
(2014) 06 MAD CK 0194

In the Madras High Court

Case No : Writ Petition No. 12656 of 2013 and M.P. No. 1 of 2013

P. Chinniyan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 6 MLJ 316

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—Heard both sides. The petitioner was initially engaged as Plot Watcher in the Forest Department from 01.04.1967 onwards. He was continued in service on daily wages basis. The service was a continuous one. He was not given time scale of pay. He was absorbed into regular service as Mali with effect from 20.10.2003, after he rendered 36 years of daily wages service and thereafter, he was granted time scale of pay. He retired from service on 30.06.2010 on reaching the age of superannuation. Since the regular service rendered by him falls short of 10 years, he was not paid pension.

2. It is the case of the petitioner that 50 % of service on daily wages basis shall be taken into account along with his regular service for the purpose of pension. He placed reliance on Rule 11(2) of Tamil Nadu Pension Rules, 1978. But his request to count 50% of service on daily wages basis was declined by the impugned order dated 10.04.2013. Thus, he was denied pension, though he rendered in total a long service of 43 years before retirement. Hence, this writ petition.

3. Therefore, the question that falls for consideration is as to whether the petitioner is entitled to count 50% of his services rendered on daily wages basis along with regular service for the purpose of pension, under the Tamil Nadu Pension Rules, 1978.

4. The case of the respondents is that half of the service rendered by the petitioner on daily wages basis could not be counted for the purpose of pension, since he was absorbed into regular service after 01.04.2013. According to the respondents, only if the absorption of daily wages employee took place prior to 01.04.2003, half of the service rendered on daily wages basis could be counted along with regular service. In this regard, the respondents have placed reliance on Rule 11(4) of the Tamil Nadu Pension Rules.

5. In the Forest Department, the sanctioned strength of the entry level posts, namely, Forest Guard and Mali, was only 1328 and 155 respectively. But, a very large contingent of employees were required to protect the vast forest area. Thus, thousands of daily wages employees, like the petitioner, were employed to meet the said situation. They continued as daily wages employees for decades. A seniority list of daily wages employees was prepared containing 5497 persons, as per G.O.Ms. No. 64, Environment and Forests Department, dated 08.03.1999 and the regular vacancies in Forest Guard/Mali were filled from the said seniority list. Since there were only 100-150 vacancies arose in those posts every year, thousands of daily wages employees were not regularized and they retired from service as daily wages employees, even after completion of 30 years of their service. Some died without their services were regularized.

6. While so, the Government issued G.O.Ms. No. 22, Personnel and Administrative Department, dated 28.02.2006, regularizing the service of daily wages employees/consolidated pay employees/honorarium employees on completion of 10 years of their services. Based on the said G.O. Ms. No. 22, dated 28.02.2006, employees in various Departments of the Government were regularized on completion of 10 years of service and they were given monetary benefits also after ten years of service.

7. But, in the Forest Department, in view of G.O. Ms. No. 64, dated 08.03.1999, the said G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, was not implemented. That is, the temporary employees similarly situated like the petitioner herein, about 5497 persons, mentioned in G.O. Ms. No. 64, dated 08.03.1999, in the Forest Department were not regularized on completion of 10 years of service pursuant to G.O. Ms. No. 22, dated 21.12.2006, when the benefit was extended to the daily wages employees of other Departments of the Tamil Nadu Government.

8. Hence, the Government issued G.O.Ms. No. 95, Environment and Forests (F2) Department, dated 07.08.2009, based on G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, and directed to regularize the services of the daily wages employees of forest department, who were yet to be regularised in the list of 5497, by creating supernumerary posts. Thus, the persons from the list of 5497, who were not regularized in 2009, though they rendered 2 to 3 decades of service, were regularized after the issuance of G.O. Ms. No. 95, dated 07.08.2009, and not on completion of 10 years of service, as it was done in other departments. Therefore, the daily wages employees of the Forest

Department were not treated like the similarly situated persons in other Departments.

9. At this juncture, it is relevant to extract paragraph 2 of G.O. Ms. No. 95, Environment and Forests (F2) Department, dated 07.08.2009, which refers to G.O. Ms. No. 64, dated 08.03.1999 as hereunder:

10. In this case, the petitioner was regularized in service even before the issuance of G.O. Ms. No. 95, dated 07.08.2009, which states that whenever a regular vacancy arose in the post of Forest Guard/Mali, as per the seniority list in G.O. Ms. No. 64, dated 08.03.1999, the persons should be absorbed in regular time scale of pay. He was absorbed in regular service on 20.10.2003. If G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, was applied in the case of the petitioner, he is entitled for regularization on completion of 10 years of service from 1977.

11. In G.O. Ms. No. 22, dated 28.02.2006, regularization was granted on completion of 10 years of service irrespective of existence of vacancies. The only condition is that one should have worked for 10 years. Even if there is lack of qualification in respect of age, educational qualification, etc., G.O. Ms. No. 22 contemplates regularization of service by giving necessary relaxation. The said G.O. was implemented in respect of thousand of employees in various departments. In this case, the absorption of the petitioner in regular service was only on 20.10.2003, after 36 years of service and he retired from service on 30.06.2010. He falls short of 10 years of regular service to qualify for pension. Half of the service rendered by him prior to 20.10.2003 was declined on the sole ground that he was absorbed in regular service after 01.04.2003.

