



W.P.(MD).No.31241 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.31241 of 2023

Sankarasubramanian

... Petitioner

Vs

1. The Accountant General,
Accounts and Entitlement,
Nandhanam, Chennai - 18.
2. The District Collector,
Tuticorin District,
Tuticorin.
3. The Tahsildar,
Srivaikundam Taluk,
Tuticorin District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to sanction the Pensionary benefits to the petitioner from the date of retirement calculating the petitioner's service from the petitioners date of appointment based on the petitioner's representation, dated 26.07.2022 made to the respondents.



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For Petitioner : Mr.P.Krishnasamy

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

The present writ petition has been filed for the issue of a writ of mandamus, directing the respondents to sanction the Pensionary benefits to the petitioner from the date of retirement calculating the petitioner's service from the petitioner's date of appointment based on the petitioner's representation, dated 26.07.2022 made to the respondents.

2.(i).The petitioner was appointed as a Noon Meal Organizer on 01.02.1983. In the year 2008, he passed the examination conducted by the Commissioner of Revenue Administration as per the G.O. Ms.No. 439, Revenue(PANI-7(1)) Department, dated 15.07.2008. Thereafter, he was selected as a Village Administrative Officer of Cherndamangalam village, Thiruchendur taluk, Tuticorin District as per the proceedings, dated 12.02.2009. He was appointed under Rule 10(A-1) of the Tamil Nadu General Rules of the Tamil Nadu State and Subordinate Services. On 13.02.2009, the appointment order in NA.Ka..A2-1139-2009-2 was issued by the Revenue Divisional Officer, Thiruchendur to the petitioner. Thereafter, on 29.06.2009,



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the Commissioner of Karungulam Panchayat Union issued a certificate to the petitioner certifying that he worked in a Noon Meal Organizer post from the period 01.02.1983 to 07.02.2009.

(ii).On attaining the age of superannuation, he retired from the service of Village Administrative Officer on 31.03.2018. The petitioner made several requests to the respondents to issue pension considering his service. He was declared as a permanent employee and was entered in the service register with effect from 01.01.1996. Since the petitioner's request was not considered, on 05.06.2023 the petitioner made a representation to the respondents 2 and 3 in this regard. The same was not considered. In view of the same, this petition came to be filed,

3.The third respondent has filed a counter affidavit. The learned Government Advocate, Mr. J. K. Jayaselan submitted that the petitioner was appointed on 01.02.1983 as a Noon Meal Organizer in a non-provincialized post and he was brought into the regular establishment with timescale of pay with effect from 01.01.1996 and he retired on 31.03.2018. During his service as Noon Meal Organizer from 01.02.1983 to 07.02.2009, he worked under the consolidated pay scheme. Since he was appointed from 19.02.2009 as Village



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Administrative Officer, he was brought under the contributory pension scheme and he is not eligible under the old pension scheme as per the prevailing rules. The petitioner has been sanctioned with a sum of Rs.4,38,284/- under the contributory pension scheme. He has also submitted required pensionary forms for the receipt of the same. Though the petitioner claims to extend the benefit of G.O.Ms.No.408, dated 25.08.2009, the same could not be extended to him and the benefits of the said G.O could be extended only to those employees, who were absorbed, appointed and regularized before 01.04.2003. Admittedly, the petitioner was appointed as V.A.O only after 2009 and thereafter, regularized and probation was also confirmed. In view of the same, he is not entitled to be covered under the old pension scheme. The petitioner's request to consider his previous service as Noon Meal Organizer from 01.02.1983 to 07.02.2009 was already taken into account and the same was also duly informed to the petitioner even on 14.12.2021 by the respondents. That apart, the Tamil Nadu Village Administrative Officers Welfare Association has also given two representations, dated 03.02.2020 and 06.11.2020 regarding the same issue and the Government in its letter no. 4749/Service-8(2)/2020-6, dated 01.11.2021 has informed the said aspect for non-consideration. The petitioner's several representation in this regard including those, dated 27.07.2018 and 27.08.2018



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were all properly rejected by the speaking orders of the Government on various occasions and the same has also been uploaded in the CM cell online portal with a file number A3-1298-18, dated 24.09.2018. In view of the same, he pressed for dismissal of the writ petition.

4.Heard, the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents. Perused the materials available on record.

5.The fulcrum of the matter in issue in this writ petition has already been tested before the Full Bench of this Court in W.A.No. 158 of 2016 batch (*The Government of Tamil Nadu Vs R. Kaliamurthy*, dated 29-08-2018), constituted by the Hon'ble Chief Justice of Madras High Court, pursuant to the order, dated 29.08.2018 passed by the Division Bench of this Court in W.A.No. 1218 of 2018 etc., batch. The specific question framed before the full Bench is as follows: "In view of the provisions of the Tamil Nadu Pension Rules, as amended comma, if a government servant is regularized in service after 01.04.2003, whether such a person will be entitled to count 50 percent of the past service rendered prior to the regularization for



the purpose of computing his pension under the old pension scheme”. The operative portion of the aforesaid judgment is extracted as follows:

“44. The aforesaid Judgment of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as resjudicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons.

45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of 65/68 <http://www.judis.nic.in> W.A.No. 158 of 2016 etc., batch proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised



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before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

6.The petitioner served as Noon Meal Organizer from 01.02.1983 to 07.02.2009 under consolidated pay scheme. Thereafter, he was appointed under Rule 10(A-1) of the Tamil Nadu State and Subordinate Service Rules as a Village Administrative Officer of Senthamangalam Village, Thiruchendur Taluk, Tutucorin District, as per the proceedings, dated 01.02.2009 and was offered with an appointment order, dated 13.02.2009.

7.The mandates of the full Court Judgment discussed *supra* has made it clear that those Government servants, who were appointed before 01.04.2003 under consolidated pay and thereafter, absorbed in regular service



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after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension. In view of the same, I am of the considered opinion that at any cost the petitioner regularized after 01.04.2003 as the Village Administrative Officer is not entitled for the relief as submitted in his representations, dated 26.07.2022 and 05.06.2023. In fact, his earlier representations in this regard has already been rejected by an order, dated 24.09.2018. In view of the same, this writ petition is not maintainable and is liable to be dismissed.

8. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

19.03.2024

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

To

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L.VICTORIA GOWRI, J.

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