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W.A.Nos.102 to 109 of 2015 etc.batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.Nos 102, 103, 104, 105, 106, 107, 108 and 109 of 2015

and

M.P.No.2 of 2015 in all Writ Appeals

The Principal Accountant General
(Accounts and Entitlements),
Tamil Nadu, No.361, Anna Salai,
Chennai 500 018

... Appellants in all the
Writ Appeals

VS

1. R.Saraswathy
2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.
3. The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.



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4. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

5. The Headmaster,
Government High School, Subbareddy Palayam,
Ponneri Taluk, Thiruvallur District.

... Respondents in
W.A.No.102 / 2015

1. M.Kokila

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George, Chennai 600 009.

3. The Commissioner,
Social Welfare, Nutritious Meal Programme
Chepauk, Chennai 600 005.

4. The Director, Integrate Child Welfare Program,
Tharamani, Chennai-113.

5. The District Social Welfare Officer,
Vellore District, Vellore-9.

6. The Block Development Officer,
Panchayat Union, Thimiri, Vellore Dist.

... Respondents in
W.A.No.103/2015

1. D.Kamalathan

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.



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3.The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.

4.The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

5.The Headmaster, Government Higher Secondary School,
Mel Olakkur, Gingee Taluk,
Villupuram District.

... Respondents in
W.A.No.104/2015

1. A.Palani

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.

3.The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.

4.The Director of School Education,
College Road, Nungambakkam, Chennai 600 006.

5. The Headmaster, Government High School,
Vishamangalam, Thirupattur Taluk,
Vellore District.

... Respondents in
W.A.No.105/2015



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1. S.Pankajam

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.

3. The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.

4. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

5. The Headmaster, Government High School,
Pilikkalpalayam,
Namakkal District.

... Respondents in
W.A.No.106/2015

1. V.Saraswathy

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.

3. The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.



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4. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

5. The Headmaster, Government Girls Higher
Secondary School, Erode,
Erode District.

... Respondents in
W.A.No.107/2015

1. K.Manickam

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.

3. The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.

4. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

5. The Headmaster, Panchayat Union Middle School,
Telungu Matrapalli Kandili Union,
Vellore District.

... Respondents in
W.A.No.108/2015



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1. R.Somasundaram

2. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department, Fort St. George,
Chennai 600 009.

3. The State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Social Welfare, Nutritious Meal Programme
(NMP) Department, Fort St. George,
Chennai 600 009.

4. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

5. The Headmaster, Government High School,
Anangur, Thiuchengodu Taluk,
Namakkal District..

... Respondents in
W.A.No.109/2015

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent to set aside the common order dated 24.03.2014 in W.P.No.10712 / 2013, 10709/2013, 10710/2013, 10711/2013, 10951/2013, 10952/2013, 10953/2013 and 10954/2013, on the file of this Court.



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In all the Writ Appeals

For Appellant : Mrs. Hema Muralikrishnan

For Respondents : Mr.A.R.Suresh,
for Mr.V.Thirupathi
for R1 in all Writ Appeals

Mr.G.Krishnaraja, Addl.Govt.Pleader
for R2 to R5 in W.A.No.102, 104 to 109/2015
for R2 to R6 in W.A.No.103/2015

COMMON JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

The Writ Appeals have been filed challenging the common judgment dated 24.03.2014 in W.P.Nos.10709 to 10712 and W.P.Nos.10951 to 10954.

2. The brief facts leading to filing of the Writ Appeals, are as follows.

The writ petitioners/first respondent in all the writ appeals were initially appointed as Noon Meal Organizers/ Child Welfare Organizers



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during the year 1980, 1982 and 1983. Thereafter, they were absorbed into a regular post by giving promotion to the post of Secondary Grade Teacher/B.T. Assistant/Physical Education Teacher/Rural Welfare Officer, during the year 2004, 2005, 2006, 2007 and 2008. Subsequently, they retired from service during the year 2008, 2009, 2010, 2011, 2012.

2.1. After retirement, the writ petitioners made a request to the Principal Accountant General (Accounts and Entitlements)/ appellant herein to grant pensionary benefits to them, by taking into account their 50% of earlier services rendered as Noon Meal Organizers/Child Welfare Organizers, as per G.O.Ms.No.6 dated 06.01.2010. Their request was denied by the appellant, stating that they were absorbed in regular service only after 01.04.20223 and hence, they are not entitled for counting 50% of their earlier service rendered in the non-provisional establishment. Aggrieved by the same, they filed the writ petitions. This Court, vide common order dated 24.03.2014, has directed the official concerned as follows.



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8. in these circumstances, I am of the view that the impugned orders are liable to be quashed and the petitioners are entitled to pension as per G.O.s.No.6, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2010. Accordingly, the impugned orders are quashed and the concerned respondents are directed to resubmit the proposals for authorization of pension, to the Principal Accountant General, (Accounts and Entitlements), Tamil Nadu, Chennai, within a period of six weeks from the date of receipt of a copy of this order and the Principal Accountant General is directed to authorize pension and other terminal benefits, based on G.O.Ms.No.6, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2010, within a period of four weeks thereafter.”

