courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 20/08/2026

(2006) 09 MAD CK 0078

In the Madras High Court

Case No : Writ Petition (MD) No. 4921 of 2006 and M.P. No''s. 1 and 2

K. Sampath APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:
Constitution of India, 1950 — Article 162, 166, 309
Tamil Nadu Pension Rules, 1978 — Rule 43(2)

Citation : (2006) 09 MAD CK 0078

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : J. Nishabanu, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to call for the records on the file of the first respondent in connection with the

order passed by him in his proceedings Lt. No. 36439/E4/2005 dated 12.12.2005 and quash the same and direct the respondents to count half of

the non-provincialised service of the petitioner from 1.3.1985 to 1.1.2000 for the purpose of repayment of all the terminal benefits including the

commutation of pension, pension arrears and monthly pension with 18% interest per annum.

2. Petitioner was selected and appointed to the post of part-time Panchayat Assistant on 1.3.1985 and was regularly appointed as such with effect

from 1.1.1991. On 1.1.2000, he was appointed as Junior Assistant and then promoted to the post of Assistant on 14.3.2004. He retired from the

service on 31.5.2005 and applied for pension, counting the period during which he served as Panchayat Assistant from 1.3.1985 to 1.1.2000.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state...

But, the second respondent rejected the request by order dated 6.4.2005 relying upon the Government Letter No. 10973/Pension/2000-1,

Finance Department, dated 4.10.2000. Petitioner challenged the said order in W.P. No. 6537 of 2005 and this Court by order dated 25.7.2005

passed the following order.

4. Petitioner''s grievance is that G.O.Ms. No. 118, Finance (Pension) Department, dated 14.02.1996, has not been taken for consideration, while

passing the impugned order.

5. Without going into the merits of the contention of the petitioner, it is sufficient to direct the first respondent to consider the claim of the petitioner

in the light of the said G.O., and pass appropriate orders, in accordance with law and on merits, within a period of eight weeks from the date of

receipt of a copy of this order.

Thereafter the first respondent passed the impugned order in letter No. 36439/ E4/2005, dated 12.12.2005 stating that G.O.Ms. No. 118 Finance

(Pension) Department, dated 14.2.1996 cannot be applied in favour of the petitioner in view of the Government Letter No. 10973/Pension/2000-

1, Finance Department, dated 4.10.2000, wherein it is clarified that the service rendered under the Village Panchayat Boards cannot be counted

as qualifying service for the purpose of calculating pension. The said order is challenged in this writ petition.

3. The learned Counsel appearing for the petitioner argued that the petitioner is having more than 20 years of total service and the period from

10.3.1985 to 1.1.2000 is bound to be counted for the purpose of arriving at pension apart from the period from 1.1.2000 to 31.5.2005. The

learned Counsel further argued that the respondents have no jurisdiction to rely upon the Government letter dated 4.10.2000 in the impugned

order for rejecting the claim of the petitioner since G.O.Ms. No. 118 dated 14.2.1996 creates a right in favour of the petitioner to count 50% of

the service in the Village Panchayt as pensionable service and if the same is counted, petitioner will be having more than 10 years of pensionable

service till his retirement on 31.5.2005 and therefore the respondents are bound to sanction pension from 1.6.2005.

4. The learned Government Advocate, on instructions submitted that G.O.Ms. No. 118 dated 14.2.1996 cannot be applied for the petitioner in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state…

view of the clarification issued by the Government in its Letter dated 4.10.2000 and therefore the impugned order rejecting the request of the

petitioner to count his service in the Village Panchayat is illegal and valid.

5. I have considered the rival submissions made by the learned Counsel appearing for the petitioner as well as the learned Government Advocate

for the respondents.

6. The point in issue is whether the petitioner is having more than 10 years of pensionable service for sanction of pension and whether he is entitled

to get sanction of pension from 1.6.2005.

7. It is the admitted case that the petitioner was appointed as a part-time Panchayat Assistant from 1.3.1985 and was regularly appointed in the

said post with effect from 1.1.1991. He was promoted as Junior Assistant on 1.1.2000, further promoted as Assistant from 14.3.2004 and retired

as Assistant on 31.5.2005. Thus, admittedly, the period of service from 1.1.2000 to 31.5.2005 is pensionable service.

