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W.P. Nos.10565, 10566, 10567, 10568,
10569, 10570 & 10571 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos.10565, 10566, 10567, 10568,
10569, 10570 & 10571 of 2017

W.P.No.10565 of 2017

- 1.Tmt.N.Malliga
- 2.G.Varathan
- 3.K.hangavelu
- 4.B.Mookan
- 6.K.Rajangam
- 7.K.P.Annadurai
- 8.S.Ganesan
- 9.A.Panaiyadi
- 10.Tmt.C.Govindammal
- 11.T.Sundaramurthy
- 12.K.Rajasekar

...Petitioners

-VS-

1. The State of Tamil Nadu
rep. by the Secretary to Government,
Finance (Local Fund) Department,
Secretariat, Fort St.George, Chennai -9.
2. The Commissioner/Director of Survey & Settlement,
Chepauk, Chennai – 600 005.
3. The Accountant General (A & E),
Teynampet, Chennai – 600 018.

...Respondents



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PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, direct the respondents to count the entire temporary services of the petitioners worked in the cadre of Field Surveyor cum Draftsman/Section Writer for pension purpose and accordingly revised the petitioners' pension and pensionary benefits and further to pay the consequential arrears in the light of the judgment reported in 2013(2) MLJ 399 and on par with the various judgments made by this Court.

For Petitioners : M.Saravana Kumar
[in all W.Ps.]

For Respondents : Mr.T.K.Saravanan
Government Advocate [R1 & R2]
[in W.P.Nos.10565 to 10568 of 2017
& W.P.Nos.10570 and 10571 of 2017]

Mrs.K.Vasanthamala
Government Advocate
[R2 in W.P.No.10569 of 2017
R1 in W.P.No.10569 of 2017]

Mr.V.Murali [R3 in all W.Ps.]

COMMON ORDER

These writ petitions have been filed to direct the respondents to count the entire temporary services of the petitioners, who worked in the cadre of Field Surveyor cum Draftsman/Section Writer, for the purpose of



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pension and accordingly revise the petitioners' pension and to further pay the pensionary benefits and other consequential arrears.

2. The petitioners were initially appointed as Field Surveyor cum Draftsman/Section Writer through District Employment Exchange on temporary basis, more so as daily rated employees. The petitioners had undergone the survey training and after passing the departmental test, they were regularly appointed in the post of Field Surveyor cum Draftsman/Section Writer in the survey department and other department by way of deputation or otherwise. After rendering many years of service, some petitioners retired from service and some petitioners are still working in the Department and they were promoted to further posts also.

3. In this background, the learned counsel for the petitioners mainly contended that the temporary services of the writ petitioners are to be taken into consideration for the purpose of counting the qualifying service for grant of pensionary benefits.

4. The learned counsel for the petitioners reiterated that under Rule



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11 of the Tamil Nadu Pension Rules, 1978, the temporary services are also to be taken into consideration for reckoning the qualifying service for grant of pensionary benefits and therefore, the said benefits are to be extended to all the petitioners.

5. In this regard, the learned counsel for the petitioners relied on the order of this Court passed in ***W.P.Nos.12477 and 12478 of 2007 dated 25.03.2014***, in the case of ***G.Sivaraman and Anr. Vs. Government of Tamil nadu and Ors.***, wherein, this Court directed the authorities to regularize the temporary service and the said order was confirmed by the Hon'ble Division Bench in ***W.A.No.550 of 2015 dated 20.04.2018*** and the said individual got the pensionary benefits by counting the temporary services rendered by him. Therefore, the similar benefits are to be extended to the petitioners in these writ petitions also.

6. The learned Government Advocate appearing on behalf of the first and second respondents objected the said contention by stating that, the petitioners were initially appointed on temporary basis for daily wages and therefore, they are eligible to avail the benefit under Rule 11(4) of the



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Tamil Nadu Pension Rules, 1978, for counting 50% of service and they are not entitled for counting 100% of their services, as per the relief sought for in these writ petitions.

7. With regard to the regularization of service, the learned Government Advocate submitted that the regular service rendered by the petitioners in the Department will be taken into consideration as qualifying service for grant of pensionary benefits and therefore, the writ petitions are to be rejected.

8. The learned counsel appearing on behalf of the third respondent Accountant General reiterated that, Rule 11(4) of the Tamil Nadu Pension Rules, 1978, alone is to be applied after verifying the service records of the writ petitioners and the nature of the service rendered by the petitioners in the Department of Survey and Settlement and other Department.

9. Rule 11 of the Tamil Nadu Pension Rules, 1978, stipulates commencement of qualifying service. Rule 11(1) contemplates that, subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which



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he is first appointed either substantively or in an officiating or temporary capacity. Therefore, the temporary appointments included under Rule 11(4) is only substantive in nature, as the recruitment was made in accordance with the recruitment rules in force. However, the consolidated pay employment, daily wage employment or project natured employment would not be falling under Rule 11(1) of the Tamil Nadu Pension Rules, 1978. In order to grant the benefit of counting 50% of the services, the Tamil Nadu Pension Rule was amended subsequently and Rule 11(4) was inserted and in respect of services rendered by the State Government employee under non-pensionable establishment on temporary or daily wage basis, they are to be taken into consideration to the extent of counting 50% of the service. The issues regarding the amended Rule 11(4) was elaborately considered by the Full Bench of this Court and accordingly, the temporary services falling under Rule 11(4) are to be taken into consideration for counting of 50% of the service for grant of pensionary benefits.