12. The learned counsel for the petitioner has relied on the judgment of a learned Single Judge dated 30.11.2010 in W.P. No. 25293 of 2010, wherein, the respondents were directed to count half of the service rendered by the petitioner therein, who was also a daily wages employee in the Forest Department as that of the petitioner, along with regular service, as the petitioner therein was also absorbed into regular service subsequent to 01.04.2003 as in the case of the petitioner herein.

13. The Department filed W.A. No. 1633 of 2011 and the writ appeal was rejected by the First Bench of this Court. Thereafter, the Government filed S.L.P. (Civil) No. 6451 of 2012 and the same was rejected by the Apex Court on 16.04.2012. The Government implemented the order of this Court by issuing G.O. Ms. No. 185, Environment and Forests (FR-2) Department, dated 24.07.2012, granting pension.

14. In my view, in view of the said judgment dated 30.11.2010 as confirmed by the Division Bench in W.A. No. 1633 of 2011 and the Apex Court in S.L.P. (Civil) No. 6451 of 2012, the petitioner is also entitled to a similar relief and he cannot be denied the same, as he is identically situated like that of the petitioner therein.

15. It is also submitted that other similarly situated persons, like the petitioner, filed similar writ petitions and those writ petitions were allowed and those orders were also complied with and pension was paid to them.

16. Further, apart from the aforesaid judgments, I am of the view that as per Rule 11(2) of the Tamil Nadu Pension Rules, half of the service rendered as daily wages employees shall be counted along with regular service for the purpose of pension.

17. Rule 11(2) of the Tamil Nadu Pension Rules is extracted hereunder:

"11. Commencement of qualifying service-

(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June 1988."

18. As stated in Rule 11(2) of the Tamil Nadu Pension Rules, the petitioner was paid only from contingencies. All the employees, who are in non-provincialized service, on consolidated pay/honorarium/daily wages basis, are paid only from contingencies and the petitioner was in daily wages service without time scale of pay and he was also paid from contingencies. Hence, as per Rule 11(2) of the Tamil Nadu Pension Rules, he is entitled to count half of the service rendered by him for the purpose of pension.

19. But the respondents heavily relied on Rule 11(4) of the Tamil Nadu Pension Rules, which was introduced only in the year 2010. But Rule 11(2) has been in existence from the very inception of the Tamil Nadu Pension Rules. Rule 11(4) is extracted hereunder:

"11. Commencement of qualifying service-

(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequent absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break;

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially condoned by the orders of the Head of Department in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

20. The difference between Rules 11(2) and 11(4) of the Tamil Nadu Pension Rules is that one should have been absorbed in regular service before 01.04.2003, for counting half of the service rendered on consolidated pay/honorarium/daily wages basis. The date 01.04.2003 is chosen, since a New Pension Scheme was introduced for persons, who are recruited after 01.04.2003 into the Government service. The Tamil Nadu Pension Rules are not applicable to the employees who are recruited after 01.04.2003.

21. (a) In my view, in any stretch of imagination, the absorption of the petitioner into service after 01.04.2003 cannot be equated with the persons who are freshly recruited after 01.04.2003 into the Government service. The persons, who are fresh recruits after 01.04.2003, are governed by New Pension Rules and the persons, who are absorbed after 01.04.2003, like the petitioner, are not extended the benefit of New Pension Scheme also.

(b) At this juncture, it is relevant to extract paragraph 9 of the judgment of the learned Single Judge dated 30.11.2010 in W.P. No. 25293 of 2010, in this regard, wherein, it was noticed that the persons, who are absorbed after 01.04.2003, like the petitioner herein, were not granted the benefits of the New Pension

Scheme also. Paragraph 9 is extracted hereunder:

"9. At this juncture, the learned counsel for the petitioner also brought to my notice that the Government issued G.O. (D) No. 332, Environment and Forest Department, dated 19.11.2008 in favour of one V. Murugan, Forest Guard, who retired on 30.9.2005, ordering to count 50% of his service from 1.9.1980 to 23.3.2003 for the purpose of sanction of pension to the said Murugan. The learned counsel for the petitioner also submits that the petitioner has not been paid any benefit under the new pension scheme and hence, there will be no impediment to extend the benefits of old pension rules to the petitioner as it was given to the said V. Murugan. Even in discretionary matters if the persons are identically placed, same treatment shall be followed to all, is well settled. I had an occasion to consider similar issue in the decision report in N.S. Balasubramanian and Others Vs. Food Corporation of India, . The said decision was confirmed by the Division Bench of this Court (A.P. Shah, C.J. & K.C., J.) in W.A. No. 956 of 2006, dated 30.10.2006 and by the Supreme Court in S.L.P. (C) No. 6771 of 2007 dated 23.4.2007."

