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W.P.No.20580 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM:

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

W.P.No.20580 of 2024

E.K.Reetha

...Petitioner

-Vs-

1. The Union Territory of Puducherry,
represented by the Chief Secretary
to Government,
Chief Secretariat,
Puducherry – 605 001.

2. The Director,
Local Administration Department,
No.16, Suffren Street,
Puducherry – 605 001.

3. The Commissioner,
Mahe Municipality,
Mahe – 673310,
Union Territory of Puducherry.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to apply the Old Pension Scheme (Defined Benefit Pension Scheme) to the petitioner by taking into account the date of her initial appointment as consolidated wages employee, namely 17.07.1998 and grant her all consequential benefits.



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For Petitioner : Mr.D.Manojkumar
For Respondents : Mr.V.Vasantha Kumar
Additional Government Pleader (Pondy)

ORDER

This Writ Petition has been filed for direction directing the respondents to consider the request made by the petitioner seeking Old Pension Scheme.

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

3. The petitioner is working as Assistant Community Organizer in Mahe Municipality, the Union Territory of Puducherry. Initially she was engaged as Assistant Community Organizer on consolidated pay of Rs.2500/- with effect from 17.07.1998. Her service was regularized in the regular time scale of pay with effect from 01.06.2015, pursuant to the orders issued by the Government of Puducherry in G.O.Ms.No.9/LAS/2015, Local Administration Secretariat, dated 29.05.2015 and by the proceedings of the Commissioner, Mahe Municipality in No.2-106/MM/Estt-1/98-99 dated 04.06.2015.

4. While being so, by G.O.Ms.No.39/LAS/2007 Local Administration



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Secretariat, dated 17.07.2007, ordered 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. The Commissioner, Mahe Municipality had sent proposals to the Director, Local Administration Department, Puducherry dated 22.03.2017 citing the said Government order. As far as the petitioner is concerned, she was working on consolidated salary with effect from 17.07.1998 without any break in service till her absorption in regular service. Therefore, she is also entitled for 50% of service for the purpose of her regularization and for the purpose of pension and retirement gratuity.

5. This issue has been already dealt with by this Court in a batch of writ petitions in ***W.P.Nos.20154 and etc., of 2022*** dated ***19.02.2024*** in which this Court held as follows:-

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 :-*



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“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 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



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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 15.7.2004 cannot be counted as he was absorbed in regular service only on 17.7.2004. The said contention was negatived 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 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



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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 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



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in employment prior to 01.01.2004 cannot be treated as a 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 the issue arising as to whether the new pension scheme which came into effect from 01.01.2004, is applicable to the person who was already employed either on daily wages or as a temporary employee and whether they are entitled to get pension under the old pension scheme on being absorbed in permanent establishment after 01.01.2004. Therefore, merely because the petitioners 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.”

6. In view of the above, the respondents are directed to consider the case of the petitioner by taking into account of 50% of service from her initial appointment as consolidated salary for the purpose of pension and retirement benefits.

7. With the above directions, this writ petition is disposed of. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation: Yes/No

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G.K.ILANTHIRAIYAN. J.



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To

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