IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORUM

DATED: 28.08.2024

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.16879 of 2017
and
WMP.No.18345 of 2017

R.Natarajan

... Petitioner

vs.

1. The Government of Tamilnadu,
Rep. by its Secretary, Revenue Department,
Fort St. George, Chennai-9.

2. The Commissioner for Revenue Administration,
Chepauk, Chennai-5.

3. The District Collector,
Nagapattinam District, Nagapattinam.

4. The Revenue Divisional Officer,
Mayiladuthurai- 609 001.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records on the file of the 1st respondent relating to the issue of the impugned letter, *viz.*, letter of Secretary to 1st respondent in No.3480/ Ser.8(2)/ 2016-4 dated 07.12.2016 and quash the same and consequently to direct the respondents to treat the appointment of the petitioner notionally with effect from 19.07.1999 for the purpose of pension and other retiral benefits and accordingly calculate all the retiral benefits under the Tamilnadu Pension Rules' 1978, *viz.*, Pension, DCRG, Special Provident Fund, encashment of Earned leave and Medical Leave Salary, etc., and pay the same and arrears therefor and also to return the amount recovered from the petitioner towards the Contributory Pension Scheme after adjusting the same towards GPF contribution along with appropriate interest, and within a time frame.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.S.Balamurugan
Government Advocate

ORDER

Writ petition is filed challenging the impugned order of the first respondent rejecting the petitioners claim for the pension under the Tamil Nadu Pension Rules', 1978.

2.The petitioner was appointed as a VAO on adhoc basis prior to 14.11.1980, the date of abolition of the erstwhile post of VAO/ Karnam by the first respondent. According to the petitioner, even though the Government had taken policy decision that, it would consider the case of VAO's who were not in service as on 14.11.1980, but had worked as part time Village Officers prior to

14.11.1980, if they were otherwise eligible for appointment, in existing future vacancies as per seniority list and on the basis of the length of service, the respondents had not considered the petitioners claim for the appointment prior to 28.10.2005, on which date alone he was actually reappointed as VAO. The petitioner states that, the delay in appointing him as a VAO was fully attributable to the in-action of the respondents. The petitioner states that, on his application in O.A.No.218 of 1999, to the Tamil Nadu Administrative Tribunal for appointment as VAO, an order was passed on 13.01.1999, directing the respondents to consider the petitioners representation dated 24.12.1998, within a period of eight weeks from the date of receipt of a copy of the order. The petitioner states that, in pursuance of the aforesaid order, the third respondent informed on 24.03.1999, that his request was under consideration. On 19.07.1999, the first respondent issued G.O (MS).No. 391, Revenue Department, directing the appointment of all eligible persons, irrespective of whether they filed cases or not, subject to the conditions passed on 18.10.1997. Thereafter, 469 persons were appointed as VAO's, between the period 1999 to 2001, but the petitioner was not appointed, even though he obtained a direction from the Hon'ble Tamil Nadu Administrative Tribunal in his favour.

3.According to the petitioner, even though the vacancies were available right from 1999, the petitioner was not appointed earlier by relying on a G.O. banning new recruitment to all posts in the Government. The petitioner states that, after the lifting of the ban on 22.06.2005, the petitioner was appointed as VAO on 28.10.2005, and the delay in appointment was unreasonable, arbitrary and untenable. The petitioner soon after his retirement, filed a writ petition in W.P.No.27096 of 2015 for a Writ of Mandamus, directing the respondents to pay him pension and retirement benefits, under the Tamilnadu Pension Rules', 1978, by adjusting the amount recovered from him towards Contributory Pension Scheme towards GPF contribution and other relief. This court, vide order dated 31.08.2015, directed the respondents to dispose of the petitioners representation dated 04.05.2015. In pursuance of the said order of this court, the first respondent passed the impugned order dated 07.12.2016. Aggrieved by which the petitioner filed the above writ petition for the aforesaid relief.

4.The respondents filed a detail counter denying the petitioners claim. The respondents submitted that the Government took a policy decision to restructure the Village Administrative set up and therefore, the Government vide the Ordinance 10/80 dated 13.11.1980, abolished the post of part time Village Officers with effect from 14.11.1980, in the State of Tamil Nadu and thereafter full time Villge Administrative Officers were appointed in all Revenue Villages in the State of Tamil Nadu. Further, the Government provided appointment to Ex-Village Officers, who lost their job consequent to the abolition of the post of Ex-Village Officers on 14.11.1980, in two phases. In the first phase, 5109 Village Administrative Officers were appointed and in the second phase, 1438 Village Administrative Officers were appointed. The respondents further submitted that the Government had taken a policy decision on humanitarian grounds, to re-appoint Ex-Village Officers as Village Administrative Officers, who worked as part time Village Officers prior to 14.11.1980, if they were otherwise fully qualified. The Government issued directions to maintain separate seniority register on the basis of the length of service of such persons. Whileso, the Hon'ble Tamil Nadu Administrative Tribunal passed the orders on 12.01.1999, directing the respondents to consider the representation of the petitioner dated 23.12.1998, as per the Rules. The Government decided to implement the direction of the Hon'ble Tamil Nadu Administrative Tribunal, vide G.O(MS).No. 954, Revenue

