

SUPREME COURT OF INDIA

State of T.N.

Vs.

T.N. Registration Deptt. Ministerial Service Association

(S Ahmed and G Pattanaik JJ.)

29.07.1998

ORDER

1. The State of Tamil Nadu is in appeal before us challenging the judgment dated 20-11-1990 passed by the Tamil Nadu Administrative Tribunal, by which the respondent was held entitled to count the period from 28-6-1950 (the date on which he was appointed) till 3-12-1962 as the period for the benefit of pension under the Tamil Nadu Pension Rules, 1978.

2. The contention of the learned counsel appearing on behalf of the State of Tamil Nadu is that the post of Section Writer which was held by the respondent was brought under graded pay with effect from 1-10-1970, and, therefore, he would be entitled to pension only with effect from that date. It is pointed out that, prior to 1-10-1970, the respondent was being paid a fixed salary every month and, therefore, the period from 28-6-1950 to 2-12-1963 cannot be counted for purposes of pension particularly as the respondent has already been paid one month's pay for every completed year of service for the period aforesaid.

3. A perusal of the judgment passed by the Tribunal indicates that the State Government had contended that the respondent was not entitled to count the period from 1950 to 1963 for purposes of pension, as he had rendered only temporary service for that period. The other contention was that Section Writers would be entitled to count the period of service for purposes of pension only with effect from 1-10-1970 as it is from that date that the post was brought under graded pay. Both the

contentions were rejected. The Tribunal found that Rule 2 of the Tamil Nadu Pension Rules, 1978 categorically provides that the Rules were applied to all government servants appointed to the service and posts in connection with the affairs of the State which are borne by pensionable establishments, whether temporary or permanent. Consequently, even though the respondent had rendered temporary service for the period from 1950 to 1963, he would be entitled to count that period for the purpose of pension. The Tribunal also found that the date 1-10-1970 on which the post of Section Writer was brought under graded pay has no nexus with the benefit of pension payable to those Section Writers who had, prior to that date, rendered temporary service. It was held that on the basis of that date, the employees could not be categorised into two classes.

4. Learned counsel for the State contended that the post of Section Writer was not a pensionable post and it became a pensionable post only with effect from 1-10-1970 and, therefore, the entire period of service rendered by the respondent on this post prior to 1-10-1970 would have to be excluded. This was not the contention raised before the Tribunal nor has any rule to that effect been shown to us that the post of Section Writer was a non-pensionable post up to 1-10-1970. We, therefore, cannot accept this contention.

5. In view of the above, this appeal has no merits and is dismissed, but without any order as to costs.