



W.P.No.20154 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM:

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

W.P.Nos.20154, 20632, 20736 & 21695 of 2022

1. P.Kandaswamy
2. R.Rajalakshmi
3. G.Guitha
4. D.Cadiravan
5. R.Subramanian
6. O.Kalimamurugan
7. K.Vinayagame
8. P.Ramesh
9. S.Varadharaju
10. M.Rajeswari
11. R.Kokilam
12. M.Mohane
13. P.Rakesh
14. D.Manorandjedame
15. K.Gopalakrishnan
16. R.Andiappan
17. C.Lakshmi @ Saroja
18. P.Arumugam

...Petitioners in W.P.
No.20154 of 2022

1. A.Thangarasu
2. G.Krishnan
3. N.Sundararasu
4. V.Latha
5. P.Rajeswari

...Petitioners in W.P.
No.20632 of 2022



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1. C.Vijayarangan
2. K.Kumara Subramaniam
3. K.Kumar
4. S.Sadhasivam
5. S.Rajasekaran
6. S.Sivakumar
7. D.Veerappan
8. V.Annamalai
9. S.Raju

...Petitioners in W.P.
No.20736 of 2022

T.Vijaya

...Petitioner in W.P.
No.21695 of 2022

-Vs -

1. The Union Territory of Puducherry,
Rep. by the Chief Secretary to Government
Chief Secretariat,
Puducherry – 605 001.
2. The Director,
Local Administrative Department,
No.16, Suffren Street,
Puducherry – 605 001.
3. The Commissioner,
Oulgaret Municipality,
Jawahar Nagar,
Puducherry – 605 005.

... Respondents in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to apply the old pension scheme (defined benefit pension scheme) to the petitioners by taking into account the date of their initial



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appointment as daily rated/consolidated wages/work charged/part time employee and refrain from applying the new pension scheme (defined contribution pension scheme) and grant them all consequential benefits including the refund of the amounts deducted from their monthly salary towards contribution under the new pension scheme.

In all W.Ps.

For Petitioners : Mr.P.Rajendran

For Respondents : Mr.Tamilvanan
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed for direction directing the respondents to apply old pension scheme viz., Defined Benefit Pension Scheme to the petitioners by taking into account the date of their initial appointment as daily rated/consolidated wages/work charged/part time employee and refrain from applying the new pension scheme.

2. The issues involved in all the writ petitions are one and the same and therefore, this Court is inclined to pass a common order.

3. The petitioners are working as Upper Division Clerk/Junior Engineer/ Work Inspector / Gangman / Driver / Assistant Community



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Organizer / Lower Division Clerk / Sanitary Worker / Gardener Maistry

Grade-II in various municipality in the Union Territory of Puducherry.

Some of the petitioners are the legal heirs of the deceased employees. All the petitioners were initially appointed as daily rated / consolidated wages / work charged / part time employees during the year 1987 to 2001. All the petitioners were absorbed in regular service on 01.01.2004. The Government of India introduced a new Defined Contribution Pension Scheme (hereinafter called as “new pension scheme”) replacing the existing system of Defined Benefit Pension Scheme (hereinafter called as “old pension scheme”) with effect from 01.01.2004. All the petitioners were absorbed in regular service after 01.01.2004, the new pension scheme has been applied to the petitioners and 10% of basis pay plus dearness allowance is deducted from their pay every month. They have also been allotted permanent retirement account number.

4. All the petitioners are not new entrants to the government service after 01.01.2004. They had entered government service prior to 01.01.2004, as such the old pension scheme will be applicable to them. New pension scheme is applicable to only those who entered into



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government service after 01.01.2004. Therefore, the petitioners submitted representation to consider their earlier service, which were rendered by them from the date of their initial appointment and to apply old pension scheme and granted them consequential benefits. Since the same was not considered, the petitioners approached this Court by way of these writ petitions.

5. The learned counsel appearing for the petitioners submitted that the Division Bench of this Court categorically held that the word “new entrant” has got a definite meaning a person who entered recently. A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004, cannot be termed as new entrant. Therefore, the new pension scheme can apply only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004. Whereas the petitioners, who were initially appointed prior to 01.01.2004 and absorbed in regular posts after 01.01.2004, cannot be terms as new entrants into government service after 01.01.2004.



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5.1. He further submitted that as per the order passed by the Government of Puducherry in G.O.Ms.No.20, Department of Personnel and Administrative Reforms, dated 05.04.1995, the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 was forwarded to all departments of the Government of Pondicherry for guidance and implementaion. As per the scheme, temporary status should be conferred on all causal labourers who have rendered a continuous service of at least one year and that such conferment of temporary status would be without reference to the creation and availability of regular Group-D posts.