Department, dated 16.10.1997 and appointed 469 Ex-Village Officers as Village Administrative Officers. The Government further issued the orders to maintain a waiting list of a persons for appointment as Village Administrative Officers, with reference to the vacancy position. In the meantime, as a ban was imposed by the Government of Tamil Nadu on fresh appointments to Government service, including the post of Village Administrative Officer, for the period from 2002 to 2005, the appointments were not made. According to the respondents, the petitioner did not work as Ex-Village Officer as on 14.11.1980, and so the appointment of the petitioner as Village Administrative Officer on 28.10.2005, was as per the Rules. According to the respondents, there was no delay in the petitioners appointment. The respondents submitted that, as the petitioner was appointed on 28.10.2005, he was covered under the New Contributory Pension Scheme and so was not entitled for General Provident Fund, Death Cum Retirement Gratuity and retirement pension. The respondents submitted that, as the petitioner had not submitted an application for final closure of the Contributory Pension Scheme, the same was not paid to him. The respondents submitted that, the monetary benefit of salary increment for the period 01.10.2014 to 30.04.2015, of Rs.4,713/- was settled on 03.09.2015, and final surrender of leave of Rs.1,68,255/- was also settled on 12.12.2015. The respondents submitted that, as the petitioner was appointed on 28.10.2005, he was not entitled to minimum pension as per G.O(MS).No.158, Revenue Department, dated 08.04.2015. The respondents further submitted that as the petitioner joined duty as a Village Administrative Officer on 28.10.2005 and retired on 30.04.2015, he had rendered 9 years 6 months of service and hence, he was not entitled for General Provident Fund, Death Cum Retirement Gratuity and retirement pension under the Tamil Nadu Pension Rules, 1978. The respondents therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

5.The learned counsel for the petitioner submitted that, inspite of the orders passed by the Hon'ble Tamilnadu Administrative Tribunal, dated 12.01.1999, and the Government order in G.O(MS).No.391, Revenue Department, dated 19.07.1999, directing the appointment of a persons who worked as Village Administrative Officer's for a short period before the ban, subject to the eligibility and qualification, the respondents failed to appoint the petitioner. The learned counsel submitted that the delay in appointing the petitioner was solely attributal to the respondents. The learned counsel submitted that, in pursuance of the order of the Hon'ble Tribunal dated 12.01.1999, for no fault of the petitioner, his appointment was kept pending, without any valid reasons and therefore, the respondents were bound to treat the period from 19.07.1999 to 28.10.2005 as pensionable service. The learned counsel further submitted that the ban imposed by the Government was only during the year 2002, and therefore the denial of appointment to the petitioner prior to that, inspite of the G.O. dated 19.07.1999, was totally unjustified. The learned counsel further submitted that the respondents having delayed the appointment of the petitioner without any valid reasons, cannot be heard to say that only Contributory Pension Scheme would apply to the petitioner. The learned counsel also pleaded discrimination. According to the learned counsel one Perumal, who was appointed along with him and who had put in lesser service than him was granted minimum pension under G.O(MS).No.148, Revenue Department, dated 20.04.2011. So also, one Sivalingam was also granted minimum pension. The learned counsel therefore submitted that the respondents could not discriminate the petitioner and on the said score alone, the impugned order was un-sustainable. The learned counsel therefore submitted that the impugned order deserved to be set aside and the writ petition be allowed.

6.The learned counsel for the respondents reitereated the submissions made in the counter affidavit and submitted that the impugned order was infallible and therefore the writ petition deserved no merit and liable to be dismissed.

7.I have heard both the learned counsels and I have perused the materials on record.

8.FACTS:

Admittedly, the petitioner worked as a Village Administrative Officer on adhoc basis prior to 14.11.1980, the date on which the Government abolished the said posts. Thereafter, the Government provided appointment to Ex-Village Officers, who lost their job consequent to the abolition of Village Administrative Officers, in two phases. Thereafter, the Government took a policy decision to appoint Ex-Village Officers who were not in service as on 14.11.1980, but had worked as part time Village Officers prior to 14.11.1980, subject to the fulfilment of requisite qualification. The Government also directed maintenance of separate seniority list for the appointment of the said persons.

