



W.P.No.19231 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.06.2023

Delivered on: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.19231 of 2016

Mala

...Petitioner

Vs

1. The Corporation of Chennai
Rep. by its Commissioner
Rippon Building
Chennai-600 003

2.Zonal Officer
Zone V
Corporation of Chennai
Mulakotharam, Chennai-600 079

3.The Secretary to Government
Municipal Administration
Water Supply Department
Fort St.George, Chennai-600 009

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the respondents to pay the
gratuity, Family Pension Arrears, Family Pension, Pay Commission Arrears



W.P.No.19231 of 2016

with 18% interest from the date of death of petitioner's husband i.e 22.08.2010 to the petitioner.

For Petitioner : Mrs.N.Beulah John Selvaraj

For Respondents : Mr.S.Gopinathan, Panel Counsel for
Chennai Corporation for R1 and 2

Mr.T.M.Rajangam, G.A. For R3

ORDER

Petitioner has sought for issuance of a Writ of Mandamus to direct the respondents to pay gratuity, family pension arrears, family pension and pay commission arrears, together with interest, from the date of death of her husband on 22.08.2010.

2. The case of the petitioner is that her husband was employed as a burial ground assistant with the Corporation of Chennai. He died on 22.08.2010, when he was in service leaving behind the petitioner three sons and his mother. According to the petitioner, her husband was originally employed on daily wages on 13.06.1995. G.O.Ms.No.125 dated 27.05.1999



W.P.No.19231 of 2016

WEB COPY

was introduced to regularize the services of daily wage employees and to make them permanent employees. The list was to include daily wage employees working prior to 04.05.1999. Her husband services were regularized on 28.02.2006 and he was made permanent in the year 2007. According to the petitioner, new pension rules would not apply to her husband and therefore the petitioner was entitled to get family pension and gratuity.

3. The respondents 1 and 2 have filed a counter stating that as per the prevailing Government orders, only persons who are appointed before 01.09.2004 were eligible for family pension gratuity and the petitioner services having been regularized only in 2006, he was not entitled to family pension and gratuity. According to the respondents, the petitioner's husband was not working on daily wage basis and he was also not on consolidated pay and only on 23.07.2007, pursuant to proceedings dated 18.07.2007, he was appointed as a burial ground assistant. The respondents also state that all other benefits have been paid to the petitioner and the petitioner has received



W.P.No.19231 of 2016

WEB COPY

the same without any demur or protest and therefore it is not open to the petitioner to now seek for the benefits which the petitioner's husband himself did not chose to avail of.

4. Heard Mrs.N.Beulah John Selvaraj, learned counsel appearing for the petitioner and Mr.S.Gopinathan, Panel counsel for Chennai Corporation for R1 and 2 and Mr.T.M.Rajangam, learned counsel for the 3rd respondent.

5. Though the petitioner claims that her husband was employed on daily wages with the Corporation of Chennai right from 01.06.1996 onwards, the said averment is specifically and stoutly denied by the respondent Corporation in their counter affidavit.

6. According to the respondents, the petitioner's husband was appointed only on 23.07.2007 and therefore he was not entitled to get family pension and only the new pension rules would apply. The Full Bench of this Court judgment reported in *The Government of Tamilnadu and Ors Vs.*



W.P.No.19231 of 2016

WEB COPY

R.Kaliyamoorthy, reported in **2019 6 CTC 705** has held as follows:

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. Pursuant to initiation of contempt proceedings, the service of the individual rendered on daily wage basis was ordered to be*



WEB COPY



W.P.No.19231 of 2016

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:

"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



WEB COPY



W.P.No.19231 of 2016

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.



WEB COPY



W.P.No.19231 of 2016

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



WEB COPY



W.P.No.19231 of 2016

attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001.

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 res judicata 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.



WEB COPY



W.P.No.19231 of 2016

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



W.P.No.19231 of 2016

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."

7. Learned counsel for the petitioner would place reliance on the order in W.P.Nos.8584 of 2021 and batch dated 10.02.2023, where the petitioners in those cases contended that they would come under the old pension scheme as the selection process had commenced prior to 01.04.2003 and the delay in completing the process and issuing appointment orders in November 2003 cannot be put against them. In such circumstances, this Court held that the petitioners were entitled to the old pension scheme, holding that the process of selection started 11 months before the new pension scheme was brought into force, fixing the cut off date as 01.04.2003. The facts of the said case would not in anyway come to the aid of the Writ Petitioner herein. In the present case, as already pointed out and discussed, the respondent



W.P.No.19231 of 2016

WEB COPY

Corporation has not even admitted to the fact that the petitioner was employed as a daily wage employee and the recognition of the petitioner's service was only in July 2007. The dictum of the Full Bench would squarely apply to the facts of the present case and the petitioner cannot claim benefits under the old pension scheme.

8. Accordingly, Writ Petition is dismissed. No costs.

14.07.2023.

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



W.P.No.19231 of 2016

WEB COPY

To

1. The Commissioner
Corporation of Chennai
Rippon Building
Chennai-600 003

2.Zonal Officer
Zone V
Corporation of Chennai
Mulakotharam, Chennai-600 079

3.The Secretary to Government
Municipal Administration
Water Supply Department
Fort St.George, Chennai-600 009



WEB COPY



W.P.No.19231 of 2016

P.B.BALAJI, J.,
kpr

Pre-delivery order in
W.P.No.19231 of 2016

14.07.2023