



W.P.(MD).No.13838 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 13.11.2024

ORDER PRONOUNCED ON : 15.11.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.13838 of 2023
and WMP(MD).No.11674 of 2023**

P.Manickavel

....Petitioner

Vs

1.The Government of Tamil Nadu
Represented by its Secretary to Government
Rural Development and Panchayat Raj Department
Fort St.George
Chennai 600 009

2.The Director of Rural Development and
Panchayat Raj Department
Panagal Buildings
No.1, Jeenis Road
Saidapet, Chennai 15

3.The District Collector
Tuticorin District
Tuticorin

4.The Accountant General
Accounts & Entitlement
Nandhanam, Chennai 600 018

5.The Block Development Officer
Ottapidaram Panchayat Union
Ottapidaram,Tuticorin District

....Respondents



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Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings issued by the third respondent in Se.Mu.Aa.No.Va8/29098/2021 dated 18.05.2023 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondents to enroll the petitioner in the old pension scheme (General Provident Fund) by taking note of the original appointment in the sanctioned post of Record Clerk regular time and scale of pay on 03.11.1986 within the time frame stipulated by this Court.

For Petitioner : Mr.P.Krishnasamy

For Respondents : Mr.D.Sasikumar
Additional Government Pleader
For R1 to R3 & R5

: Mr.P.Gunasekaran
Standing Counsel for R4

ORDER

The instant writ petition has been filed by a retired Deputy Block Development Officer challenging the order passed by the third respondent dated 18.05.2023 wherein the request of the writ petitioner for enrolling himself under the Old Pension Scheme governed by Tamil Nadu Pension Rules, 1978 has been rejected.

(A)Facts leading to the filing of the writ petition are as follows:

2.The petitioner herein was appointed as a full time record clerk by the



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President of the Panchayat Board, Kulathur by way of resolution dated 31.10.1986 and the petitioner joined service on 03.11.1986. The probation of the petitioner was declared on 02.11.1988. By way of proceedings of the third respondent dated 24.12.2007, the petitioner was absorbed into Government service as a Junior Assistant under 10% quota after obtaining concurrence from the Tamil Nadu Public Service Commission. Thereafter, the petitioner was appointed as Junior Assistant Grade-II and later promoted as Junior Assistant Grade-I. Thereafter, the petitioner was promoted as Deputy Block Development Officer Grade-II and he retired in the said post on 31.03.2023. After retirement, the petitioner has sent a representation on 02.05.2023 to the third respondent seeking to reckon 50% of the services rendered between 03.11.1986 to 23.12.2007 and add the same to his pensionable service and revise his pension.

3.The petitioner had relied upon Rule 11(4) of Tamil Nadu Pension Rules, 1978 and G.O.Ms.No.39 Rural Development and Panchayat Raj Department dated 13.06.2011 in support of his case. After considering the said representation, the present impugned order has been passed on 18.05.2023 rejecting the request of the petitioner on the ground that the petitioner has been absorbed into Government service only on 28.12.2007 and therefore, the petitioner is not entitled to get enrolled himself in the Old Pension Scheme. This order is put to challenge in the present writ petition.



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(B)Contentions of the counsels appearing on either side:

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4. According to the learned counsel appearing for the writ petitioner, the petitioner was appointed as a full time record clerk on a time scale of pay on 03.11.1986. Therefore, the services of the writ petitioner from the date of initial appointment is not only on full time basis, but also on permanent basis. The petitioner has been appointed as a Junior Assistant on 24.12.2007 by way of promotion. Therefore, the period between 03.11.1986 to 23.12.2007 cannot be excluded. Since the petitioner is in permanent government service from 03.11.1986 onwards, the petitioner ought to have been enrolled under the Old Pension Scheme and the said service should be reckoned and therefore, at least 50% of the said services should be reckoned for the purpose of calculating the pensionable service.

5. The learned counsel for the petitioner had relied upon Rule 11(4) of the Tamil Nadu Pension Rules, 1978 to impress upon the Court that the services rendered in non-provincialised service, if it is rendered as a whole time employment and subsequently absorbed in regular service under the State Government, 50% of the said services have to be reckoned. The learned counsel also relied upon G.O.Ms.No.39 Rural Development and Panchayat Raj Department dated 13.06.2011 wherein it is held that 50% of the services rendered in a consolidated pay and absorbed prior to 01.04.2003 as Junior Assistant shall be calculated for pensionable service.



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6.Per contra, the learned Additional Government Pleader appearing for the respondents herein had contended that though the petitioner was working as a full time employee, his salary was paid by the local body while he was working as a record clerk in the Panchayat Union. His services were absorbed into Government only on 24.12.2007. The absorption order has been specifically pointed out that the petitioner would be governed only under Contributory Pension Scheme. While in service, the petitioner has not chosen to challenge the said order for nearly 16 years. He had further contended that the benefit arising under Rule 11(4) of the Tamil Nadu Pension Rules or under G.O.Ms.No.39 Rural Development and Panchayat Raj Department dated 13.06.2011 could be conferred upon the writ petitioner only if he has been absorbed into Government service prior to 01.04.2003.

7.The learned Additional Government Pleader had further contended that the appointment of the writ petitioner as a Junior Assistant in Government service is not a promotion from the post of record clerk but it is a direct recruitment under 10% quota. Therefore, the petitioner would not be entitled to seek reckoning 50% of the past services rendered by him in the Panchayat Union.

8.I have considered the submissions made on either side and perused the material records.



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(C)Discussion:

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9.A perusal of the order passed by the third respondent herein on 24.12.2007 reveals that the petitioner has been absorbed into Government service under 10% quota after getting concurrence from Tamil Nadu Public Service Commission and appointed as a Junior Assistant. The said order further reveals that the petitioner would be governed by Contributory Pension Scheme. Under the said order, the petitioner has been directed to undergo two years of probation and he was directed to complete the departmental examination within a period of five years. Therefore, it is clear that the petitioner has been absorbed into Government service for the first time only on 24.12.2007. After being absorbed into Government service, the petitioner has been enrolled under Contributory Pension Scheme and on his retirement, the entire benefits accrued under the said scheme has been disbursed to the writ petitioner.

10.The petitioner has not chosen to challenge the condition imposed in the absorption order or raised any dispute while he was in service for nearly 16 years. The learned counsel for the petitioner had relied upon G.O.Ms.No. 39 Rural Development and Panchayat Raj Department dated 13.06.2011 to contend that 50% of his past services should be taken into consideration. A perusal of the said G.O., reveals that the said Government order is applicable only to those Junior Assistants who were absorbed into Government service



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prior to 01.04.2003. Therefore, the said Government order is not applicable to the writ petitioner.

11.The learned counsel for the petitioner had further relied upon Rule 11(4) of the Tamil Nadu Pension Rules, 1978 seeking the said benefits. A perusal of Rule 11(4)(iii) reveals that one of the conditions for calculating 50% of the past services is that the candidate should have been absorbed in regular service before 01.04.2003. Therefore, the petitioner cannot take advantage of the above said Rule also.

12.If really the petitioner was in Government service from the year 1986 onwards, certainly he would have already been enrolled under the Old Pension Scheme. No records have been placed before this Court to indicate the fact that the petitioner has been enrolled under the Old Pension Scheme. Therefore, it is clear that the petitioner was not in Government service prior to 24.12.2007, but received salary from the funds of the local-body.

13.In view of the above said deliberations, this Court does not find any illegality or infirmity in the order impugned in the writ petition. There are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2024.

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



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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