IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1075 of 2019
And C.M.P.No.7884 of 2019

1.The Secretary to Government
Backward Classes and Minorities Welfare
Chennai.

2.The Director / Commissioner
Backward Classes & Minorities Welfare
Chennai.

3.The District Backward Classes &
Minorities Welfare Officer,
Tiruvannamalai District
Tiruvannamalai. ... Appellants

-Vs-

1.J.Elumalai
2.D.Chandra
3.A.Seetha
4.G.Indira Gandhi
5.M.Saroja
6.G.Gunasundari
7.P.Manimegalai
8.D.Malarveni
9.K.Meena
10.K.Muthammal
11.The Accountant General
361, Anna Salai

Teynampet, Chennai-18. ... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.8817 of 2018 dated 12.04.2018.

For Appellants	:	Mr.K.V.Sajeev Kumar Special Government Pleader
For Respondents	:	RR 1 to R9 – Notice served, No appearance R10 – Not ready in notice

JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This writ appeal has been filed against the order of the learned single Judge dated 12.04.2018 made in W.P.No.8817 of 2018.

2. The private respondents herein are the writ petitioners before the writ Court. The grievance that was espoused before the writ Court was that they were initially appointed in 1991 and 1993 and one person was appointed in 1987, as Assistant Cooks at the respondent Department / appellant herein. However, their services were not regularized immediately and the Government had taken action to regularize their services only after 10 to 14 years. Therefore, their regularization was done only with effect from

01.04.2007.

3. These employees, though had been engaged initially from 1991 or 1993 and in respect of one person from 1987, till the New Pension Scheme has come with effect from 01.04.2003, they have not been regularized. Merely because they were regularized with effect from 01.04.2007, whether benefit accrued on them by calculating 50% of the services they rendered prior to 01.04.2003 can be reckoned for the purpose of calculating their pension, is the question that was posed before the learned Judge.

4. The learned Judge has exhaustively discussed the issue by taking note of the amendment made to Rule 11 of the Tamil Nadu Pension Rules under the heading 'Qualifying Service' and also has taken note of various orders passed by this Court including at least two Division Bench judgments. By taking note of all these aspects, the learned Judge came to the conclusion that the employees are entitled to calculate their 50% of service rendered already prior to 01.04.2003 ie., the cut off date on which the New Pension Scheme has come into effect and accordingly gave a direction to the appellant Department who were respondents in the writ petition to re-consider the case of the writ petitioners in the light of the observations made in the order, for the purpose of granting relief of counting of service of 50% of the services rendered on temporary basis and pass appropriate orders after verifying the service records and based on Rule 11 of the Tamil Nadu Pension Rules, 1978.

5. Aggrieved over the said order, this appeal has been filed by the Department. Learned Special Government Pleader would contend that, as per the Full Bench judgment of this Court made in **W.A.No.158 of 2016 etc., batch dated 03.12.2019** in the matter of **The Government of Tamil Nadu -Vs- R.Kaliyamoorthy and Others**, these employees are not entitled to get the benefit of calculating 50% of the services rendered by them prior to 01.04.2003.

6. We have gone through the papers that have been placed before us including the order impugned as well as the Full Bench judgment cited supra.

7. In Paragraph 45 of the said Full Bench judgment, the following has been stated:

"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."*

8. In Paragraph 45(ii), the Full Bench stated that the 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. In paragraph 45(iii) it is stated that, in case, a government employee/servant had 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.

9. Relying heavily upon Paragraph 45(iii), learned Special Government Pleader contended that though they had been appointed prior to 01.04.2003 on temporary basis or consolidated pay or non-provincialised service, their services admittedly had not been regularized before 01.04.2003 and had been regularized only from 01.01.2007, and hence they are not entitled to get the benefit of calculating 50% of services rendered by them earlier to 01.04.2003.

10. However, the fact remains that insofar as these employees are concerned, they had been engaged from 1991, 1993 except one person who was engaged from 1987. Therefore, as on 01.04.2003, they have completed more than 10 years on temporary basis or consolidated basis or non-provincialized service. Thus, whatever be the nomenclature, they were very much entitled to get regularization, even otherwise by various government orders. Therefore, merely the appellant Department had come forward to regularize their services belatedly in the year 2007, the benefit that had already been accrued on them well prior to 01.04.2003 cannot be taken away or abrogated.

11. Therefore, for all practical purposes, these employees will be fit in under paragraph 45(iii) of the Full Bench judgment cited supra, where it was held that those employees who had 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 and the fictitious date that has been made by making the belated regularization as on 01.01.2007 cannot be taken into account for the purpose of calculating the said 50% of past service.

12. In the result, the employees are entitled to get the benefit of calculating 50% of service which they rendered prior to 01.04.2003. Therefore, taking note of this factor, the learned Judge has given such a direction to the appellant Department in the order impugned. We do not find any error in the said order and accordingly this writ appeal fails and hence it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

(R.S.K.,J..) (K.B.,J.)
13.07.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
KST

To

The Accountant General
361, Anna Salai
Teynampet, Chennai-18.

R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

KST

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