8. G.O.Ms. No. 118 Finance (Pension) Department, dated 14.2.1996 reads as follows,

Government Of Tamil Nadu

Finance (Pension) Department

G.O.Ms. No. 118 Dated: 14th February, 1996

Sub : PENSION - Counting of half of the service under non-pensionable establishment along with regular service under pensionable establishment

for pensionary benefits -

Orders Issued.

Read : 1) G.O.Ms. No. 437, Finance (Pension), dated 23.6.1988

2) G.O.Ms. No. 955, Finance (Pension), dated 23.12.1991.

Order:

In the Government Order first read above, orders have been issued to count half of the service rendered under contingent establishment along with

regular service for pensionary benefits subject to certain conditions in respect of Government employees and employees of local bodies and aided

educational institutions.

2) The Government have examined the question of extending the concession

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state…

ordered in the Government first read above to the case of

Government employees who were borne on non-pensionable establishment and subsequently brought into pensionable establishment and have

decided to count half of the service rendered under non-pensionable establishment along with service under pensionable establishment for

pensionary benefits. They accordingly direct that half of the service rendered by State Government employee under non-pensionable establishment

shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following

conditions.

(a) Service under non-pensionable establishment should have been in a job involving whole time employment.

(b) The service under non-pensionable establishment should have been on time scale of pay.

(c) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment

without a break.

3. These orders shall take effect from the date of this Government Order. In respect of those who retired prior to the date of this order, eligible

pension or revised pension, as the case may be shall be paid from the date of this order, and that there can be no claim for arrears in any case for

the period upto the date of this order.

(By Order Of The Governor)

P.V.Rajaraman, J.

Secretary to Government

A bare reading of the above Government Order contemplates three conditions to count the half of the service rendered by the State Government

employees under non-pensionable establishment, that is, (1) Service under non-pensionable establishment should have been in a job involving

whole time employment; (2) The service under non-pensionable establishment should have been on time scale of pay; and (3) The service under

non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without break. Further, the

said Government Order nowhere states that the non-pensionable service

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state...

rendered by a person in Village Panchayat will not be counted for

pension. On the contrary the said Government Order is general in nature, which also states that the same is applicable to the Government

employees, employees of Local Bodies and Aided Educational Institutions. Village Panchayat is admittedly a Local Body. Therefore, 50% of the

service rendered by the petitioner in the Village Panchayat on full time basis with time scale of pay from 1.1.1991 to 1.1.2000 is countable for the

purpose of calculating pension under G.O.Ms. No. 118 dated 14.2.1996. Thus the petitioner is having five more years of pensionable service upto

1.1.2000 and by adding the same with the admitted pensionable service from 1.1.2000 to 31.5.2005, the total pensionable service comes to 10

years and 5 months. Hence the petitioner satisfies the minimum qualifying service of 10 years to get sanction of pension from 1.6.2006. Rule 43(2)

of the Tamil Nadu Pension Rules, 1978 contemplates that the employees having minimum ten years of qualifying service are eligible to get pension.

9. The reason stated in the impugned order stating that in view of the subsequent clarification issued by the Government by letter dated 4.10.2000

clarifying G.O.Ms. No. 118 dated 14.2.1996, is totally illegal since the Government order issued with the executive power of the Government in

the name of the Governor cannot be clarified by a letter of the Secretary to the Government. Admittedly no amendment to G.O.Ms. No. 118

dated 14.2.1996 is issued and therefore the Government order will prevail over the subsequent Government letter.

