

(2011) 04 MAD CK 0325

Madras High Court

Case No: Writ Petition No. 8206 of 2011 and M.P. No. 1 of 2011

Ayyavoo

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision: April 19, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Tamil Nadu Pension Rules, 1978 - Rule 11(2)

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: S. Mani, for the Appellant; K. Sathish, G.A., (Forest) for Respondents 1 to 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

The prayer in the writ petition is for issuance of a writ of mandamus directing the Respondents 1 to 3 to count half of the service rendered by the Petitioner as Plot Watcher from 01.02.1982 till 13.07.2004 along with regular service rendered by the Petitioner as Forest Watcher from 14.07.2004 till 30.09.2009 as qualifying service for the purpose of conferment of pension and send the revised pension proposal to the fourth Respondent and grant pension to the Petitioner with all consequential benefits.

2. When the writ petition was posted for admission on 30.03.2011, the learned Government Advocate (Forest) was directed to find out whether the issue raised in this writ petition is covered by my earlier order made in W.P. No. 25293 of 2010, dated 30.11.2010. Today, the learned Government Advocate fairly submitted that the issue is covered by the said order.

3. The case of the Petitioner is that he was initially appointed as Plot Watcher in the Forest Department on 01.02.1982 in Gudiyatham Range on daily wage basis and salary was paid once in a month. While so, based on the orders passed by this Court, the Government issued various G.O's based on which the Respondents 1 to 3 decided to draw a State wide seniority list as per the initial date of engagement of the daily wage workers in the Forest Department for the purpose of bringing them under regular time scale of pay and to confer all other consequential benefits. The Petitioner was assigned with Serial No. 1680 based on his initial date of engagement and was brought under time scale of pay with effect from 14.07.2004 on the basis of G.O. Ms. No. 95, Environment and Forest Department dated 07.08.2009. The services of the Petitioner came to be regularized only after 22 years of unblemished service and he was conferred with all benefits as that of the Government Servant. Subsequently, the Petitioner retired from service on 30.09.2009, on attaining the age of superannuation. The Petitioner could not be conferred with pensionary benefits as he has put in less than ten years of regular service. The Petitioner submitted a representation on 01.02.2011 to the Respondents and prayed for sanction of pension and till date no order is passed.

4. The grievance of the Petitioner is that he was not granted pensionary benefits under the Tamil Nadu Pension Rules, 1978 on the ground that he is not having ten years of pensionable service as the Respondents have treated Petitioner's service of 22 years on daily wage basis as non-pensionable service.

5. The learned Counsel for the Petitioner submitted that G.O. Ms. No. 259 dated 6.8.2003 introducing new Contributory Pension Scheme, which states that persons recruited on or after 1.4.2003 are not eligible to get pension under old pension scheme, and the order cannot be applied to the Petitioner as he was initially appointed on 01.02.1982 and he was in service in the department till 30.09.2009 without any break-in-service. The learned Counsel also submitted that the Petitioner was paid daily rate wages once in a month from 01.02.1982 till 13.07.2004 and he was also promoted and regularized as Forest Watcher with effect from 14.07.2004 and retired on 30.09.2009. The learned Counsel also submitted that Rule 11(2) of the Tamil Nadu Pension Rules, 1978 clearly states that for calculating qualifying service, half of the service paid from contingencies shall be allowed to be counted and that the Petitioner is satisfying the conditions contained in Rule 11(2) as he was appointed on daily wage basis from 01.02.1982 till he was promoted and regularized on 14.07.2004. The learned Counsel further submits that the Petitioner has submitted a representation on 01.02.2011 to the Respondents 1 to 3 and till date no order is passed and therefore, this writ petition is filed.

6. I have heard the learned Counsel appearing for the Petitioner and the learned Government Advocate appearing for the forest department.

7. Rule 11(2) of the Tamil Nadu Pension Rules, 1978 reads as follows:

11(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 weight age 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.

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.

