Writ Petition for a Mandamus to direct the respondent to calculate the petitioners' pension by taking note of 50% services rendered as temporary employee till the petitioners' regularisation and disburse the amounts together with arrears as per the order of this Court in W.P.No.11746 of 2014, dated 03.11.2017 as confirmed by the judgment, dated 16.08.2022 in W.A.No.1857 of 2022.

3. The petitioner Nos.1, 2, 4, 5 herein and the husband of the third petitioner are the retired employees of the respondent Board (TNHB). They originally entered into service on daily wage basis as NMRs. Thereafter, their services were regularized and they are all now retired from service.

4. The prayer of the petitioners is to count 50% of the said services prior to the date of regularization for the purpose of pension. The case of



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the petitioners is that the Government itself has extended the benefit in G.O.(Ms).No.408, dated 25.08.2009. The Hon'ble Full Bench of this Court has also clarified that the employees who have been regularized before 01.04.2003 are entitled for counting 50% of benefits.

5. More specifically, earlier, this Court by the order, dated 03.11.2017 in W.P.No.11746 of 2014 had granted relief to the employees by directing the respondents to count half of the services rendered by the petitioners/employees. Pursuant to the order, dated 03.11.2017 in W.P.No.11746 of 2014, the respondent Board preferred an appeal in W.A.No.1857 of 2022, which was also dismissed by the Hon'ble Division Bench by its order, dated 16.08.2022 in W.A.No.1857 of 2022. The petitioners 1, 2, 4, 5 and the husband of the third petitioner also similarly situated as that of the said petitioners/employees. Hence the Writ Petition.

6. It can be seen that as far as entitlement of the petitioners/employees are concerned, it is not disputed. The respondent is also not distinguishing the case of the petitioners from the earlier orders of this Court. The only ground which is pleaded is the financial disability. When the petitioners are



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entitled to as per the law, then, financial disability cannot be pleaded as a ground to deny them the benefit.

7. Learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in ***Shri M.L.Patil (Dead) Through LRs Vs. The State of Goa and Anr.***¹.

8. The learned Counsel for the petitioners would further submit that earlier, even though this Court, by the order dated 03.11.2017, in W.P.No.11746 of 2014, granted relief only by counting half the services of the petitioners/employees, the respondents themselves have paid the arrears to the connected petitioners/employees.

9. I have considered the submissions of the learned Counsel for the petitioners and perused the material records of the case.

10. The judgment of the Hon'ble Supreme Court in ***Shri M.L.Patil (Dead)*** (cited *supra*) does not deal with the factual situation like this when

¹ 2022 LiveLaw (SC) 537



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the petitioners are superannuated only from service in the year 2013-2017 etc.

11. It can be seen that the petitioners, like their counterparts, did not even approach this Court and now only they are approaching the Court. Therefore, this Court has to balance the interests. In matter of pay, since everyday gives rise to continuing causes of action, the petitioners cannot be dis-entitled for the relief on the ground of delay. However, as far as the matter of arrears is concerned, this Court could restrict the same.

12. In view thereof, the Writ Petition deserves to be allowed. Accordingly, this Writ Petition is allowed on the following terms:-

(i) The respondents are directed to consider the case of each of the petitioners 1, 2, 4 5 and the husband of the third petitioner and count 50% of their services prior to the date of regularization from the date of entry into services for the purpose of pension and accordingly, recalculate the pension of the said candidates;



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(ii) As far as arrears are concerned, the same shall be payable from three years prior to the date of filing of the Writ Petition i.e., from March 2021 onwards;

(iii) The entire exercise shall be done within a period of 12 weeks from the date of receipt of a copy of this order and the arrears shall also be paid within the said period;

(iv) There shall be no order as to costs.

20.06.2024
(2/2)

Neutral Citation : no
grs

To

1. The Secretary,
Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai - 600 009.
2. The Director,
Tamil Nadu Housing and Urban Development Department,
CMDA Building,
E&C Market Road, Koyambedu,
Chennai - 600 107.



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D.BHARATHA CHAKRAVARTHY, J.

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