9.According to the respondents, there were 3 categories of Ex-Village Officers. Category I - consisted of those who were actually discharging duties as Ex-Village Officer as on the date of the ban, directly affected by the ban and who possessed the requisite qualification. Category II - were persons who were affected by the ban, but did not possess the requisite Educational qualification and who subsequently acquired the Educational qualification. Category III - were persons who were not affected by the ban as they were not in service as on 14.11.1980. The petitioner admittedly belongs to third category i.e., the persons who worked as part time Village Officer prior to 14.11.1980 (i.e.) date of ban. The respondents case was that, the third category of persons were appointed as per seniority and because of the ban imposed by the Government on fresh appointments to Government service including Village Officers post, between the period 2002 to 2005, the appointments were not made and it was only after the ban was lifted that the petitioner was appointed on 28.10.2005, as per Rules. The petitioner was appointed as a VAO on 28.10.2005, after coming into force of New Contributory Pension Scheme and therefore the petitioner was not entitled for General Provident Fund, Death Cum Retirement Gratuity and retirement pension.

According to the respondents, the petitioner had not made an application for final closure of Contributory Pension Scheme, and therefore, the same was not disbursed to him. In any event, the other benefits like salary increment and final surrender of leave were granted to the petitoiner on 03.09.2015 and 12.12.2015 respectively.

10.Though several issues were raised in the affidavit/counter affidavit and some Judgments were placed in support of the writ petition, it is not necessary to discuss the same because in my view the writ petition deserves to be allowed on the short ground of discrimination.

11.When the matter was taken up for hearing on 17.08.2023, on the submissions of the learned counsel for the petitoner, this court directed the respondents to file a specific counter/ reply affidavit, as to why the petitioner was treated differently from N.Perumal and R.Sivalingam. In pursuance of the order of this court, the 4th respondent filed a specific counter. Wherein, in para '5', it was stated as follows:

"5. However with reference to the Hon'ble High Court

Order dated 17.08.2023, this court asked a specific query why the petitioner had been differently considered that Perumal and Sivalingam. It is submitted that the petitioner had not been differently considered than Mr.Perumal and R.Sivalingam. They had been wrongly included in the G.O.(MS) No.148. For this proposal was addressed to the Secretary to Government Revenue and Disaster Management Department vide Lr.No.RA.II(2)/46770/2016/ Dt.16.10.2023 and to issue speaking order for reiterating the Government policy that who ever joins Governmtne on or after 01.04.2003, they must be enrolled in contributory pension scheme, In respect of persons already sanctioned minimium pension who have joined Government service on or after 01.04.2003, a proposal is being sent separately to issue an erratum to G.O (MS) No.148, Revenue Department dated 20.04.2011 to remove those persons, as their inclusion is against the policy decision of the Government."

12.From a reading of the above, it is seen that the respondents clearly admitted that the said two persons were included in G.O(MS).No. 148, Revenue Department and sanctioned minimum pension, though erroneously it is further seen that the respondents stated therein that, steps were taken to issue an erratum to the said G.O, so as to remove the names of the persons, as their inclusion was against the policy decision of the Government. Though the specific counter affidavit was filed, as early as on 28.12.2023, not a scrap of paper is filed before the court to establish that the same. The matter was taken up for final disposal on 28.08.2024, and even after a lapse of seven months, the respondents failed to produce any material to show that the erratum as stated in para '5' of the specific counter was issued or any steps were taken in furtherance thereof. In the light of the admission of the respondents that similarly placed persons were granted minimum pension as per G.O(MS).No.148, Revenue Department dated 20.04.2011, I am of the view that the petitioner cannot be discriminated. Moreso, when the aforesaid persons had put in lesser service than the petitioner. I am therefore of the view that the impugned order cannot be sustained and hence the same is set aisde.

13.Accordingly, the writ petition is allowed and the impugned order passed by the first respondent dated 07.12.2016 is set aside. No costs. Consequently, connected WMP is closed.

28.08.2024

Index:Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
dsn/ah

N.MALA,J.
dsn

To
1. The Secretary, Revenue Department,
The Government of Tamilnadu,
Fort St. George, Chennai-9.

2. The Commissioner for Revenue Administration,
Chepauk, Chennai-5.

3. The District Collector,
Nagapattinam District, Nagapattinam.

4. The Revenue Divisional Officer,
Mayiladuthurai- 609 001.

W.P.No.16879 of 2017

28.08.2024