



WEB COPY

W.A. (MD) Nos.1359 & 1360 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.1359 & 1360 of 2016

and

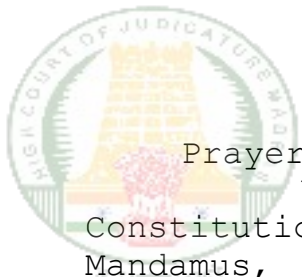
C.M.P. (MD) Nos.9898 & 9899 of 2016

- 1.The State of Tamil Nadu
rep.by Secretary to Government
Differently Abled Welfare Department
Secretariat, Chennai-600 009
- 2.The Principal Secretary
The State Commissioner for the
Differently Abled State Resource cum
Training Centre Campus
Jawaharlal Nehru, Ring Road
K.K.Nagar, Chennai-600 078... Appellants 1 & 2 in both appeals
- 3.The District Differently
Abled Welfare Officer
Collectorate Campus
Dindigul ... 3rd Appellant in W.A.(MD)
No.1359 of 2016
- 4.The District Differently
Abled Welfare Officer
Collectorate Campus
Sivagangai ... 3rd Appellant in W.A.(MD)
No.1360 of 2016

-vs-

- A.Sandiyagu ... Respondent in W.A.(MD)
No.1359 of 2016
- A.Raveendra Bharathi ... Respondent in W.A.(MD)
No.1360 of 2016

Writ Appeals filed under Clause 15 of Letters Patent to set aside the orders, dated 02.08.2013, passed in W.P.(MD) Nos.16373 & 16374 of 2012, on the file of this Court.



Prayer in WP(MD). 16373/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to refix the pay of the petitioner in regular time scale of pay from the date of initial appointment, notionally, for the purpose of pay fixation and pension and other retirement benefits.

Prayer in WP(MD). 16374/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to refix the pay of the petitioner in regular time scale of pay from the date of initial appointment, notionally, for the purpose of pay fixation and pension and other retirement benefits.

For Appellants : Mr.A.K.Baskarapandian
(in both appeals) Special Government Pleader

For Respondent : Mr.S.Karthick Subramanian
(in both appeals)

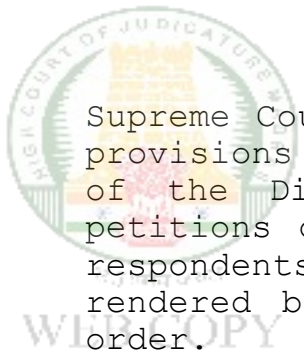
C O M M O N J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

These writ appeals by the Government are directed against the order dated 02.08.2013, passed in W.P.(MD) Nos.16373 & 16374 of 2012.

2. The writ petitions were filed by the respondents praying for issuance of a writ of mandamus to direct the appellants to refix their pay in regular time scale of pay from the date of their initial appointment, notionally, for the purpose of pay fixation and pension and other retirement benefits.

3. These writ petitions were disposed of, by the impugned common order dated 02.08.2013, wherein reference was made to Rule 11 (2) of the Tamil Nadu Pension Rules, 1978. Furthermore, the Writ Court has noted that similar issue was considered in W.P.No.8205 of 2011 and by order dated 19.04.2011, half of the services of the petitioner therein, who was working as Plot Watcher in the Forest Department from 01.01.1982 to 13.07.2004 was directed to be counted along with his regular service rendered as Forest Watcher from 14.07.2004 to 31.08.2009 as qualifying service to arrive at pensionable service. Further, the Writ Court pointed out that the said decision was affirmed by the Division Bench in W.A.No.27 of 2012, by Judgment dated 13.02.2012 and the Special Leave Petition filed against the said Judgment was dismissed by the Honourable



Supreme Court on 10.05.2012. Thus, the Writ Court by applying the provisions of the Tamil Nadu Pension Rules, 1978, and the Judgment of the Division Bench dated 13.02.2012, disposed of the writ petitions directing the first appellant to sanction pension to the respondents by counting 50% of their consolidated pay service rendered by them. A time frame was fixed to implement the said order.

4. Not satisfied with the directions issued by the Writ Court, the respondents filed review applications before this Court in Rev.Aplc (MD) Nos.5 and 6 of 2014. One of the grounds raised in the review applications by the respondents is that they are physically challenged persons (blind) and the recommendation of the second appellant to the Government was to bring them under the Old Pension Scheme as they are in service from 1992 onwards and therefore, sought for review of the order passed in the writ petitions and to permit them to join as subscribers to the General Provident Fund Scheme under the Old Pension Scheme. The review applications were disposed of by order dated 25.08.2015 and the operative portion of the order reads as follows:

"3.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents also has no objection to clarify that since the petitioners are working, the direction to count 50% of their consolidated pay service rendered by them shall be complied with only for the purpose of counting their pensionable service at the time of retirement only, therefore, if any proposal is made that can be taken into account only for the purpose of counting the service of the petitioners. It is made clear that pension shall be paid to the petitioners after counting 50% of their service after retirement."

5. A reading of the above would clearly show that the appellants had clarified before the Review Court that since the respondents are working, the direction to count 50% of their consolidated pay services will be done after they attained the age of retirement. The said order passed in the review applications has attained finality and the appellants have not challenged the said order by filing appeal.

6. After all these events, now the appellants have come forward with the present writ appeals stating that Contributory Pension Scheme was put into effect from 01.04.2003 and all new employees, who were recruited on or after 01.04.2003, are eligible only under the Contributory Pension Scheme and they are not eligible to get the benefit under the Old Pension Scheme. Further, it is submitted that the respondents cannot claim themselves to be the regular Government servants from the date of their appointment on



consolidated pay and therefore, the direction issued in the writ petitions is incorrect.

7. In our considered view, it is too late for the appellants to contend that they will not implement the order passed in the writ petitions, more so, when in the review applications, they have agreed to count 50% of the consolidated pay services rendered by the respondents for the purpose of computing the total length of service and consequently to compute the pensionary benefits. The only embargo, which was placed by the appellants before the Review Court, was that they can do so only upon the respondents attaining the age of superannuation / retirement. In such circumstances, the appellants cannot turn around and take a different stand in the present writ appeals and seek setting aside of the order passed in the writ petitions.

8. For the above reasons, we find no ground to modify the order passed in the writ petitions. Accordingly, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

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Sub Assistant Registrar(CS)

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Differently Abled Welfare Department
Secretariat, Chennai-600 009

2.The Principal Secretary
The State Commissioner for the
Differently Abled State Resource cum
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Jawaharlal Nehru, Ring Road
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3.The District Differently
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4.The District Differently
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Collectorate Campus
Sivagangai

+1CC TO MR.S.KARTHICK SUBRAMANIAN, Advocate Sr. No. 94106

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and

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