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W.P.No.21021, 21025 & 21029 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

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

W.P.Nos. 21021, 21025 & 21029 of 2024

and

W.M.P.Nos.22976, 22984 & 22986 of 2024

K.Sekar	... Petitioner in W.P.No.21021 of 2024
P.Shanmugam	... Petitioner in W.P.No.21025 of 2024
P.Anjalam	... Petitioner in W.P.No.21029 of 2024

-Vs-

1. The Government of Tamil Nadu,
represented by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George,
Chennai-600 009.

2. The Director of Rural Development Department,
Panagal Maligai,
Saidapet,
Chennai-600 015.

3. The District Collector (PD Section),
Thiruvallur District,
Thiruvallur

... Respondents in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, call for the records pertaining to G.O. (Ms) No.99 Rural Development and Panchayat Raj (E5) Department dated 27.08.2022 issued by the 1st respondent and quash the



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same in so far as it seeks to sanction monetary benefits to the petitioners only from the date of the Government order and not from the date of retirement of the petitioners and consequently direct the respondents to pay monetary benefits to the petitioners from the date of retirement of the petitioners.

In all W.Ps

For Petitioners : M/s T.Hemalatha

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

COMMON ORDER

These writ petitions have been filed challenging G.O.Ms.No.99 dated 27.08.2022 passed by the first respondent, thereby accorded permission to count 50% of service rendered in the post of part time Panchayat Clerk along with regular service for pensionary benefits from the date of issue of the Government Order, viz., 27.08.2022.

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

3. All the petitioners were appointed as part time Panchayat Clerk. Thereafter, their services were regularized and made permanent as Junior Assistants. They retired from service on attainment of superannuation. They were granted pension for the period of service after being made permanent



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along with the regularized service period. The computation of the pension were calculated on the basis of the period of service rendered by the petitioners from the date on which they were made permanent and the period in which they served as part time Panchayat Clerk were not taken into consideration for the computation of pension.

4. The Government, in order to alleviate the distress of the persons whose service were utilized by keeping them as temporary workers for a long time and consequently depriving them of the pensionable benefits by discounting the period of service as temporary employee, issued G.O.Ms.39, Rural Development Department on 13.06.2011. Accordingly, 50% of the service period of the employee in consolidated pay should be included with pensionable service for the purpose of computation of pension provided that employee is absorbed as Junior Assistant on or before 01.04.2003. Before absorption, the employee should have rendered the service as part time Village Panchayat Assistant Grade I or II or full time or part time Panchayat Clerk. Thereafter, the Government passed another order in G.O.Ms.No.77, Rural Development Department, on 12.07.2013, thereby counting of 50% of service in case of part time Panchayat Clerk/Assistant was withdrawn. Therefore, it was challenged before this Court in a batch of writ petitions.



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5. This Court quashed G.O.Ms.No.77, Rural Development Department, on 12.07.2013 and upheld G.O.Ms.No.39 dated 13.06.2011. It was confirmed by the Hon'ble Division Bench of this Court in W.A.No.431 of 2016 by an order dated 11.04.2016. Therefore, in the light of the orders passed by this Court, the Government decided to accept the orders passed by this Court and the Director of Rural Development and Panchayat Raj passed an order in G.O.Ms.No.99 Rural Development and Panchayat Raj (E5) Department, dated 27.08.2022, thereby accorded permission to count 50% of service rendered in the post of Panchayat Clerk along with regular service for pensionary benefits from the date of issuance of the Government Order viz., 27.08.2022.

6. The only grievance of the petitioners is that the Government Order is restricting the monetary benefits only from the date of issuance of the Government Order, instead of disbursing the monetary benefit from the date of retirement.

7. The submission made by the learned Additional Advocate General appearing for the respondents revealed that G.O.Ms.No.39 Rural Development and Panchayat Raj (E5) Department dated 13.06.2011 is contrary to the para



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11(4) of the Tamil Nadu Pension Rules, 1978, which reads as follows:-

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“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 condition namely:-

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

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis 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 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 wage basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

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

8. In view of the order passed by this Court, while challenging

G.O.Ms.77, Rural Development and Panchayat Raj (E5) Department dated

12.07.2013, in order to avoid the contempt proceedings, the present



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Government Order viz., G.O.Ms.No.99, Rural Development and Panchayat Raj (E5) Department dated 27.08.2022 has been passed by the first respondent.

Further, the Government also passed an order in G.O.Ms.No.82, Rural Development and Panchayat Raj (E5) Department, dated 07.07.2022, in order to give effect prospectively from the date of issue of the Government Order, the present G.O.Ms.No.99, Rural Development and Panchayat Raj (E5) Department dated 27.08.2022 has been passed.

9. Therefore, Para 11(4) of the Tamil Nadu Pension Rules, 1978 is prevailing the Government order. However, this Court passed various orders considering G.O.Ms.No.39 Rural Development and Panchayat Raj (E5) Department dated 13.06.2011 and directed the respondents to count 50% of the service rendered in the post of Panchayat Clerk, both part time and full time Panchayat clerk who were absorbed prior to 01.04.2003 in Government Services for calculating pensionary benefits. Therefore, G.O.Ms.No.39 Rural Development and Panchayat Raj (E5) Department dated 13.06.2011 is still in force, but the present impugned G.O.Ms.No.99, Rural Development and Panchayat Raj (E5) Department dated 27.08.2022 is depriving the right of the petitioners to receive the monetary benefit from the date of their retirement is contrary to G.O.Ms.No.39 Rural Development and Panchayat Raj (E5)



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Department dated 13.06.2011, thereby depriving the substantial monetary benefit is without any authority of law and the same is in violation of Article 300A of the Constitution of India. When the right to receive pensionary benefits from the date of retirement is vested on the petitioners, by virtue of G.O.Ms.No.39 Rural Development and Panchayat Raj (E5) Department dated 13.06.2011, it cannot be deprived by way of the impugned G.O.Ms.No.99, Rural Development and Panchayat Raj (E5) Department dated 27.08.2022.

10. Though the Government Order has been passed in order to avoid the contempt proceedings, the first respondent is now attempting to over rule various orders passed by this Court. All the petitioners were absorbed into the Government service prior to 01.04.2003. Therefore, 50% of service rendered in the post of part time Panchayat clerk along with regular service has to be taken into consideration for their pensionary benefits from the date of their retirement.

11. Therefore, the impugned Government Order restricts the monetary benefits from the date of issuance of the Government Order instead of extending the monetary benefits from the date of retirement of the petitioners. It is nothing but depriving the petitioners' entitlement to receive the monetary benefits from the date of their retirement which is exfacie illegal and arbitrary. Hence, it is in violation of Article 14 of the Constitution of India. Therefore, the impugned



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Government Order is liable to be struck down insofar as the portion restricting the monetary benefits from the date of issuance of G.O.Ms.No.99, Rural Development and Panchayat Raj (E5) Department dated 27.08.2022 alone.

12. In view of the above, these writ petitions are allowed. The first respondent is directed to grant monetary benefits to the petitioners from the date of their retirement of service and disburse the same, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

26.07.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George,
Chennai-600 009.
2. The Director of Rural Development Department,
Panagal Maligai,
Saidapet,
Chennai-600 015.
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G.K.ILANTHIRAIYAN. J.

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