



W.P.(MD)No.10894 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.10894 of 2022

and

W.M.P.(MD)Nos.7862, 7863 and 22640 of 2022

K.Subburaj

... Petitioner

Vs.

1.The Principal Accountant General (A&E),
O/o.Principal Accountant General,
Annasalai, Teynampet,
Chennai-600 018.

2.The Treasury Officer,
Madurai, Madurai District.

3.The Thasildar,
Peraiyur Taluk,
Peraiyur,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings passed by the first respondent in his proceedings in No.PO1/3/10123023/ADK/32 dated 31.08.2021 and consequential impuged order passed by the first respondent in his proceedings in Na.PO1/10123254/IPPO NO.R0123254/Rev dated 03.12.2021 and quash the same as illegal and consequentially direct the respondents to count the entire service of the



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petitioner as Village Assistant with effect from 01.06.1995 as net qualifying service and accordingly revise the pensionary and retirement benefits and disburse the same within the period that may be stipulated by this Court.

For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates
For R2 & R3 : Mr.J.Ashok
Government Advocate
For R1 : Mr.P.Gunasekaran

ORDER

This writ petition has been filed challenging the order passed by the first respondent in his proceedings in No.PO1/3/10123023/ADK/32, dated 31.08.2021 and the consequential impugned order passed by the first respondent in his proceedings in Na.PO1/10123254/ IPPO NO.R0123254/Rev, dated 03.12.2021 as illegal and consequentially to direct the respondents to count the entire service of the petitioner as Village Assistant with effect from 01.06.1995 as net qualifying service and accordingly, revise the pensionary and retirement benefits and disburse the same within the period that may be stipulated by this Court.

2. Heard Mr.Mohammed Imran, learned counsel appearing for the petitioner, Mr.J.Ashok, learned Government Advocate for the second and third respondents and Mr.P.Gunasekaran, learned counsel for the first respondent.



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3.The petitioner, who was working as an Office Assistant, after having rendered 26 years of service retired from service on 31.05.2021. The petitioner's service in the post of Village Assistant has been regularized with effect from 01.06.1995. After his retirement, a proposal for grant of pension was forwarded to the first respondent, who in turn had returned the said proposal stating that the service of the petitioner with effect from 01.06.1995 upto the date of retirement, is governed by the Special Rules on Special Time Scale of Pay as per Tamil Nadu Village Assistant Rules and therefore, for the purpose of reckoning qualifying service, half of those service alone should be taken into consideration. Thereafter, the pension proposal was modified to that effect and the first respondent by order dated 03.12.2021 has observed that for the purpose of qualifying service half of the service rendered by the petitioner shall be taken into account. Accordingly, the qualifying service was reckoned and the petitioner is being paid with pension for the said period.

4.The whole confusion had arisen only because the pension proposal was submitted by the third respondent in accordance with the Tamil Nadu Pension Rules without getting any choice given to the petitioner to choose the rules under which the petitioner prefers to get the pensionary benefits. The



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petitioner was in service from 01.06.1995 till 26.05.2021 only as Village Assistant. The petitioner got promotion only on 26.05.2021 and he retired from service on 31.05.2021. He served in the post of Office Assistant only for about six days.

5.If the pension proposal was sent to the first respondent under the Tamil Nadu Village Assistant Rules, there would not be any confusion as the issue on the same has already been decided by this Court in W.P.Nos.18734 of 2020 etc., batch dated 18.03.2024, wherein it has been stated that all those Village Assistants, who had continued to be village Assistants on and from 01.06.1995 till their retirement will be entitled to get their promotion under the Tamil Nadu Village Assistant Rules. As per the said Rules, for the purpose of reckoning qualifying services to get pensionary benefits, the period of service as Village Assistant from 1995 till the date of retirement will be taken in full and their half past services before regularization, i.e., before 01.06.1995, will be taken for computation.

6.But in this case, the petitioner has got promotion as Office Assistant on 26.05.2021 and retired from service on 31.05.2021. Hence, the petitioner's service in the capacity of Village Assistant alone could be taken into



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consideration under the Tami Nadu Village Assistant Rules for the purpose of granting pension. If the petitioner's services are calculated as calculated by the first respondent under the Tamil Nadu Pension Rules, then the petitioner will not get any benefit from either of the Rules.

7.The learned Government Advocate for the first respondent has relied upon a clarification given by the Government in Letter No.39151/Ser. 8(1)/2018-5, dated 20.11.2019 to substantiate his contention that the finding arrived at by the first respondent holds good.

8.However, the said clarification pertains to the service rendered by the Village Assistant, who had been observed into the services of Village Administrative Officer or Office Assistant after 01.06.1995. In the present case, the petitioner continued as Village Assistant till few days before his retirement. Hence, the services rendered by the petitioner has to be computed in the capacity of Village Assistant and hence, there cannot be any quarrel for his entitlement for pension, which will precisely be governed by the Tamil Nadu Village Assistant Rules.



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9.In view of the above observation, this writ petition is allowed and the orders passed by the first respondent in No.PO1/3/10123023/ADK/32, dated 31.08.2021 and in Na.PO1/10123254/ IPPO NO.R0123254/Rev, dated 03.12.2021 are hereby set aside and the third respondent is directed to send a revised pension proposal after getting consent /option from the petitioner and by computing the petitioner's entire service with effect from 01.06.1995 to 25.05.2021 along with half of his past service, if any rendered as Village Assistant prior to his regularization that is 01.06.1995 and grant the pensionary benefits to the petitioner as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

03.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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To

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R.N.MANJULA, J.

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