5.2. All the petitioners had completed their one year service long before 01.01.2004. If the said scheme implemented, all the petitioners would have been conferred with temporary status long before 01.01.2004. 50% of the service rendered by them under temporary status would be counted for the purpose of retirement benefits under the Central Civil Services (Pension) Rules. Therefore, the failure on the part of the administration to implement the said scheme in time had deprived the petitioners for the grant of temporary status.



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5.3. He further submitted that as per the government order in G.O.Ms.No.39/LAS/2007, Local Administration Secretariat, dated 17.07.2007, the Government of Puducherry issued order directing that 50% of the service rendered by the persons in local bodies as casual labourers and who have been paid wages through Nominal Muster Roll should be counted for the purpose of grant of pension. There is no justification at all for treating them as fresh entrants after 01.01.2004.

6. Heard the learned counsel on either side and perused the materials available on records.

7. On perusal of the counter and documents filed by the respondents and the submission made by the learned Additional Government Pleader revealed that the Government of Puducherry adopted the new pension scheme for its employees who have joined service on or after 01.01.2004, and it is applicable to all new entrants to Central Government service, except to Armed Forces, joining government service on or after 01.01.2004. It came into operation with



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effect from 01.01.2004. All the petitioners were engaged on daily rated basis / consolidated basis on various dates since 1987. They were absorbed only after 01.01.2004. However, their 50% of daily rated service is counted for the purpose of grant of pension as per G.O.Ms.No.39/LAS/2007 dated 17.07.2007.

8. The learned Additional Government Pleader appearing for the respondents relied upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.542 of 2023*** in the case of ***National Institute of Rural Development Vs. Shyam Sunder Prasad Sharma & ors.***, dated 28.02.2023, which held as follows :-

“15. The Tribunal, as well as the High Court, have proceeded on an erroneous basis that after regularisation, respondent No.1 was entitled to change his option from CPF to the old pension scheme in terms of Bye-law 52. The High Court erroneously observed that regularization would relate back to the date of initial appointment made in the year 2002 when the order of regularisation dated 4th May 2012 expressly states that the regularisation will operate from the date of the said order. The High Court came to the conclusion that in view of the second proviso to sub-clause (a) (4) of



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Bye-law 52 of the Bye-laws, on the failure to communicate the option in the prescribed manner it shall be deemed that the employee has opted for the old pension scheme and GPF. Sub-clause (a)(4) of Bye-law 52, as observed earlier, will not apply to an employee whose service has been regularised under the Regularisation Rules. In the present case, in view of the provisions of the Regularisation Rules, there was no question of making available such an option.

16. In the circumstances, we find it difficult to sustain the impugned judgments. It appears that respondent no.1 has returned the benefits received by him under the CPF scheme. As a consequence of setting aside the impugned order, we direct the appellant to pay the amount to which respondent no.1 was entitled to under CPF. The amount shall be paid within a period of two months from today failing which the same will carry interest at the rate of 8% p.a. from the date on which the amount was returned to the appellant by respondent No.1.”

The above case is not applicable to the case on hand for the reason that there was an option and while their regularization they opted new pension scheme. Thereafter they claimed old pension as per bye-law.

Whereas in the case on hand, admittedly all the petitioners were joined



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during the years 1987, and their services were regularized after 01.01.2004.

9. That apart, as per the government order in G.O.Ms.39/LAS/2007 dated 17.07.2007, 50% of the service counted for the purpose of grant of pension. Therefore, the petitioners cannot be treated as fresh entrant after 01.01.2004, merely on the basis that they were absorbed in the regular service after 01.01.2004. The Hon'ble Division Bench of this Court in ***W.P.No.2110 of 2014*** in the case of ***Union of India and anr Vs. K.Punniyakoti and ors***, by an order dated ***19.03.2014*** held 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 01.01.2004, 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 01.01.2001.

18. Similar issue was considered by one of us (N.P.V..J.) in W.P.Nos.26933 and 26934 of 2007, order dated 23.04.2008. In the said case, the order of the



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Government of Tamil Nadu dated 06.08.2004, introducing new pension scheme with effect from 01.04.2003 came up for consideration and it was held that persons appointed/recruited after 01.4.2003 are not governed under the Tamil Nadu Pension Rules, 1978 and the persons appointed prior to the said date even in consolidated salary, or whose appointments as Secondary Grade Teachers were approved subsequently with time scale pay after passing Child Psychology Training, whose earlier services were ordered to be counted by the Division Bench of this Court. In the said case the Teachers were not paid salary before passing of Child Psychology Training, and they were ordered to be treated under the Tamil Nadu Pension Rules, 1978 as their initial appointment was prior to 1.4.2003, and the said order was implemented.

