**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 16.08.2018****CORAM:****THE HONOURABLE Mr. JUSTICE S. VAIDYANATHAN****W.P. (MD) No. 7370 of 2011****WEB COPY**

K.Mony

... Petitioner

Vs.

1.The Accountant General,
(Accounts & Entitlements)
Anna Salai, Chennai.

2.The District Collector,
Kanyakumari District, Nagercoil.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to refix the pension of the petitioner as per the revised pension proposal submitted by the petitioner dated 12.11.2010 by calculating half of the total honorarium service rendered by the petitioner and add it into regular service as per G.O.(Ms.)No.408 Finance (Pension) Department, dated 25.08.2009 instead of the present pension already sanctioned in PPO No.C3376820VOA dated 30.03.2010 within a stipulated time as fixed by this Court.


For Petitioner : Mr.S.Bharathy Kannan
For Respondents : Mr.S.Dhayalan, G.A.for R2
Mr.P.Gunasekaran for R1

ORDER

The petitioner has come forward with the present Writ petition to issue a Writ of Mandamus, directing the respondents 1 and 2 to refix the pension of the petitioner as per the revised pension proposal submitted by him on 12.11.2010 by calculating half of the total honorarium service rendered by him and add the same into regular service as per G.O.(Ms.)No.408 Finance (Pension) Department, dated 25.08.2009 within a time frame.

2.The sum and substance of the issue on hand is as to whether the services rendered by the petitioner as a Village Headman (Village Munsif) would be taken into account for the purpose of calculating pensionary benefit.

3.According to the petitioner, he was initially granted monthly salary on honorarium basis and thereafter, the Village Munsif post was abolished by the State Government vide Tamil Nadu Abolition of Posts as Part-Time Village Officers Act, 1981 (Tamil Nadu Act No.3 of 1981). In view of the direction of the Hon'ble Supreme Court, Ex-Village Officers, who possessed minimum educational qualifications, were absorbed as Village Administrative Officer by the State Level Screening Committee. Accordingly, the petitioner was also absorbed as Village Administrative Officer on 11.08.1982.



According to the petitioner, from the date of abolition of Village Headman ie., on 14.11.1980 to till the date of absorption into the post of Village Administrative Officer ie., on 11.08.1982, he has received monthly salary on honorarium basis. As he has completed more than 28 years of service, the entire period rendered as Village Munsif will have to be taken into account for the purpose of calculating pensionary benefits and further, in terms of Rule 11(4) of the Tamil Nadu Pension Rules, 1978, the entire benefits have got to be extended to him.

4.The further contention of the petitioner is that that this Court in a judgment reported in **(2013) 2 MLJ 399(V.Ganapathy, No.584 (Old No.18F/82, Kanyakumari District .vs. State of Tamil Nadu, represented by its Principal Secretary to Government,Revenue Department,Chennai and others)** held that Rule 11 of the Tamil Nadu Pension Rules allowing only 50% of service rendered on temporary basis for grant of pensionary benefit cannot stand the test of Article 14 of the Constitution of India. Hence, according to him, an employee, who rendered service on temporary basis, is entitled to get pensionary benefits and therefore, pension is neither a bounty nor a matter of grace and hence, the same has got be extended to him.

5.The learned standing counsel appearing for the first respondent would submit that the services rendered as Village Headman is only on a part time basis and the same cannot be taken into account for the purpose of counting 50% of service to avail the pensionary benefits. He further submitted that the Village Headman is not coming within the definition of part time village officer mentioned in Tamil Nadu Abolition of Posts of Part Time Village Officers Act (III of 1981) and hence, it excludes the petitioner and the Writ petition has got to be dismissed.

6.In reply, the learned counsel for the petitioner contended that as per the above Division Bench judgment of this Court, 50% of the services rendered has got to be taken into account for calculating pensionary benefits under the provision of Rule 11 and now, the petitioner has attained the age of superannuation.

7.The petitioner has also relied on a decision of this Court in **W.P. (MD)Nos.14245 of 2018 etc batch, dated 10.07.2018**, wherein this Court directed the respondent therein to count 50% of service rendered by the petitioner therein as Village Assistant from 23.11.1976 to 31.05.1995 along with his regular service for sanctioning pension. The facts mentioned in the said decision may not be applicable to the facts of the present case on hand as in that case, the case of the petitioner was relating to Village Assistant (Thalayari) whereas, in the present case on hand, the petitioner's service was a part time one. The definition also will make it very clear that the petitioner is covered by the definition 2(iii) of the said Act, which came into effect from 14.11.1980.

8. This Court by an order **dated 09.01.2009 in W.P.Nos.276 to 280 of 2009** has held in paragraph no.19 as under:



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"19. The historical background narrated above would show that the erstwhile post of Village Officers (Karnam, Munsif etc.) was in non-pensionable service and was part time. But the newly created post of Village Administrative Officer is in pensionable service and is full time. It has actually been included as one of the categories of psts in the Tamil Nadu Ministerial Service. The Tamil Nadu Pension Rules, which govern the issue of grant of pension, do not provide for clubbing a non pensionable service and a pensionable service together for the purpose of counting the qualifying service Rule 3 (o) of the Tamil Nadu Pension Rules, defines the expression qualifying service as follows:

"(o) 'qualifying service' means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment."

Even going by G.O.Ms.No.408 Finance (Pay Cell) dated 25.08.2008 the petitioner would not be entitled to the benefit as he does not satisfy any of the conditions mentioned supra. Unless the petitioner fulfills the other conditions, he will not be entitled to claim the benefits under Rule 11.

9. In view of the above, this Writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Accountant General,
(Accounts & Entitlements)
Anna Salai,
Chennai.

2. The District Collector,
Kanyakumari District,
Nagercoil.

+1cc to Mr.S.Bharathy Kannan, Advocate Sr.No.79206

+1cc to Mr.P.Gunasekaran, Advocate Sr.No.79130

+1cc to Spl.Government Pleader Sr.No.79136

NBJ

VB/SV/SAR2/10.12.2018/3P/6C

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