22. I am of the considered view that the action of the Departments in denying to count half of the long service rendered by the persons before the absorption into regular service, who are not fresh recruits, but absorbed into regular service after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, has no rationale basis.

23. The State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the employees like the petitioner, who had rendered more than three decades of service before absorption. The petitioner or the persons situated like him cannot be blamed for non-absorption before 01.04.2003, though they rendered 2 to 3 decades of service before 01.04.2003.

24. It is a different matter if a person joined the service after 01.04.2003 on daily wages basis and he was absorbed thereafter. But in my view, the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption has no rationale basis and the same is arbitrary and violative of Article 14 of the Constitution. In fact Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant, in view of Rule 11(2) of the Tamil Nadu Pension Rules. Rule 11(2) does not prescribe any cut off date as to absorption into regular service. The benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4). Thus, the cut off date of absorption as 01.04.2003 prescribed in Rule 11(4) shall be ignored. Otherwise, it will lead to grave injustice.

25. The Government cannot deny the pensionary benefit to the petitioner by fixing the cut off date as 01.04.2003 for absorption thereby refusing to take into account half the service rendered before absorption for the purpose of pension. Admittedly, the petitioner has been in service on daily wages basis from

01.04.1967 till the date of his absorption as Mali on 20.10.2003, i.e., he served for more than 36 years before his absorption into regular service.

26. Further, as stated above, the petitioner cannot be faulted for the belated regularization of his service after 01.04.2003, though similarly situated persons like him in other departments were absorbed into regular service on completion of 10 years of service by giving the benefit of G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, and they have been given pension also.

27. The cases of Graduate Teachers employed in Private Aided institutions, who were absorbed after 01.04.2003, is considered in the judgment dated 30.11.2010 in W.P. No. 25293 of 2010, that is referred to above. The past service rendered by the above teachers prior to their absorption after 01.04.2003 was counted for the purpose of pension under the Tamil Nadu Pension Rules. The details of the facts relating to those teachers are as follows:

(i) Hundreds of B. Ed./Graduate Teachers were appointed against the vacancies meant for Second Grade Teachers by the private aided educational institutions. The educational institutions approached the authorities for approval of their appointment. The Government issued G.O. Ms. No. 559, School Education Department, dated 17.05.1995, directing the educational authorities not to approve the appointment of B. Ed., teachers in the vacancies of Secondary Grade Teachers, as they do not possess the requisite qualification.

(ii) The same was challenged in a batch of writ petitions. A learned Single Judge dismissed those writ petitions on 19.05.1998 and upheld the G.O. Ms. No. 559.

(iii) Writ Appeals were preferred against the said order. A Division Bench of this court disposed of the batch of writ appeals in Secretary and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School Vs. The State of Tamil Nadu and Others , and upheld the order of the learned Single Judge.

(iv) However, the learned Additional Advocate General very fairly suggested that the employment of those teachers who were inducted prior to the disposal of the writ petitions by the learned Single Judge could be saved and the directions could be given to give these teachers "the Child Psychology Training", as given to the Graduate Teachers, who were appointed in the vacancies of Secondary Grade Teacher in the earlier occasions when Graduate Teachers were appointed in the vacancies of the Secondary Grade Teachers, with the approval of the Government, as there were no persons available with the qualification for appointment to the post of Secondary Grade Teachers.

(v) Based on the said judgment, the Government issued G.O. Ms. No. 155, School Education Department, dated 03.10.2002. Those Graduate Teachers were sent for child psychology training in batches and almost all were absorbed only after 01.04.2003, after they underwent the training.

(vi) In G.O. Ms. No. 155, School Education Department, dated 03.10.2002, it is stated that the past service rendered by them would not be counted for pension.

(vii) G.O. Ms. No. 155, dated 03.10.2002, was put to challenge before this Court in a batch of writ petitions. The same was heard by a Division Bench of this Court and the Division Bench in The State of Tamil Nadu and Others Vs. Pallivasal Primary School, , held that the past service rendered by those teachers shall be counted for the purpose of pension alone, though they are absorbed in service after 01.04.2003.

(viii) If the Graduate Teachers employed in Private Aided educational institutions are given the benefit of counting of full past service prior to absorption into regular service, even though the absorption took place in various dates after 01.04.2003, it is an irony to decline to count even half of the service rendered by the own employees of various Departments.

(ix) Taking into account those facts, the learned Single Judge correctly held to count half of the service rendered by the similarly situated employee, like the petitioner, and the same was upheld by the Division Bench in W.A. No. 1633 of 2011 and was confirmed by the Apex Court in S.L.P. (Civil) No. 6451 of 2012, as stated above.

For all the aforesaid reasons, I am of the view that the impugned order is liable to be quashed. Accordingly, the impugned order dated 10.04.2012 is quashed and a directed is issued to the respondents to count half of the service of the petitioner before his absorption on 20.10.2003, along with the regular service for the purpose of pension. It is made clear that such exercise shall be complete within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.