8. Thus, half of the service rendered by the Petitioner prior to regular appointment is bound to be counted as pensionable service. Regarding application of G.O. Ms. No. 259, dated 06.08.2003, stating that the candidates appointed after 01.04.2003 are not eligible to get pension, I had an occasion to consider the said issue insofar as appointment of Teachers in aided schools, wherein certain Teachers with higher qualifications were appointed in aided schools in contravention of G.O. Ms. No. 559 School Education Department, dated 17.5.1995 and when the said Government Order was in operation, the management appointed several teachers. Aggrieved over the non-approval of their appointment number of Teachers filed writ petitions before this Court. The said Government Order was upheld by the single Judge of this

Court by order dated 19.5.1998. However, the Division Bench of this Court (V.S.S.,J (as he then was) & A.K.,J.) in the decision reported in 2002 WLR 173 (Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School v. The State of Tamil Nadu) held that appointments made upto 19.5.1998 in aided schools have to be approved by giving special training. Pursuant to the said direction, the Government issued G.O. Ms. No. 155 School Education Department dated 3.10.2002 and ordered to give Child Psychology Training to the Teachers, who were appointed from 11.7.1995 to 19.5.1998 and ordered to approve their appointments only from the date of completion of the certificate course and all the said Teachers were granted approval on time scale of pay only from 2.6.2003. Some of the teachers challenged G.O. Ms. No. 155 School Education Department dated 3.10.2002 before this Court and the Division Bench of this Court in the decision reported in 2004 (2) LW 591 (State of Tamil Nadu v. Pallivasal Primary School) held that the services rendered by the Teachers prior to Child Psychology Training shall be counted for the purpose of pension. The said Teachers were denied pension on the ground that they were appointed after 1.4.2003.

9. Similar issue came up before me in W.P. No. 26933 and 26934 of 2007 and by order dated 23.4.2008, taking note of the earlier Division Bench decisions as well as the fact that the Petitioners therein were appointed prior to 1.4.2003, I have ordered to extend pensionary benefits to the Petitioners therein. The said order of this Court was subsequently followed in the following writ petitions.

(a) W.P(MD) No. 5174 of 2008, dated 30.6.2008 (K. Suguna, J)

(b) W.P(MD) No. 7263 & 7264 of 2008, dated 16.12.2008 (S. Nagamuthu, J.)

(c) W.P(MD) No. 10447 of 2008, dated 16.7.2009 (M. Sathyanarayanan, J.)

(d) W.P(MD) No. 1375 of 2010, dated 3.3.2010, (P. Jyothimani, J.)

The above cited order dated 23.04.2008 was also implemented by the Government by issuing G.O. Ms. No. 413 Finance (PGC) Department dated 4.11.2010 stating that the persons having been appointed in the sanctioned regular posts from 11.7.1995 to 19.5.1998, they should not be treated as appointed after 1.4.2003, i.e., after the implementation of Contributory Pension Scheme and ordered to extend the benefits of old pension scheme and general provident fund as applicable to the teachers appointed prior to 1.4.2003.

10. 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 said Murugan was given regular appointment only from 24.03.2003. 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 scheme to the Petitioner as it was given to the said V. Murugan. The first Respondent also in Letter No. 19228/FR-2/2009-1, dated 13.10.2009 ordered to grant pension, even if the Plot Watcher is originally employed and granted regularization after 01.04.2003. The Government shall treat the individuals who are identically placed, on similar basis is well settled. The said issue i.e., to consider similarly placed persons equally if the issue is identical was considered in the decision reported in [N.S. Balasubramanian and Others Vs. Food Corporation of India](#), . Paragraphs 16 and 17 reads as follows:

16.(a) The learned Senior counsel for the Petitioner cited the judgment of the Supreme Court reported in [K.C. Sharma and others Vs. Union of India and others](#), , wherein in para 6 it is held as under,

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the Appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 1994 is condoned and the said application is allowed. The Appellant would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs.

(b) In another decision cited by the learned Senior Counsel for the Petitioner reported in [State of Karnataka and Others Vs. N. Parameshwarappa and Others](#), in paragraphs 8 and 9 the Supreme Court held as under,

8. ...we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the Court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30.3.1990, as raised in the proceedings.

