



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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W.A(MD)No.1141 of 2020

and

C.M.P(MD)No.6272 of 2020

1.The Principal Secretary to Government,
Social Welfare Department,
Secretariat, Chennai -600 009.

2.The Commissioner of Social Welfare,
Panagal Maaligai 2nd Floor,
Saidapet,
Chennai 600 015.

3.The District Project Officer,
Child Welfare Scheme,
Collectorate Complex,
Ramanathapuram,
Ramanathapuram District.

... Appellants / Respondents

Vs.

Vijayakumari

... Respondent / Writ Petitioner

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the judgment dated 11.11.2019 in W.P(MD) No.20883 of 2019 on the file of this Court.

Prayer in WP(MD). 20883 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling the records of the 2nd Respondent ie., the Commissioner of Social Welfare, Chennai in his Na.Ka.No.23809/Nir 3(2)/2019 dated 08-08-2019 and quash the same and consequently direct the 1st Respondent i.e., the Principal Secretary to Govt., Social Welfare Department, Chennai to instruct the District Project Officer Child Welfare Scheme, Ramanathapuram to send pension proposals to the Accountant General, Chennai in respect of the petitioner Tmt.P.Vijayakumari counting 50 percent of services put in by the petitioner as Bala Sevika for the period from 18-01-1982 to 18-04-2012 and regular time scale service put in by the petitioner as Rural Welfare officer Grade-I and Grade-II for the period from 19.04.2012 to



31.01.2018.

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For Appellants

: Mr.K.Chellapandian
Additional Advocate General,
assisted by Mr.Muthugeethaiyan
Special Government Pleader

For Respondent

: Mr.S.Viwalingam

JUDGMENT

[Judgment of the Court was delivered by **B.PUGALENDHI, J.**]

This writ appeal is filed as against the order of this Court in W.P(MD)No.20883 of 2019, dated 11.11.2019, the respondent / writ petitioner filed the writ petition as against the order of the second appellant Commissioner of Social Welfare, Chennai, in Na.Ka.No.23809/ E3(2)/2019, dated 08.08.2019 and for a consequential direction to direct the first appellant to instruct the third appellant to send the pension proposal of the respondent to the Accountant General, Chennai by counting her services as Bala Sevika for the period from 18.01.1982 and 18.04.2012.

2. The respondent was initially appointed as Child Welfare Organiser (Bala Sevika) in the year 1982 on a consolidated pay. The respondent was absorbed in a regular time scale of pay in the year 2012 and posted as Rural Welfare Officer Grade-II. Her services in the said post was regularised with effect from 19.04.2012. She was also promoted as Rural Welfare Officer Grade-I in the year 2016 and retired as Supervisor Grade-I on attaining the age of superannuation on 31.01.2018. Thus the respondent served in the department on consolidated pay from 18.01.1984 to 18.04.2012 nearly for 30 years and thereafter in the regular time scale of pay as Rural Welfare Officer Grade-II, with effect from 19.04.2012 nearly for six years of service, but the respondent denied pension to the respondent stating that she is not having the required service in the time scale of pay.

3.The respondent by referring to the earlier orders of this Court to count 50% of her services in the cadre of Bala Sevika from 18.01.1982 to 18.04.2012 made a representation to the authorities concerned and her representation was rejected. As against the rejection, the above writ petition was filed. This Court allowed the writ petition by order dated 11.11.2019 directing the appellants to count 50% of the services rendered by the respondent in the post of Bala Sevika for the purposes of pension along with her service in timescale of pay and to consider



the case of the respondent for pension within a period of four weeks. Aggrieved over the same, the present writ appeal is filed by the department.

4.Mr.M.Muthugeethaiyan, learned Special Government Pleader appearing for the appellants submitted that the order dated 1.11.2019 passed in W.P.(MD)No.20883 of 2019 is against the decision of the Hon'ble Supreme Court and the orders of the Hon'ble Full Bench of this Court in W.A.No.158 of 2016 and a batch of cases, dated 03.12.2019. He would further submit that as per Rule 11 (2) of the Tamil Nadu Pension Rules, 1978, half of the service paid from contingencies shall be allowed to count towards qualifying services for pension along with regular services provided, the services shall be in a job involving whole time employment. The Bala Sevika post being temporary in nature, implemented under a scheme, 50% of services rendered in that Bala Sevika post cannot be taken into consideration for calculating for the purpose of pension. He would further submit that the respondent, who was working as a Child Welfare Organiser (Anganwadi Worker) in a non provincialised service on honorarium and she was brought into regular stream only in the year 2012. Therefore, she is not entitled for pensionary benefits by calculating the services rendered in a non provincialised sector on honorarium.