Challenging the above order, the appellant has filed the present writ appeals.

3. The learned counsel for the appellant submitted that the petitioners had filed the writ petitions to count their 50% of earlier service rendered in non provisionalised service for pensionary benefits. She further submitted that the learned Single Judge, relying upon the G.O.Ms.No.6 dated



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06.01.2010, has passed the impugned order. But the above said G.O.Ms.No.6 was amended by G.O.Ms.No.34 dated 14.03.2013, whereby, it is clearly stated that for counting 50% of service rendered on consolidated pay, the claimants should have been absorbed in the regular service before 01.04.2003. It is also submitted by her that, even after issuing of amended G.O.Ms.No.34, dated 14.03.2013, the Government had issued a clarification, vide Letter No.8579/NMP 2/2010 dated 23.04.2013, to the effect that 50% of the service period in consolidated pay would be included for calculation of pension, in respect of those teachers, supervisors Grade-2 and multipurpose health workers, attracted to permanent government posts before 01.04.2003. But the writ petitioners were absorbed in the regular service, only after 01.04.2003.

4. The learned counsel appearing for the appellant has also brought the notice of this Court to the decision rendered by a Full Bench of this Court in a batch of cases, in W.A.Nos.158 of 2016, etc., (***State Government, rep. by Secretary to Government versus R.Kaliyamoorthy***), and submitted that, the government servants who were appointed in the



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non-provincialised service, or on consolidated pay or on honorarium or daily wage basis, 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 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.

4.1. The learned Counsel further submitted that, here in these cases, the writ petitioners were absorbed in regular service only after 01.04.2003. Therefore, as per the amended G.O Ms.No.34 dated 14.03.2013 and the subsequent government clarification letter dated 23.04.2013 and also as per the ratio laid down by the Full Bench of this Court, 50% of service rendered by the writ petitioners in non-provisionalised service, could not be counted for pensionary benefits. However, without appreciating the above facts, the learned Single Judge has passed the impugned common order and hence, the same is liable to be set aside.



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5. According to the learned counsel appearing for the respondents/writ petitioners, as per G.O.Ms.No.6, dated 06.01.2010, 50% of the service period i.e. from the date of appointment as Noon Meal Organizers/Child Welfare Organizers till the date of appointment in regular service as Secondary Grade Teacher/B.T. Assistant/Physical Education Teacher/Rural Welfare Officer, i.e., after 01.04.2003, shall be taken into account for conferment of pension benefits. Therefore, the orders passed by the learned Single Judge does not warrant any interference and hence, pleaded for dismissal of the Writ Appeals.

6. We heard the learned counsel appearing for either parties and perused the materials on record.

7. The facts of the cases show that the writ petitioners were appointed as Noon Meal Organizers/Child Welfare Organizers during the year 1980, 1982 and 1983 and they were absorbed in the regular post, after 01.04.2003 and subsequently, they retired from service on superannuation. According to the petitioners, as per G.O.Ms.No.6, dated 06.01.2010, they are entitled to



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count half of their past service for the purpose of determination of qualifying service for pension. The learned Single Judge has observed that the petitioners are entitled to pension as per G.O.Ms.No.6, dated 06.01.2010 and hence, quashed the impugned orders passed by the appellant and directed the appellant herein to authorise pension and other terminal benefits to the writ petitioners.

8. At this juncture, It is useful to extract the G.O.Ms.No.6, Social and Nutritious Meals Scheme (S & S-2) Department dated 06.01.2010, which reads as under.

Order:

Government in G.O. cited above have ordered for counting half of the service rendered under Government from 01.01.1961 in non-provincialised consolidated, Honorarium and daily wage basis and absorbed before 01.04.2003 in regular service, as qualifying service, subject to conditions, for pensionary benefits along with regular service period.

2. In letter cited 2 above, the Commissioner of Social Welfare, sought for orders for counting the service in respect of those who have served as Nutritious Meals Organiser under Nutritious Meals Scheme and got posting as Teachers, those Child Centre Workers promoted as Women Rural Welfare Officers,



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Supervisors Grade-2 and appointed under Government Service for pension and death-cum-retirement gratuity.

3. At this stage, Hon'ble Chief Minister, in the thanksgiving meeting conducted by the Nutritious Meals, Child Centre Workers on 22.11.2009, had announced as follows.

" Half of the service rendered by Teachers, Supervisors Grade-2 and those promoted as Multipurpose Sanitary Workers under Nutritious Meals Scheme and Integrated Child Development Scheme on the basis of consolidated pay shall be counted for pension".

4. Therefore, as announced by the Hon'ble Chief Minister Government orders for counting 50% of service rendered on consolidated basis by those who have served under Nutritious Meals Scheme, integrated Child Development Scheme and promoted as Teachers, Supervisors Grade-2 and Multipurpose Sanitary workers under Nutritious Meals Scheme, Integrated Child Development Scheme for the purpose of pension."