9. For all the reasons stated above, the appeals filed both by the State as well as by the private Respondent teachers fail and shall stand dismissed. Our declaration to extend the benefits of the judgments to others who have not approached the Court, but similarly placed is to do complete and substantial justice. No costs.

(c) In yet another decision reported in 1999 SCC 788 (Govind Ram Purohit and Anr. v. Jagjiwan Chandra and Ors.), in para 3 the Honourable Supreme Court held thus,

3. It was lastly contended by the learned Counsel for the Appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the Appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.

From the analysis of the judgments cited above, it is beyond doubt and clear that once the point is decided in favour of a group of persons, there is no further point in waiting for each and every person to file petition and pray for the same relief. As held by the Honourable Supreme Court, the benefit of the judgment is equally applicable to similarly placed persons to do complete and substantial justice.

17. The Law Department as well as the Finance Department of the Respondents/Corporation considered the similarity of the issue involved and recommended to the Respondents to pay the recovered amount to the Petitioners as well. Hence the denial of the said benefit to the Petitioners is unreasonable and violative of Articles 14 and 16 of the Constitution of India. The decisions cited by the learned Additional Advocate General reported in AIR 1996 SC 2890 (State of Karnataka v. G. Halappa) and AIR 2002 SC 2427 (State of Karnataka v. G. Halappa) have no application to the facts of this case because of the submission that Circular No. 13 dated 9.7.1997 was wrongly applied by the Respondents while stepping up of the pay. The said contention was raised before the Kerala High Court and before the Honourable Supreme Court and the same was not accepted. Hence it is not open to the Respondents to raise the said plea in this writ petition as they were parties to the proceedings before the Kerala High Court.

The said decision is confirmed in W.A. No. 956 of 2006 by the Division Bench by judgment dated 30.10.2006. SLP(C) No. 677 of 2007 filed against the same was also dismissed by the Supreme Court on 23.4.2007. In the decision reported in [Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others](#), the Hon"ble Supreme Court has held as follows:

19. But, once a similar case of Abdul Rashid Rather came up for consideration before a Single Judge and his writ petition was allowed, a direction was issued to the authorities to appoint him as PSI by granting consequential benefits, the learned Single Judge could not be said to have committed any error of law in following the said decision, in allowing the writ petition filed by the present Appellant-writ Petitioners and in issuing similar directions to the State authorities. This was particularly true because the judgment and order of the learned Single Judge was confirmed by the Division Bench and even by this Court inasmuch as SLP was also dismissed.

20. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned Single Judge without filing intra-court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ Petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present Appellants. In our opinion, therefore, the learned Single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ Petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.

The said judgment of the Hon"ble Supreme Court was followed by the Division Bench of this Court in W.A.(MD) Nos. 64, 111 to 126 of 2007 judgment dated 14.11.2008

11. The Petitioner's service is from 01.02.1982 is certified by the Forest Ranger, Bagayam. Applying the said principle to the facts of this case, and in the light of the statutory provision contained in Rule 11(2) of the Tamil Nadu Pension Rules, 1978, and in view of the fact that the Petitioner having been initially appointed on 01.02.1982 and continued to serve in the department without any break-in-service, and was paid salary on monthly basis and he having absorbed in regular service from 14.07.2004, and applying G.O(D) No. 332, Environment and Forest Department dated 19.11.2008, granting similar benefit to a similarly placed forest watcher, I hold that the Petitioner is entitled to get his 50% of the services, from 01.02.1982 till the date of his regularization on 14.07.2004, counted as pensionable service for the purpose of calculation of pension. The Government Order issued in G.O. Ms. No. 430, Finance (Pension) Department, dated 06.08.2004 cannot be applied to the Petitioner as he was continuously employed from 01.02.1982 to 30.09.2009 i.e., prior to 01.04.2003. The Petitioner's claim shall be considered as per the Government Letter dated 13.10.2009.

12. Hence, the writ petition is disposed of with a direction to the first Respondent to pass orders in the representation of the Petitioner dated 01.02.2011, in the light of the above findings within a period of three months from the date of receipt of a copy of this order. Connected miscellaneous petitions is closed. However, no order as to costs.