5.The learned Special Government Pleader further submitted that the respondent, who was appointed as Child Welfare Organiser (Bala Sevika) on a consolidated salary of Rs.175/- per month in the year 1992 in a non-provincialised services under a Scheme, later brought into regular time scale of pay with effect from 04.04.2012 as Rural Welfare Officer Grade II and subsequently, promoted as Supervisor Grade I. Finally retired from service on attaining the age of superannuation on 31.01.2018. The respondent's service was only in the non-provincialised service on a scheme and she was brought into regular stream only with effect from the year 2012, i.e. after the crucial date of 01.04.2003. Therefore, as per clause (v) of the decision of a Full Bench of this Court in **State of Tamil Nadu Vs R.Kaliyamoorthy, [in WA No. 158 of 2016 and batch cases dated 03.12.2019]**, the respondent is not eligible for calculating the qualifying service for pension by taking to account 50% of the service rendered in non-provincialised service.As per G.O. Ms. No. 41 Social Welfare and Nutritious Meal Programme (NM1) Department dated 29.08.2019, the respondent was brought under regular salary in the cadre of Rural Welfare Officer Grade II in the year 2012, after the crucial date of 01.04.2003, she is entitled for special pension at Rs.2000/- per mensem. The above pension was sanctioned and she is getting the same from the month of September, 2019 i.e. from the date of



above Government order.

6.The learned Special Government Pleader has also relied upon the following judgments in support of his contention:

1.State of Karnataka and others vs Ameerbi and others' reported in (2007) 11 SCC 681

2.Secretary to Government, School Education Department v V. Govindasamy, reported in CDJ Law Journal 2014 SC 146.

3.State of Tamil Nadu v Seeniammal' and others [WA (MD) No. 1157 of 2013]

4.State v M. Palanikani and others [WA (MD) No. 587 of 2014 dated 03.12.2014]

5. State of Tamil Nadu Vs R.Kaliyamoorthy, [Full Bench in WA No. 158 of 2016 and batch cases dated 03.12.2019]

7.Mr.S.Viswalingam, learned Counsel appearing for the respondent / writ petitioner submitted that the writ petitioner was recruited as Bala Sevika through District Employment Exchange and served on consolidated pay from the year 1982 to 2012 nearly for 30 years. Thereafter her services were regularised in the cadre of Rural Welfare Officer Grade -II, which is equivalent to Junior Assistant, from the year 2012 to 2014 and subsequently, she was promoted as Rural Welfare Officer Grade-I in the year 2014 and retired from service on attaining the age of superannuation on 31.01.2018. Thus, according to the learned Counsel for the respondent, the services of the respondent in the department on consolidated pay is 30 years and in the regular time scale of pay is 6 years and her total services in the department is 36 years. Therefore, considering the similar orders passed by this Court on various occasions, the writ Court rightly allowed the writ petition and there is no reason to interfere with the orders of the writ Court.

8.He would further submit that as per Rules 11(2) and 11(4) (iii) of the Tamil Nadu Pension Rules, the services rendered even in non-provincialised services, consolidated pay, honorarium, or daily wage basis, shall be followed by absorption in the regular service before 01.04.2003, half of such services, i.e., 50% shall be taken for calculation of pension. The cut off date 01.04.2003 mentioned in Rule 11(4) of Tamil Nadu Pension Rules, 1978 has been taken away in the case law reported in **2014 (6) MLJ 316**, which attracted the attention of the Division Benches and the Special Leave Petition filed by the State was also dismissed and the Hon'ble Supreme Court assigned reasons and it is not a dismissal of Special Leave Petition simpliciter and after detailed discussion as per the decision reported in **2018 (1) SCW 689**. Therefore, the orders of the Government which are executive nature cannot override the above said Rule 11(2) of Tamil Nadu Pension



Rules, 1978 and the orders of the Division Bench, confirmed by the Hon'ble Supreme Court.

9.The regularisation of service is the exclusive domain of the employer and as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978 the services of the employees in a non provincialised services of daily wage or honorarium or consolidated pay are entitled to count 50% of their services before absorption in the time scale of pay. However, the cut off date was introduced in the Tamil Nadu Pension Rules, by way of an amendment in Rule 11(4) on 09.02.2010 is contrary to Rule 11(2) of the said Rules and it has been discussed in detail in **Chinnayan's** case that the cut off date prescribed in Rule 11(4) shall be invoked in the case of the respondent and others, who were appointed prior to 01.04.2003. The said order was confirmed by a Division Bench of this Court and also by the Hon'ble Supreme Court.