10.(a) In the decision reported in (2005) 10 SCC 244 (R.P. Bhardwaj v. Union of India and Ors.) the issue dealt with was as to whether a letter

of the Central Ministry issued by the Secretary will over ride the Office Memorandum and the Honourable Supreme Court held that the

Government letter cannot be acted upon unless a new Office Memorandum is issued. The relevant portion of para 8 is extracted hereunder,

... We have already noticed that the OM dated 19.7.1989 contained instructions to be noted and followed by all concerned. That position was

prevailing when the proposal by means of letter dated 23.11.1989 was mooted. It was not yet issued as OM for compliance by all concerned as

was done in respect of the OM dated 19.7.1989. In our view, it was still at a premature stage and before being final so as to be circulated by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state…

Government of India for being followed by the authorities and the departments and all concerned, it seems to have been acted upon by the Service

Commission against the OM which was in operation. Even if any implied approval is inferred by the Public Service Commision, it would be of no

consequence since then too it would not be anything more than an approval of a proposal. An approved proposal would not replace an OM

issued by the Government of India. Even after approval the Government may not issue any OM. The Commission wrongly acted upon the mere

proposal.

(b) In an unreported decision in W.P. No. 1713 of 1988, etc., batch by common order dated 7.11.1990, this Court considered similar issue as to

whether the Government letter will prevail over the Government Order or not and held that the Government Order having been authenticated and

expressed to be taken in the name of the Governor, has the sanctity of an order issued under Article 166 of the Constitution of India and the

Government letter issued subsequently cannot supersede the earlier Government Order.

(c) This Court in the decision reported in 2004 WLR 805 (P. Jeya v. Union of India and Ors.) considered a similar issue as to whether the

Government letter will prevail over the Government Order. The relevant portion of para 34 reads as follows,

In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive

order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by

another executive order, not being issued in the name of the Governor....

11. By virtue of issuance of G.O.Ms. No. 118 Finance (Pension) Department, dated 14.2.1996, petitioner has got the right to count his 50% of

service prior to his appointment from 1.1.2000 for pension. Under the Government letter dated 4.10.2000, the said benefit is sought to be taken

away. In view of my earlier finding that the Government letter cannot over-ride the Government Order, the petitioner is entitled to succeed. Even

otherwise, on any ground if the Government letter is applicable, it can be applied only prospectively to the persons who have joined service after

4.10.2000 in view of the decision of the Hon''ble Supreme Court reported in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state...

State of Haryana, Vs. Shamsher Jang Bahadur, etc. etc., wherein in

para 7 it is held thus,

7. It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question

arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under

the Rules framed under Article 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to

do so. This Court has ruled in Sant Ram Sharma Vs. State of Rajasthan and Another, that while the Government cannot amend or supersede the

statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the

rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are

concerned, so far as relate to the clerks in the Secretariat amend or alter the conditions of service prescribed by the rules framed under Article309.

Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules,

the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affect the promotion of

concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Article

309 by means of administrative instructions. We are unable to agree with the contentions of the State that by issuing the instructions in question, the

Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules.

The same view is taken in the decision reported in Chandraprakash Madhavrao Dadwa and Others Vs. Union of India and Others, wherein in

para 53 the Honourable Supreme Court held as follows,

53. To put it in a nutshell, the change in the essential qualification made in 1990 or 1998 or the additional functions now required to be performed

by the appellants could not retrospectively affect the initial recruitment of appellants as Data Processing Assistants nor their confirmation in 1989.

Recruitment qualifications could not be altered or applied with retrospective effect so as to deprive the recruitees of their right to the posts to which

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state…

they were recruited nor could it affect their confirmations.

12. Hence, the Government letter dated 4.10.2000 cannot be made applicable to the petitioner as he has been given regular appointment from

1.1.2000 and if it is applied, it will certainly affect the petitioner, which would amount to alteration of his conditions of service, more particularly in

receiving his pension.

13. Since the petitioner satisfies that he is having 10 years and 5 months of pensionable service, I hold that the impugned order is unsustainable and

the respondents are bound to sanction pension to the petitioner from 1.6.2005.

14. In the result, the impugned order dated 12.12.2005 is set aside and the respondents are directed to sanction pension to the petitioner from

1.6.2005. The monthly pension payable to the petitioner shall be sanctioned and paid within a period of two months and the arrears of pension

from 1.6.2005 shall be paid within three months from the date of receipt of copy of this order.

The writ petition is allowed with the above directions. No costs. Connected miscellaneous petitions are closed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/k-sampath-appellant-hash-the-state…