



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)No.2143 of 2021

and

CMP(MD)No.10095 of 2021

- 1) The State of Tamil Nadu,
Rep. by its Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai-9.
 - 2) The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet, Chennai-15.
 - 3) The District Forest Officer,
Kodaikkanal Forest Division,
Dindigul District.
- ... Appellants / Respondents

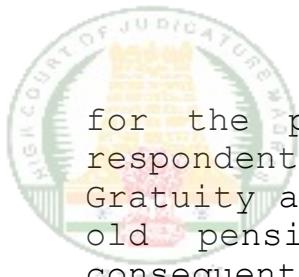
vs.

- 1) S.Manoharan
... 1st Respondent / Writ
Petitioner
- 2) The Principal Accountant General of Tamilnadu,
Teynampet,
Chennai-18.
... 2nd Respondent /
4th Respondent

Appeal filed under Clause XV of Letters Patent, against the common order dated 10.04.2019 made in W.P(MD)No.8620 of 2019.

Prayer in WP(MD). 8620/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 1 to 3 respondents to count the half of service rendered by the petitioner as Plot Watcher from 20.04.1983 to 06.08.2009 on temporary basis along with the regular service from 07.08.2009 to 28.02.2019 as qualifying service for retirement on 28.02.2019 as qualifying service



for the purpose of conferment of pension, and to direct the respondents to send pension proposal including family pension, Gratuity and Commuted Value of pension to the 4th respondent under old pension scheme to authorise the same with all other consequential benefits.

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For Appellants : Mr.P.Subbaraj
Special Government Pleader
For R1 : Mr.A.Haja Mohideen

JUDGMENT

(Judgment of the Court was made by
PUSHPA SATHYANARAYANA, J.)

The 1st respondent herein had filed a Writ of Mandamus, directing the appellants to count half of the services rendered by him, as Plot Watcher from 20.04.1983 to 06.08.2009, when he was on temporary basis, along with the regular service from 07.08.2009, till the date of his retirement, namely, 28.02.2019, as qualifying service, for the purpose of computing pension.

2. The Writ Court had directed to count 50% of the service of the writ petitioner, when he was working on temporary basis and calculated the service from the date of regularisation till his date of retirement.

3. Subsequently, there was a Full Bench judgment of this Court in **Government of Tamilnadu vs. R.Kaliyamoorthy**, reported in **(2019) 6 CTC 705**, in which, it has been held that as far as the appointments made on or before 01.04.2003, is concerned, 50% of the services rendered by the employees, on temporary basis, should be taken into consideration and insofar as the appointments made on or after 01.04.2003 is concerned, since the said appointees are governed by the new contributory pension scheme, 50% of the services rendered by them, on temporary basis, need not be taken into consideration, for the purpose of calculating pension.

4. The Writ Court had followed the Division Bench judgment of this Court in **Government of Tamil Nadu and others vs. K.Sakthivel and another [W.A.No.51 of 2018 etc., batch, dated 27.03.2018]** and allowed the writ petition. On appeal, the learned Special Government Pleader would point out that as per the dictum laid down by the Hon'ble Full Bench, referred supra, the Government servants, who were appointed on or after 01.04.2003, and absorbed in the regular service after 01.04.2003, will not be entitled to count half of their past services, for the purpose of determination of qualifying service for pension.



5. Admittedly, in this case, though the 1st respondent was appointed as Plot Watcher on 20.04.1983, his services were regularised only on 07.08.2009, and therefore, he will not be entitled for counting 50% of the services, for the purpose of calculating pension. It is also to be noted that the writ petitioner has not challenged the belated regularisation. Almost after 30 years, only after his superannuation, he is seeking 50% of his services to be calculated, for the purpose of computing pension. In this regard, the subsequent Division Bench in **The State of Tamil Nadu and others vs. B.Devadoss and another [W.A.No.153 of 2019]**, where one of us, is a party, has held as follows:-

6.3. However, before parting with this case, it would not be out of place to mention here that we have come across many instances, where, the State had the practice to regularize the employees only at the fag end of their career, i.e. two years or three years before when the employee is about to retire from service. After extracting work from the employees for one or two decades, regularising their service on the verge of their retirement would not benefit the employees in any way, and by doing so, the employees would obviously lose their entire terminal benefits, which is their hard earned money by sweat of the brow. We further noticed that the State had the practice of reckoning 50% of the temporary service rendered by the employees for the purpose of computing pensionary benefits, only when the aggrieved employees are coming before the Court craving for justice and obtaining orders from the Court. We rebuke such practice. We still have a ray of hope that State would take care of its employees, at least in the womb of time by providing all the benefits, to which, they are legally entitled to, inasmuch as, the State is functioning only for the well being of its people.''

6. Though we have expressed our anguish, we are unable to help the 1st respondent, as he had not challenged the order of regularisation dated 07.08.2009, but has filed the writ petition, only to count 50% of the services rendered by him, on temporary basis, as qualifying service for the purpose of calculating the pensionary benefits. He is not entitled to the said relief, in view of the law laid down by the Hon'ble Full Bench, referred supra.

7. In fine, the Writ Appeal is allowed and the order of the learned single Judge is set aside. It is also stated by the learned counsel for the 1st respondent that the decision of the Full Bench is under challenge, before the Hon'ble Supreme Court. In the event, it is in favour of the writ petitioner, it is open



to him to file appropriate application, to get the benefits extended to him. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1) The Secretary to Government,
State of Tamil Nadu,
Environment and Forest Department,
Fort St.George,
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- 2) The Principal Chief Conservator of Forest,
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Chennai-18.

+1 CC to M/s.SPL GP (SR-37040[F] dated 02/12/2021)

W.A(MD)No.2143 of 2021

DATED : 01.12.2021

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