10.He would further submit that the Government in G.O.Ms.No.259, Municipal Administration and Water Supply Department dated 17.06.2016 has calculated 50% of the services of the employees, who were absorbed subsequent to 01.04.2003 and he also referred to the following judgments in support of his case:

1.The Government of Tamil Nadu Vs Ayyavoo and another, [S.L.P(Civil) Nos.14838 and 14839 of 2012, dated 10.05.2012]

2.The Government of Tamil Nadu Vs Palraj [Review Petition (c) No.1418 of 2013, dated 13621 of 2012]

3.The State and six others Vs. R.Kesavan [W.A.(MD)No.1026 of 2015, dated 30.09.2015]

4.M.Elumalai Vs The State and three others, [W.P.Nos.3487 to 3491 of 2016, dated 29.01.2016]

5.The State and four others Vs. S.Thillai Govidan [W.A.No.1733 of 2017, dated 13.02.2018]

11.This Court has paid its anxious consideration to the rival submissions and perused the materials available on record.

12.The respondent / writ petitioner was appointed as Child Welfare Officer (Bala Sevika) in the year 1982 with monthly honorarium of Rs.175 per month. The Hon'ble Supreme Court in **State of Karnataka and others Vs Ameerbi and others** reported in **2007 (11) SCC 681** has held that the post of Anganwadi Workers are not statutory posts. They are created under a scheme and they do not carry on any function of a State and their recruitment process is not governed by any Statue. The Court further held that these Anganwadi Worker posts are not created by the Government in exercise of powers under Article 77 or 162 of the Constitution of



India and the Rules framed under Article 309 of the Constitution of India. The Government Tamil Nadu has also reiterated the same in letter No.151/NMP/15/2003-I that the Anganwadi Workers are not Government employees.

13. The Anganwadi Workers were brought under time scale of pay of Rs.40 - Rs.110 per month as per G.O.Ms.No.2 Social Welfare and Nutritious Meal Programme Department dated 03.01.1996. The Government brought them into the regular stream in the year 2012 and they were transferred to various departments such as Rural Development and Panchayat Raj, School Education Department, upon their educational qualifications on policy decision and the respondent was posted as Rural Welfare Officer Grade-II on 18.04.2012 her services were regularised with effect from 19.04.2012 by proceedings in ROC.No.No.42118/No.e(3)/2013, dated 10.01.2014. Thereafter the respondent was promoted as Supervisor Grade-I, and retired from service in the year 2018 on attaining the age of superannuation. The respondent was in regular employment from the year 2012 to 2018, i.e., after the crucial date of 01.04.2003. Therefore, her request to count 50% of her services was rejected by the Additional Director of Social Welfare, Chennai in ROC.No.23809/E3(2)/2019, dated 08.08.2019 and the same was impugned in writ petition in W.P(MD)No.20883 of 2019.

14. Rule 11(2) was amended vide G.O.Ms.No.41 Finance (Pension) Department dated 09.02.2010 that for calculating half of the services paid from contingencies shall be allowed to continue towards qualifying service for pension along with regular services, provided the services shall be in a job involving whole time employment and that services ought to have been brought under regular services before 01.04.2003. A Division Bench of this Court in a similar issue in **State Vs Palanikani and others** in W.A(D)No. 587 of 2014, dated 03.12.2014 has held that by conjoint reading of i) G.O.Ms. No. 408 Finance Department dated 25.08.2009, (ii) G.O. Ms. No. 6 Social Welfare and Nutritious Meal Programme Department dated 06.01.2010, (iii) G.O. Ms. No. 34 Social Welfare Department dated 14.03.2013 the respondents thereon are not entitled of the benefit of counting 50% of service rendered by them under Noon Meal Programme.

15. In the decisions referred to by the Respondent/Petitioner in P. Chinniyan's case and in the writ appeal filed as against the same by the Department in W.A (MD) No. 51 of 2018 and batch cases, this Court adjudged the issue in favour of Plot Watchers in the Forest Department and directed to count 50 % of their services before the year 2003.

16. In view of the contradictory decisions as above, the



issue was referred to a Full Bench. On reference, the Hon'ble Full Bench of this Court in W.A.No. 158 of 2016 and batch cases dated 03.12.2019 has laid down the dictum that those of the Government servants who were appointed on daily wage basis, consolidated and in non provincialised service and who were absorbed in 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 past services for the purpose of pensionary purposes. The Full Bench has also given answer to earlier order passed in this connection, as follows;-

37. Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 allows a Government employee / servant appointed in a cadre post before 01.04.2003 as per the Rules whether in temporary or permanent capacity to include 50% of the service rendered in (i) provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis along with regular service subject to conditions stipulated therein.

