



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2020

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.6158 of 2018

and

W.M.P.(MD) No.6006 of 2018

(Through Video conferencing)

K.Perumal

...Petitioner

-Vs-

1. The State of Tamilnadu,
represented by its Secretary,
Department of School Education,
Secretariat, Chennai - 600 009.

2. The Accountant General,
Accounts and Entitlement,
Nandanam, Chennai - 600 018.

3. The Director,
O/o.Director of Government Examinations,
College Road, Chennai - 600 006.

4. The Regional Deputy Director
O/o.Regional Directorate of Government
Examination,
Madurai District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.357118/E2/2017 dated 23.11.2017 on the file of the Respondent No.1 and quash the same as illegal and consequently direct the respondents No.1,3 and 4 to count the services of the petitioner in the cadre of temporary employee on daily wages as per rule 11(2) of Tamil Nadu Pension Rule, 1978 along with the Regular time scale of pay for the purpose of calculation of pension and send pension proposal to the respondent No.2 within the time period stipulated by this Court.

For Petitioners : Mr.T.Thirumurugan

For Respondents : Mr.K.Mu.Muthu, AGP for RR1,3 & 4
Mr.P.Gunasekaran, for R2



ORDER

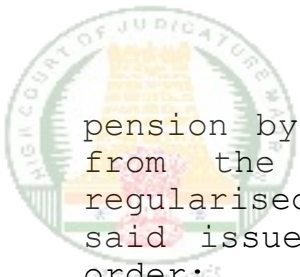
The Prayer sought for in this writ petition is for a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.357118/E2/2017 dated 23.11.2017 on the file of the Respondent No.1 and quash the same as illegal and consequently direct the respondents No.1,3 and 4 to count the services of the petitioner in the cadre of temporary employee on daily wages as per rule 11(2) of Tamil Nadu Pension Rules, 1978 along with the Regular time scale of pay for the purpose of calculation of pension and send pension proposal to the respondent No.2 within the time period stipulated by this Court.

2.The petitioner was appointed at the 4th respondent office as daily wages on 18.02.1991. On 25.10.2006, G.O.Ms.No.212 was passed that, those, who were completed 10 years of service as on 01.01.2006 as temporary employee can be regularised and accordingly, totally, 71 temporary employees were regularised as per the said Government Order. In this regard, the petitioner has completed his probation period on 26.10.2007 and he retired from service on 30.06.2017.

3.The case of the petitioner is that, though the petitioner had been working as a Mazdoor from 18.02.1991, i.e., from the date of appointment, his service was regularised and appointed as Sanitary worker even from 25.10.2006 and he retired from service on 30.06.2017, the service rendered by the petitioner from 25.10.2006 to 30.06.2017 alone was taken into account for pensionable service and the earlier service rendered by the petitioner from 18.12.1991 till 24.10.2006 was not taken into account. In this regard, number of such cases had been considered by this Court, where, 50% of the service rendered by the employees prior to they brought under regular time scale of pay can be taken into account for the purpose of pensionable service and the said benefits since have been extended to various members like the petitioner by a number of orders passed by this Court, the very same benefit can be extended to the petitioner and the said benefits since has not been extended, the present writ petition has been filed for the aforesaid relief.

4.Heard the learned counsel appearing for the respondents 1, 3 and 4 and the learned standing counsel appearing for the 2nd respondent.

5.The learned counsel appearing for the respondents has brought to the notice of this Court about the decision made by the Full Bench of this Court by order dated 03.12.2019 in the matter of ***The Government of Tamil Nadu and Ors., Vs. R.Kaliyamoorthy***. In the said decision, the issue as to whether those who have been brought under regular time scale of pay or regularised their services after 01.04.2003 from the date onwards, the new pension scheme has come into effect, would be entitled to get the benefit of getting full



pension by taking into account the total service rendered by them from the date of their original appointment till they got regularised was the main issue and having elaborately discussed the said issue, in para 45, the Full Bench has given the following order:

"45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

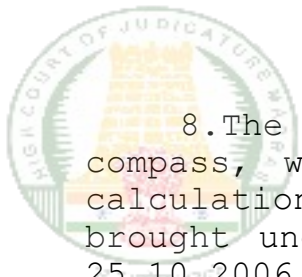
iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

6.By relying upon the said Full Bench decision, the learned counsel appearing for the respondents would contend that, admittedly, the petitioner was even though appointed on 18.02.1991 as Mazdoor on temporary basis, was brought under regular time scale of pay or his service was regularised only on 25.10.2006, that is well after the cut off date i.e. 01.04.2003. Therefore, applying the ratio of the Full Bench judgment, the petitioner would not be entitled to get the benefit he seeks for in this writ petition. Therefore, this writ petition deserves to be rejected, they contended.

7.I have heard the said submissions made by both sides and also have perused the materials placed before this Court.



8.The issue raised in this writ petition is in a very narrow compass, where, as to whether the petitioner is entitled to get calculation of the earlier service rendered by him before he was brought under regularisation or regular time scale of pay i.e. on 25.10.2006 and if so, whether 50% of the earlier service rendered by him from 18.02.1991 till 24.10.2006 can be taken into account for the purpose of his total pensionable service. In order to delve into the said question, we need not go into any other aspects except to go to the import of the Full Bench judgment, where, as has been rightly pointed by the learned counsel appearing for the respondents, the Full Bench has categorically cited five circumstances in para 45 as has been extracted hereinabove. Clauses 3, 4 and 5 are relevant, which makes it abundantly clear that, those, who appointed prior to 01.04.003 and regularised before 01.04.2003 would be entitled to get their services to be calculated for the purpose of total pensionable service. However, those who are appointed before 01.04.2003 and regularised subsequent to 01.04.2003 would not be entitled to, various circumstances depending upon the date of entry into service as well as date of regularisation of the service as to whether it is prior to 01.04.2003 or after 01.04.2003 has been dealt with and accordingly, Full Bench has given answer to all those queries in para 45 of the judgment referred to above.

9.In view of the categorical pronouncement made by the Full Bench, it is binding all these kind of employees, who seek benefit of taking into account the past services rendered by them prior to their regularisation for the purpose of total pensionable service have been dealt with and answered accordingly. In the case in hand, admittedly, the petitioner though was appointed on 18.02.1991, he was regularised only on 25.10.2006, i.e. after the cut off date 01.04.2003. Therefore, as per the very clauses 3 to 5 of para 45 of the judgment of the Full Bench referred to above, the petitioner is not entitled to get such a benefit. Therefore, this Court has no hesitation to hold that the petitioner's grievances for calculating the past service prior to 24.10.2006 is not acceptable and accordingly, this writ petition is liable to be rejected.

10.In the result, this writ petition fails and hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

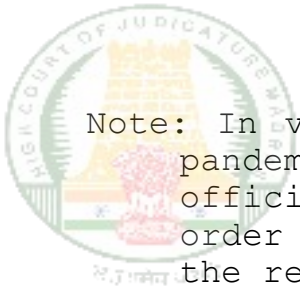
Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To

1. The Secretary,
State of Tamilnadu,
Department of School Education,
Secretariat, Chennai - 600 009.
2. The Accountant General,
Accounts and Entitlement,
Nandanam, Chennai - 600 018.
3. The Director,
O/o.Director of Government Examinations,
College Road, Chennai - 600 006.
4. The Regional Deputy Director
O/o.Regional Directorate of Government
Examination,
Madurai District.

+1cc to Mr.T.Thirumurugan, Advocate, SR.No.17222.

Order made in
W.P. (MD) No.6158 of 2018
15.09.2020

VR(CO)
CS(07.01.2021) 5P 6C