10. In the present case, let us consider the nature of appointment of the writ petitioners. The order of appointment issued in the year 1984



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reveals that the petitioners were appointed as Section Writers on daily wage basis and they were paid Rs.8/- per day, subject to realization of full out turn prescribed. The maximum remuneration payable for a month to an employee was Rs.200/- (Rupees two hundred only) and the further condition imposed was that, they will not be paid any travel allowance for the journey to join duty in the post. The appointment was purely temporary and they will be ousted at any time without any prior notice. It is further stated in the order of appointment that the employment does not confer any preferential right for absorbing them in the vacancy in any other category that may arise in future in this Department. Thus, the conditions stipulated in the order of appointment clarifies that it is a daily wage appointment on temporary basis and the maximum salary of Rs.200/- (Rupees two hundred only) was fixed per month for one employee.

11. It is further stated that the daily wage employment cannot be considered for claiming any preference or any right for permanent absorption in the sanctioned post in the Department. This being the conditions stipulated in the order of appointment, now after the permanent absorption and regularization, the petitioners cannot turn around and claim



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regularization with retrospective effect in respect of daily wage employment. The conditions stipulated during the relevant point of time was accepted by the petitioners and accordingly, they joined in the temporary service and served and considering the length of service rendered by the petitioners, the Government itself granted the benefit of regularization and permanent absorption and therefore, the regular pensionable qualifying service are to be taken into consideration from the date of regularization and as far as the temporary service are concerned, 50% of the service are to be taken into consideration for the purpose of calculating the qualifying service in accordance with Rule 11(4) of the Tamil Nadu Pension Rules.

12. Regarding the order relied upon by the petitioners passed in W.P.Nos.12477 & 12478 of 2007 dated 25.03.2014 is concerned, there was no complete adjudication of the scope of the Tamil Nadu Pension Rules and more so, amended Rule 11(4) and its application. In the absence of the adjudication of any rules or interpretation, this Court cannot mechanically follow the orders passed earlier and such a routine way of passing order by exercising the power of judicial review under Article 226



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of the Constitution of India would result in miscarriage of justice and therefore, the High Court is expected to consider the facts and circumstances as well as the Rules to be applied in a particular case and take a decision whenever a similar order has been placed before this Court.

13. Pertinently, the Division Bench also had not considered the scope of Rule 11(4) nor the interpretation of the Rules and the scope of the appointment itself stipulated in the appointment order issued to the writ petitioners as daily wage employees.

14. There is a practice of issuing certain orders for the purpose of granting similar orders in the absence of adjudication, rules and principles, which all are to be applied in a particular case. Thus, when those orders are passed without considering the rules, principles and other relevant factors, the said orders are to be confined only to the parties to that order and it cannot be followed as a precedent so as to grant the similar relief to other persons.



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15. In this regard, in the matter of following the similar orders, the Division Bench of this Court in the case of ***The Director of Sericulture Department, Salem v. K.Kumar [2015 (4) CTC 241]***, held as follows:

"34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in [A.R.Antulay vs. R.S.Nayak](#) [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by



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getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

41. *In Union of India v. Kartick Chandra Mondal* [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in *State of Bihar v. Upendra Narayan Singh* [(2009) 5 SCC 69], held that *Article 14* is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in *Kartick Chandra Mondal* was subsequent to the decision in *Maharaj Krishan Bhatt* and the decision in *Maharaj Krishan Bhatt* is also referred to in *Kartick Chandra Mondal*."

16. In the case of *Basawaraj and another Vs. Special Land Acquisition Officer* reported in (2013) 14 SCC 81 , the Supreme Court in unequivocal terms held as follows:



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"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Button Ltd. v. State



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of Haryana & Ors., AIR 2005 SC 565; K.K.Bhalla v.

State of M.P. & Ors., AIR 2006 SC 898; and Fuljit

Kaur v. State of Punjab, AIR 2010 SC 1937)."

17. The above judgments and the principles laid down therein, would squarely be applicable with reference to the request made by the learned counsel appearing for the petitioners. Whenever a similar order has been submitted before this Court for the purpose of following the same order, it is necessary for the Court to verify whether the Rules relating to the facts and circumstances are adjudicated or not and also the principles involved are considered or not. If that be so, then alone such orders can be followed as a precedent for the purpose of extending the benefits and in all other cases, High Courts are expected to adjudicate the facts and circumstances established independently with reference to the Rules and Principles.

18. In the present case, the petitioners are not brought under the regular establishment in the regular time scale of pay and those regular services are to be taken into consideration for counting qualifying service, as per Rule 11 of the Tamil Nadu Pension Rules, 1978 and regarding the



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temporary daily wage services are concerned, Rule 11(4) is to be applied and accordingly, 50% of the services are to be taken into consideration for the purpose of reckoning the qualifying service for grant of pensionary benefits.

19. With these directions, these writ petitions are disposed of. No costs.

10.11.2022

Index : Yes

Speaking Order : Yes

mp

To

1. The Secretary to Government,
Finance (Local Fund) Department,



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Secretariat, Fort St.George, Chennai -9.

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