9. The above said G.O.Ms.No.6, dated 06.01.2010, was amended by G.O.Ms.No.34, Social Welfare and Nutritious meals Scheme (S & S-2) Department, dated 14.03.2013, which is extracted hereunder.

Government in order 3 cited above, have ordered for counting 50% period of service rendered on consolidated pay by those who have served in Nutritious Meals Scheme/ Integrated Child Development Scheme and promoted as teachers, supervisors Grade-2 and Multipurpose sanitary Workers for the purpose of pension.



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2. The Deputy Accountant General in letter cited four above, had stated that many Nutritious Meals Organizers, who were regularized on or after 01.04.2003, misinterpreting the provision of G.O.Ms.No.6, Social Welfare and Nutritious Meals Scheme (S & S2) Department dated 06.01.2010, as if they are also entitled to count 50% of their consolidated pay service and applied for pension or filed Writ petitions as their proposals were rejected. As filing writ petitions impleading the Principal Accountant General are on the rise, the Deputy Accountant General (Pension) sought for clarifications as to whether 50% of service rendered under consolidated pay could be reckoned for pension in respect of those who were regularised on or after 01.04.2003.

3. Further, the Director of Social Welfare stated that those appointed as Women Rural Welfare Officers/Supervisors Grade-2 from the post of Child Centre Worker are denied pensionary benefits comparing them to those who were newly appointed on or after 01.04.2003. Therefore, the Director requested to grant pensionary benefits as a special case, to those who were promoted on or after 01.04.2003 as Women Rural Welfare Officer, Supervisor Grade 2 from the post of Child Centre Workers.

4. The Points raised by the Deputy Accountant General (Pension) and the Director of Social Welfare were examined carefully with Finance Department and accordingly order the following amendment to G.O.Ms.No.6 Social Welfare and Nutritious Meals Scheme (S & S2) Department dated 06.01.2010.

AMENDMENT



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After the word " served" in the second line, paragraph 4 of the above said Government Order, the wording "absorbed regularly in Government service before 01.04.2003" to be added.

Therefore, the above G.O.Ms.No.34 dated 14.03.2013, specially stipulate that the claimant should have been absorbed in Government Service before 01.04.2003, in order to be eligible for pension. It is also necessary to mention that the Government had issued a letter No.8579/NMP2/2010, dated 23.04.2013, in which, it was clarified that, 50% of the service period in consolidated pay would be included for calculation of pension, if the claimants absorbed to permanent government posts before 01.04.2003.

10. Further, it is also pertinent to extract Rule 11(4) of Tamil Nadu Pension Rules, which reads as follows.

11. Commencement of qualifying Services.

(4) Half of the service rendered under the State Government

in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 01.04.2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-



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- (i) Service rendered in on-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment.
- (ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis, paid on monthly basis and subsequently absorbed in regular service under the State Government.
- (iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.

11. It is also necessary to rely upon the decision of the Full Bench of this Court in a batch of cases, in W.A.Nos.158 of 2016, etc., (***State Government, rep. by Secretary to Government versus R.Kaliyamoorthy***), wherein, it has been categorically held as under, in paragraphs 44 and 45:

“44. The aforesaid Judgment of the Honourable Supreme Court (***State of Maharashtra v. Digambar [(1995) 4 SCC 683]***) 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,



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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



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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.”

12. Admittedly, the writ petitioners were absorbed in the regular service only after 01.04.2003. When the G.O.Ms.No.6, dated 06.01.2010 was amended as per G.O.Ms.No.34, dated 14.03.2013; and further clarified by the Government Letter dated 23.04.2013; it is unambiguous that the benefit of reckoning 50% of the services for pension is applicable only to those whose services were attracted to permanent government posts before 01.04.2003. Therefore, in the light of the above discussion and also the decision of the Full Bench of this Court, we are of the view that the writ petitioners are not entitled to count half of the service period rendered in Non provincialised service, for pensionary benefits and hence, the impugned common order passed by the learned Single Judge warrants interference by this Court.

13. Accordingly, the Writ Appeal Nos.102 to 109 of 2015 are allowed and the impugned common order passed by the learned Single Judge dated



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24.03.2014 is set aside. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.)

(K.G.T.J.)

24.03.2023

Index : Yes/No

Internet : Yes/No

mst

To

1. The Principal Secretary to Government,
State of Tamil Nadu, School Education Department,
Fort St. George, Chennai 600 009.
2. The Principal Secretary to Government,
State of Tamilnadu, Social Welfare,
Nutritious Meal Programme (NMP) Department,
Fort St. George, Chennai 600 009.
3. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.
4. The Commissioner,
Social Welfare, Nutritious Meal Programme
Chepauk, Chennai 600 005.
5. The Director, Integrate Child Welfare Program,
Tharamani, Chennai-113.
6. The District Social Welfare Officer,

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and

K.GOVINDARAJAN THILAKAVADI, J.

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