IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

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

W.P.No.20520 of 2024
and
W.M.P.No.22467 of 2024

1. V.Mohan
2. M.Pattu
3. M.Selvaraj
4. D.Vijaya
5. M.Sundar Singh
6. D.Ramu
7. A.Uma Devi
8. Hamsa Beevi
9. G.Mohana Krishnan
10. S.Durairaj .... Petitioners

Vs

Tamil Nadu Housing Board,
Rep. by its Managing Director,
CMDA Complex, E&C Market Road,
Koyambedu,
Chennai – 600 107. ....
Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to implement the benefits granted vide proceedings bearing No. PNT-1/34971/2012 dt.

27.01.2023 to the petitioners to pay pension by taking into account 50% of their service rendered before their regularization as pensionable service for calculation of pension with arrears from the date of their retirement with interest as per the order of this Honble Court in W.P. No.11746 of 2014 dt, 03.11.2017 as confirmed by order dt. 06.08.2022 in W.A. No. 1857 of 2022.

In all W.Ps

For Petitioners : Mr.M.N.Sumathy

For Respondent : Mr.V.Logesh
Standing Counsel for TNEB

ORDER

This Writ Petition has been filed for direction, 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 same together with arrears by taking note of order passed in W.P.No.11746 of 2014, dated 03.11.2017 confirmed by the Hon'ble Division Bench in W.A.No.1857 of 2022 dated 16.08.2022.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioners were appointed as Nominal Muster Roll

Employees in the Tamil Nadu Housing Board, during the year 1979-1988. During such period, they were disbursed as non-provincialized service, consolidated pay, honorarium or daily wages and subsequently, in the year 1988, their services have been regularized by way of fixing time scale as per Government Order in G.O.Ms.No.400, Housing and Urban Development Department, dated 02.05.1990 by giving retrospective effect from the year 1988, i.e., on 07.12.1988. Thereafter, the petitioners had retired from service. However, their 50% of service were not taken into account for their pension.

4. Therefore, similarly placed persons approached this Court in W.P.No.11746 of 2014. This Court, by an order dated 03.11.2017, held as follows :-

> *5. The grievances advanced in this writ petition is the non-consideration of the amended Rule 11 of the Tamil Nadu Pension Rules, in respect of qualifying the services and the amended Rule is extracted hereunder:*
> *Rule 11*
>
> *QUALIFYING SERVICE*
>
> *1."Commencement of qualifying service # {(1}) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he taken charge of the post to which he is first appointed either*

substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October. 1969,2{.....} temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.
(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:
service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

- *Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.*

- *Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.*

- *Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.*

- *Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.*
- *Pension or revised pension admissible as the case*

shall be paid from the 23rd June 1988.]

[Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break.

(3) These orders shall take effect from the date of this Government Order. In respect of those who retired prior to the date of this order, eligible pension or revised pension, as the case may be, shall be paid from the date of this order, and that there can be no claim for arrears in any case for the period upto the date of this order.

Note: In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore-Cochin State consequent on the reorganisation of State temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore-Cochin State shall count in full for purposes of pension:
Provided that-
(a) in the case of a Government Servant, service rendered before attaining the age of eighteen years shall not count,

except for compensation gratuity;

(b) in the case of a Government Servant whose year and month of birth are known, but not the exact date the 16th of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1st July if the year shall be taken.

(c) in the case of a Government Servant with no military service who gives on recruitment only his age, but not the year of his birth the year should be arrived at by deducting from the year of recruitment the given age and then the date of birth should be taken as the 1st July of that year:

Provided further that in the case of a Government servant with previous military service the date of birth is fixed as laid down below:

When a military employee is transferred to a civil department under the Government and assumes a civilian status, the date of birth to be entered in his service book should be the date stated by him at the time of attestation.

When the documents referring to the previous military service of an individual do not give the definite date of birth but only the age stated at the time of attestation, he should be assumed to have completed the stated age on the date of attestation e.g., if one ex-soldier was enrolled on 1st January 1910 and if, on that date, his age was stated to be 18, his date of birth should be taken as 1st January 1892. This procedure will apply to cases arising on or after 27th June 1938.

Notwithstanding anything contained above in cases where S.S.L.C. Or any other school certificate is available, the *date of birth, as entered therein should be taken into account.*

[Explanation.--For the purpose of date of birth, the word 'attestation' refers only to the initial records kept by the Defence Department at the time of appointment of the individual and not in the discharge certificate on discharge from the Defence Department.] '

6. While amending Rule 11(4)(iii), the Government imposed the cut-off date as 01.04.2003. It is stated that #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.

7. In view of the amended Rule 11 of the Tamil Nadu Pension Rules, which was already adapted by the authorities concerned, the writ petitioners are eligible for counting of the half of the services rendered by them as casual labours, if they satisfy the conditions stipulated in the said amended Rules. If the writ petitioners fall within the categories mentioned under Rule 11 as well as the order of the competent authorities, then the writ petitioners case has to be considered.

8.In this view of the matter, the respondents are directed to re-consider the case of the writ petitioners for counting half of the services rendered by them on consolidated pay, in accordance with Rule 11 of the Tamil Nadu Pension Rules, 1978, and pass appropriate orders in this regard, within a period of twelve weeks from the date of receipt of a copy of this order and communicate the same to the writ petitioners.

5. Aggrieved by the above order, the respondent filed Writ Appeal

in W.A.No.1857 of 2022 and the same was also dismissed by the Hon'ble Division Bench of this Court, by an order dated 16.08.2022. The order passed by the Hon'ble Single Judge of this Court was also confirmed by the Hon'ble Supreme Court of India in SLP (C) No.20427 of 2022, by an order dated 25.11.2022.

6. In view of the above, the respondent is directed to re-consider the case of the petitioners for counting half of the services rendered by them on consolidated pay, in accordance with Rule 11 of the Tamil Nadu Pension Rules, 1978 and pass appropriate orders, within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

25.07.2024
(2/2)

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

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To

The Managing Director,
Tamil Nadu Housing Board,
CMDA Complex, E&C Market Road,
Koyambedu,
Chennai – 600 107.

G.K.ILANTHIRAIYAN, J.

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