



W.P.No.21169 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.21169 of 2024

1. P.Kezendirane
2. K.Balabaskaran
3. R.Vijaya
4. V.Nalina
5. Soubalatchoumy
6. S.Jayanthi
7. Rajendirane
8. K.Kuppusamy
9. Rajesh D' Silva

... Petitioners

Vs

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



W.P.No.21169 of 2024

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

3. The Commissioner,
Puducherry Municipality,
Puducherry – 605 001.

4. The Commissioner,
Mahe Municipality,
(Union Territory of Puducherry) Mahe.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the representations dated 29.05.2023 and 18.03.2024 by directing the respondents to apply the old pension scheme (defined benefit pension scheme) by taking into account the date of the petitioner's initial appointment as work charged employee in terms of order passed by this Court in Writ Petition No. 20154 of 2022 dated 19.02.2024 and Writ Petition Nos. 17669, 17676, 17678, 17680 and 17683 of 2024 dated 04.07.2024 within the time limits as fixed by this Court.

For Petitioners : Mr. P.Suresh

For Respondents : Mr. V.Vasanth Kumar,
Additional Government Pleader
(Puducherry)



W.P.No.21169 of 2024

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ORDER

This Writ Petition is filed to direct the respondents to consider the representations dated 29.05.2023 and 18.03.2024 submitted by the petitioners, seeking applicability of the old pension scheme (defined benefit pension scheme), taking into account the date of their initial appointment as work-charged employees, in terms of the order passed by this Court in Writ Petition No. 20154 of 2022 dated 19.02.2024 and Writ Petition Nos. 17669, 17676, 17678, 17680, and 17683 of 2024 dated 04.07.2024, within the time limits as may be fixed by this Court.

2. The petitioners were originally engaged as Daily Rated Technical Assistants from 14.07.1997 to 03.08.2015 under a work-charged establishment in a nominal Muster Roll. In the year 2003, a proposal was sent to the second respondent for absorption of the Daily Rated Technical Assistants against newly created posts and existing vacant posts as well. Accordingly, the petitioners were absorbed by G.O. Ms. No. 15/LAS/2015-16, Local Administration Secretariat, dated 31.07.2015. In fact, the post of Work Inspector had been vacant since 2002. Therefore, the petitioners are



W.P.No.21169 of 2024

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not new entrants to Government Service after 01.01.2004, since they entered Government Service on 14.07.1997 itself. Hence, they are seeking accommodation in the Old Pension Scheme.

3. The learned Additional Government Pleader (Puducherry) appearing for the respondents, on written instructions, states that after absorption of the petitioners from casual service to the concerned departments, the Department of Personnel & Training issued a clarification by Office Memorandum dated 28.07.2016 regarding the applicability of the Old Pension Scheme to casual labourers as follows:-

“The OM was issued in consultation with Department of Expenditure and the Department of Pension and PW. It was clarified vide that OM that this Department's O.M dated 26th April, 2004 had been quashed in a series of Orders/Judgments. The OM dated 26th February, 2016 restores the provisions of the Scheme as it existed prior to the OM dated 26th April, 2004. The benefit of GPF and Old Pension Scheme is applicable to all those casual labourers



W.P.No.21169 of 2024

who are covered under the Scheme of the 10th September, 1993 even if they have been regularized on or after 01.01.2004.

As the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/Department may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 01.01.2004 for similar benefit in place of NPS”

4. Therefore, the Old Pension Scheme is admissible only to those casual workers who are covered under the 1993 scheme. However, the petitioners are not covered under the 1993 scheme. A similar issue was dealt with by this Court in W.P. Nos. 17669, 17676, 17678, 17680, and 17683 of 2024, dated 04.07.2024, and the relevant portion is extracted hereunder:-

“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



W.P.No.21169 of 2024

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 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



W.P.No.21169 of 2024

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 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 Byelaw 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



W.P.No.21169 of 2024

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 during the years 1994 to 1998, 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



W.P.No.21169 of 2024

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



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W.P.No.21169 of 2024

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 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-



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W.P.No.21169 of 2024

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



W.P.No.21169 of 2024

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



W.P.No.21169 of 2024

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 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



W.P.No.21169 of 2024

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 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.

5. In view of the above, 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.

6. With the above directions, this Writ Petition is allowed. No costs.

29.07.2024
2/2

Index:Yes/No



W.P.No.21169 of 2024

Neutral Citation/Yes/No

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W.P.No.21169 of 2024

G.K.ILANTHIRAIYAN, J.

kv

W.P.No.21169 of 2024

29.07.2024

2/2