19. In W. P. (MID) No.14369 of 2010 one of us (N.P.V.J.) considered similar issue, wherein the petitioner was appointed as Noon-Meal Organizer on consolidated pay from 23.8.1988 to 16.7.2004 and he was appointed in regular service as B.T. Assistant from 17.7.2004 and retired as B.T. Assistant on 31.5.2001. The claim of the petitioner therein was that new pension scheme came into force in the State of Tamil Nadu from 01.4.2003 insofar as the State Government employees are concerned, cannot be applied to him. The contention of the State was that 50% service of the petitioner rendered from 23.8.1988 to



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15.7.2004 cannot be counted as he was absorbed in regular service only on 17.7.2004. The said contention was negated and, it was held that the initial appointment being 23.8.1988, though consolidated salary was paid upto 16.7.2004, the petitioner was brought in regular service from 17.7.2004 without any break in service, he was entitled to be treated under Tamil Nadu Pension Rules, 1978 and 50% of the earlier service as Noon- meal Organizer is to be counted along with regular service as B.T. Assistant for pension purpose under Rule 11 (2) of the Tamil Nadu Pension Rules, 1978. No appeal was preferred against the said order and the said order was also implemented.

20. Number of similar cases were considered in respect of the State Government employee under the Tamil Nadu Pension Rules, 1978, wherein also Rule 11 (2) of the Tamil Nadu Pension Rules, 1978 provides counting of 50% of the contingency service on similar terms and conditions as enumerated under the above Rule 14 (2) of CCB (Pension) Rules, 1972. In the said case Plot Watcher of Forest Department, appointed on daily wage basis from 01.9.1982, without interruption was absorbed in regular service from 24.08.2005 and he retired on 31.7.2011. Applying Rule 11(2) of Tamil Nadu Pension Rules, 1978, 50% of the service from 01.9.1982 till 23.8.2005 was ordered to be counted along with the regular service from



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24.8.2005 till 31.7.2011 and ordered sanction of eligible pension and other benefits. In the said case also, regularization was granted after the new pension scheme was introduced with effect from 01.4.2003 by the State Government. The said order was made in W.P.No.8205 of 2011 dated 19.4.2011, which was confirmed in W.A.No.27 of 2012 dated 13.2.2012 as well as in S.L.P.No.16119 of 2012 dated 10.5.2012 and in W.P.No.14987 of 2012 dated 14.6.2012.

21. At this juncture it is relevant to point out that persons appointed similar to respondents 1 to 16 on daily wage basis, who were given temporary status by virtue of the Scheme viz., Casual Labourers (Grant of Temporary Status and Regulation) Scheme, 1993, numbering 34, were given the benefit of counting 50% of their temporary status service while calculating pensionary service and they are entitled to get higher pension by adding 50% of their service. 50% casual employees appointed by the second petitioner being a class, there cannot be any classification within the said 50% casual employees, subsequently made as temporary employees and absorbed as Group 'D' employees.

22. Similar issue regarding fixing of pension by adding dearness pay by giving cut-off date was held arbitrary and violative of Articles 14 and 16 of the Constitution of India by the Supreme Court in the decision



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reported in (2013) 2 SCC 772 (Kellakkurichi Taluk Retired Officials Association vs. State of Tamil Nadu): The discriminatory treatment meted out to retired persons while granting pension was not approved by the Honourable Supreme Court in the decision reported in AIR 1983 SC 130 (D.3.Hakara and Other Petitioners v. Union of India).

23. The right of Government servants to receive pension is not a bounty, and it is a statutory right conferred under the pension rules applicable from the date when the Government servant was appointed, either on daily wage/temporary/permanent basis. Permanent absorption having been ordered considering the temporary service rendered earlier, under any stretch of imagination the persons who were already in employment prior to 01.01.2004 cannot be treated as fresh appointee for the purpose of applying new pension scheme, which came into force from 01.01.2004.”

10. Accordingly, this Court held with regard to issue arises as to whether new pension scheme which came into effect from 01.01.2004, is applicable to the person who were already employed either on daily wages or as temporary employee and whether they are entitled to get pension under old pension scheme on being absorbed in permanent establishment after 01.01.2004. Therefore, merely because the petitioners



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were absorbed permanently after 01.01.2004 in the service, they cannot be denied their statutory right. That apart, already their 50% of service rendered as casual labourers prior to 01.01.2004, has counted for the purpose of grant of pension.

11. Considering the above facts and circumstances, the respondents are directed to apply old pension scheme to the petitioners by taking into account of 50% of service from their initial appointment as daily rated / consolidated wages / work charged / part time employees and granted all consequential benefits within a period of twelve weeks from the date of receipt of a copy of this Order

12. With the above directions, all the writ petitions are allowed.
There shall be no order as to costs.

19.02.2024
($\frac{1}{2}$)

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Chief Secretary to Government,
Union Territory of Puducherry,
Chief Secretariat,
Puducherry – 605 001.
2. The Director,
Local Administrative Department,
No.16, Suffren Street,
Puducherry – 605 001.
3. The Commissioner,
Oulgaret Municipality,
Jawahar Nagar,
Puducherry – 605 005.

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($\frac{1}{2}$)