38. For instance if a government employee/servant was appointed and absorbed between the cut off dates i.e. 01.01.1961 and 01.04.2003, then he/she will be entitled to include half of the service rendered under the State Government in (i) non provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services for determination of qualifying service. 39. On the other hand, if a Government employee / servant was not absorbed between the aforesaid cut off dates, he/she will not be entitled to include half of the service rendered under the State Government in (i) non provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services even though such person may be entitled to Government Pension under the Rule if he/she was appointed in a cadre post on or before 01.04.2003 but was absorbed after the said date.

40. For example, if a person is appointed prior to 01.04.2003 in a non provincialised service or on consolidated pay or on honorarium or daily wage basis and later to a cadre post on temporary basis under Rule 10 (a) (i) of The Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and such service is regularised after 01/04/2003, such Government employee is eligible for Government Pension under the Tamil Nadu Pension Rules but at the same time would not be eligible to include half of services rendered in such capacity viz., i) Non provincialised Services ii) Consolidated pay; iii) honorarium; or iv) daily wage basis to his regular service.

<https://hcservices.ecourts.gov.in/hcservices/> Thus, a government servant who may have been



appointed before the cut off date of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularisation is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10 (a) (i) alone will be entitled to get pension.

42. The cut off date i.e. on or after 01.04.2003 in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 will not perse bar a person from getting pension if such a person had joined the service in accordance with the provisions of Tamil Nadu State and Subordinate Service Rules i.e in the cadre whether on temporary or permanent basis. Services rendered before the cut off date of 01.04.2003, can be added to the regular service only if the service was regularised before the said date for determining the qualifying service. Therefore, in our opinion, it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service.

43. The learned counsel appearing for the writ petitioners placed reliance on several orders passed by the Government, in compliance with the various directions issued by this Court directing the State or instrumentalities of the States to count half of the service of the persons similarly placed like the writ petitioners along with their regular service, even if the service of those persons were regularised after 01.04.2003. It is no doubt true that the Government passed several orders and extended the benefit of counting half of the service rendered in casual or daily wage employment along with the regular service in which the individual was appointed after 01.04.2003. It is also brought to the notice of this Court that this Court issued Mandamus at the instance of the daily wage employees to consider their claim for counting half of the service rendered on daily wage basis. In some cases, when such directions issued by this Court have not been complied with, contempt proceedings have been initiated.

<https://hcservices.courts.gov.in/hcservices/> Pursuing to initiation of contempt proceedings, the



service of the individual rendered on daily wage basis was ordered to be counted. In some cases, the Government or instrumentality of the Government rejected such claim and it was challenged by individual daily wage employee purportedly by citing the cases in which half of the service was ordered to be counted based on the contempt proceedings initiated before this Court. This is how, multiple number of orders came to be passed by this Court. Thus, the orders passed by this Court cannot be construed as a binding precedent. In this context, the learned Advocate General placed reliance on the decision of Col. (Retd). B.J. Akkara case mentioned supra, wherein it was held that merely because the State Government did not file appeal against certain judgment of the High Court, it cannot operate as a bar for the State to question similar order passed by the High Court. The relevant portion of the decision reads as follows:

25. A similar contention was considered by this Court in *State of Maharashtra v. Digambar* [(1995) 4 SCC 683]. This Court held: (SCC p. 691, para 16) Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter(s) where it is considered on behalf of the State that non filing of such SLP or SLPs and pursuing them is likely to



seriously jeopardise the interest of the State or public interest.

26. The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick and choose" method only to exclude petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29126;10126/1999 (corresponding to the Defence Ministry circular dated 11126;9126/2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11.12.;2001.

44. The aforesaid Judgment of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as resjudicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the



instance of similarly placed persons.

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."

17. In view of the orders of the Hon'ble Full Bench of this court, the respondent is not entitled to have the relief of calculating 50% of her services rendered by her in a non-provincialised service from the year 1982 for the purpose of pension and accordingly, the writ appeal is allowed and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



dsk

To

1.The Principal Secretary to Government,
Social Welfare Department,
Secretariat, Chennai -600 009.

2.The Commissioner of Social Welfare,
Panagal Maaligai 2nd Floor,
Saidapet,
Chennai 600 015.

3.The District Project Officer,
Child Welfare Scheme,
Collectorate Complex,
Ramanathapuram,
Ramanathapuram District.

+1 CC to M/s.SPL GP (SR-18292[F] dated 30/04/2021)

W.A(MD)No.1141 of 2020
29.04.2021

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