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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.NO.1607/2019 & C.M.P.NO.10965/2019

1. The Government of Tamil Nadu
Rep.By its Principal Secretary
Animal Husbandry and Fisheries
Department, Secretariat,
Chennai - 9.
2. The Director of Animal Husbandry and
Veterinary Services, DMS Department,
Chennai - 600 006.
3. The Regional Joint Director,
Animal Husbandry Department,
Thiruvallur District,
Thiruvallur.
4. The Assistant Director,
Animal Husbandry Department,
Thiruthani,
Thiruvallur District.

... Appellants/Respondents

Versus

1. B.D.Kumarasamy
... 1st Respondent/
Writ Petitioner
2. The Accountant General of Tamil Nadu,
Office of the Accountant General,
Anna Salai, Teynampet,
Chennai - 18.
... Respondents/
Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of the Letters Patent
against the order made in W.P.No.8858/2018 dated 12.04.2018.



Prayer in W.P.No.8858 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to count half of the service rendered by the petitioner as Animal Husbandry Assistant (on temporarily services) on from 20.11.1989 to till 06.08.2012 along with the regular service rendered by him as Animal Husbandry Assistant in the regular post on from 07.08.2012 to 30.06.2015 as qualifying service for pensionary benefits and send the proposal to the 5th respondent for grant pension with all consequential monetary benefits.

For Appellants : Mrs.A.Srijayanthi
Special Government Pleader

For R1 : Mr.M.R.Jothimanian
For Mr.K.Balu

For R2 : Mr.Balan Haridas

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,
through Video Conferencing]

1. By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment.

2. The official respondents in the writ petition is the appellants herein.

3. The 1st respondent in the writ appeal/writ petitioner prayed for issuance of a writ of mandamus directing the official respondents to count half of the service rendered by the writ petitioner as Animal Husbandry Assistant [on temporary services] from 20.11.1989 to 06.08.2012 along with regular service rendered by him in the said post from 07.08.2012 to 30.06.2015 as qualifying service for pensionary benefits and send the proposal to the 5th respondent for grant of pension with all consequential monetary benefits.

4. The learned Single Judge, after taking note of Rule 11 of the Tamil Nadu Pension Rules, 1978, especially the prescription of the cut-off date on 01.04.2003 and further taking into consideration the other materials, had disposed of the said writ petitions with a positive direction vide impugned order dated 12.04.2018 and aggrieved by the same, the present writ appeal is preferred.



5. Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the appellants would submit that in the light of the dicta/ratio laid down by a Full Bench of this Court reported in 2019 [6] CTC 705 [The Government of Tamil Nadu rep.by its Secretary to Government, Public Works Department, Secretariat, Chennai-600 009 and others Vs. R.Kaliyamoorthy], the impugned order warrants interference.

6. Per contra, Mr.M.R.Jothimanian, learned counsel for the 1st respondent/writ petitioner would submit that the learned Judge has rightly taken note of the rule position and having found that the matter in issue is squarely covered by various pronouncements of this Court, has rightly granted the relief and hence, prays for dismissal of this writ petition.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. It is relevant to extract paragraph No.45 of the above cited Full Bench judgment reported in 2019 [6] CTC 705 [The State of Tamil Nadu rep.by its Secretary to Government, Public Works Department, Secretariat, Chennai-9 and Others V.R.Kaliyamoorthy]:-

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

- i. Those, who are freshly appointed on or after 1.4.2003 are not entitled to Pension in view of Proviso to Rule 2 of Tamil Nadu Pension Rules 1978 inserted by G.O.Ms.259, dated 6.8.2003.
- ii.Those Government servants/Employees appointed prior to 1.4.2003 whether on temporary or permanent basis in terms of Rule 10[a][1] 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 Honararium or Daily Wage basis and if such services were regularised before 1.4.2003, half of such service rendered shall be counted fro the purpose of conferment of pensionary benefits.



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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 the Tamil Nadu State and Subordinate Service Rules before 1.4.2003 and absorbed into Regular service after 1.4.2003 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 1.4.2003 but were absorbed in Regular service after 1.4.2003 will be entitled to count half of their past service for the purpose of determination of qualifying service for Pension.''

9. A perusal of the materials would disclose that the writ petitioner joined the services of the 4th respondent in the year 1989 as Animal Husbandry Assistant on part time basis and he was brought into the Time Scale of Pay on 14.08.2012 his service came to be regularised in the year 2012. Since the service regularisation of the writ petitioner came into being after the cut-off date on 01.04.2003, in the considered opinion of the Court, the judgment rendered by the Full Bench of this Court have full application to the case on hand.

10. In the result, the writ appeal stands allowed setting aside the order dated 12.04.2018 made in WP.No.8858/2018 and consequently, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Principal Secretary,
Animal Husbandry and Fisheries Department,
Secretariat,
Chennai-9.



2. The Director of Animal Husbandry and
Veterinary Services, DMS Department,
Chennai - 600 006.

3. The Regional Joint Director,
Animal Husbandry Department,
Thiruvallur District,
Thiruvallur.

4. The Assistant Director,
Animal Husbandry Department,
Thiruthani,
Thiruvallur District.

5. The Accountant General of Tamil Nadu,
Office of the Accountant General,
Anna Salai, Teynampet,
Chennai - 18.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.25644

+1cc to Mr.K.Balu, Advocate, S.R.No.25532

+1cc to the Government Pleader, S.R.No.25690

W.A.NO.1607/2019

CP(CO)
PBS/17/08/2021