



W.P.(MD).No.12703 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.12703 of 2022

and

W.M.P(MD) Nos.9014, 9016 and 9017 of 2022

M.Baskaran

... Petitioner

Vs.

1. The Principal Accountant General,
O/o. Principal Accountant General,
Annasalai, Teynampet,
Chennai – 600 018.

2. The Treasury Officer,
Madurai,
Madurai District.

3. The Tahsildar,
Madurai East,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings in No.AG (A&E)/PEN.PO1/10123370/1/R0123370, dated 11.01.2022 and consequential impugned order passed by the first respondent



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in his proceedings in No.PO1/10123370/1/PPO No.R0123370/REV, dated 18.01.2022 and the consequential impugned order passed by the first respondent vide proceedings Pen 1/1 pt 14873/R0122370/21-22/ dated 08.03.2022 and quash the same as illegal and consequentially 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.

For Petitioner	: Mr.Mohamed Imran for M/s.Ajmal Associates
For R1	: Mr.P.Gunasekaran
For R2 and R3	: Mr.S.S.Madhavan Government Advocate

ORDER

The present Writ Petition has been filed by a retired Office Assistant, challenging the order passed by the respondents 1 and 2, wherein, they have treated the pensionary service only from 26.05.2021, the date on which the petitioner was appointed as an Office Assistant and brought under the Tamil Nadu Pension Rules 1978.



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2. According to the learned counsel appearing for the writ petitioner, the petitioner was a part time Village Assistant between 1989 and 1995. Later his services were regularised w.e.f. 01.06.1995 and he was appointed as a full time Village Assistant and brought within the Tamil Nadu Village Assistant Pension Rules, 1995. On 26.05.2021, he was promoted as an Office Assistant and thereafter, he was brought within the Tamil Nadu Pension Rules, 1978. The petitioner had attained superannuation on 30.06.2021, within a period of one month from the date on which he was promoted as an Office Assistant.

3. When the petitioner's pension proposals were submitted for calculating the pensionary service from 01.06.1995, the authorities have returned the same with an observation that only 50% of the service period between 01.06.1995 and 26.05.2021 will be taken into consideration for the purpose of pensionary service. Challenging the said order, the present writ petition has been filed.

4. According to the learned counsel appearing for the writ petitioner, he has put in a long service as a Village Assistant and therefore, 50% of the



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services cannot be taken into consideration. The learned counsel for the petitioner had relied upon Rule 4 of Tamil Nadu Pension Rules to contend that he can exercise this option to retain himself under the Tamil Nadu Village Assistants Pension Rules, 1995, if he expresses his option within a period of six months from the date on which he was appointed as an Office Assistant. Since he had retired within a period of one month, he was not in a position to exercise the said option.

5. Per contra, the learned counsel appearing for the respondents herein had contended that the pensionary service under the Tamil Nadu Pension Rules means only the services put in by the writ petitioner as Government servant and the services as Village Assistant cannot be taken into consideration and therefore, only 50% of services can be taken into consideration and he prayed for sustaining the said order.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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7. The petitioner's services were regularised as Village Assistant on 01.06.1995 which is a pensionary service under the Special Pension Rule, namely, the Tamil Nadu Village Assistants Pension Rules, 1995. Later he has been promoted as an Office Assistant on 26.05.2021, which falls within the Tamil Nadu Pension Rules, 1978. Therefore, it is clear that the petitioner has got transferred from a post to which the Tamil Nadu Pension Rules, would not apply. Hence, as per Rule 4 of Tamil Nadu Pension Rules, 1978, the petitioner is having a remedy to return to the old pension Scheme under Tamil Nadu Village Assistants Pension Rules, 1995. However, the said option has to be exercised within six months from the date of transfer. In the present case, within one month from the date of transfer, the petitioner has retired. Therefore, the petitioner is entitled to exercise his option now, to get himself retained in the Tamil Nadu Village Assistants Pension Rules, 1995.

8. In view of the above said facts, the petitioner is directed to approach the third respondent herein with a request to exercise his option under Rule 4 of Tamil Nadu Pension Rules, 1978, to get himself retained under the Tamil Nadu Village Assistants Pension Rules, 1995. On submission of the said request, the third respondent herein is directed to forward the same to the



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respondents 1 and 2 within a period of eight weeks from the date of receipt of such a request from the writ petitioner. The respondents 1 and 2 are directed to consider the same and pass orders on merits and conferring eligible benefits upon the writ petitioner.

9. With the above said observations, this Writ Petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

08.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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O/o. Principal Accountant General,
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R.VIJAYAKUMAR,J.

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