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Writ Appeal No.1859 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1859 of 2018
and C.M.P.No.14943 of 2018**

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 600 009.

2. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Social Welfare and Nutritious Meal
Programme Department,
Secretariat, Chennai – 600 009.

3. The District Education Officer,
Perambalur District, Perambalur.

4. The Head Master,
Government High School,
Jamin Aathur, Alathur Taluk,
Perambalur District.

... Appellant

Vs

1. P.Kannusamy
2. The Principal Accountant General of Tamil Nadu,
Teynampet, Chennai – 600 018.

.. Respondents



Writ Appeal No.1859 of 2018

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 22.09.2017 made in W.P.No.25705 of 2017 and allow this writ appeal.

For Appellant : Mr.K.V.Sajeev Kumar
Special Government Pleader

For Respondents : No appearance

JUDGMENT

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

This writ appeal has been directed against the order dated 22.09.2017 made in W.P.No.25707 of 2017.

2. The respondent was appointed as a Nool Meal Organizer on 15.09.1983. In that capacity, he had been working for long years. Subsequently, based on his qualification, he was selected and appointed as B.T.Assistant, Zoology. Thereafter, on superannuation, he retired from service on 31.05.2017.

3. Therefore, the period for which he worked as B.T.Assistant, Zoology i.e., between 2006 to 2017 alone has to be taken into account for the purpose of pensionary benefits, if any.



4. In this context, it seems to be the grievance of the first respondent that atleast 50% of his past service, he rendered as Noon Meal Organizer with effect from 1983 till he joined as B.T.Assistant, Zoology have to be taken into account for the purpose of calculating the total pensionable service, based on which full pension has to be given to him, that is why he filed writ petition in W.P.No.25707 of 2017.

5. The said writ petition having been heard was ordered by the Writ Court by its order dated 22.09.2017, where the learned Judge directed the appellant Department to re-consider the case of the writ petitioner in the light of the observations that has been made therein.

6. It was stated by the appellant that there has been a Division Bench judgment, based on which, the cut off date 01.04.2003 has been made for the purpose of regularizing the service that means, those who joined service on or after 01.04.2003 would not be entitled to get the pension under old scheme and they would be entitled to new pension i.e., contributory pension and therefore, the service rendered by the persons like the first respondent earlier to the regular service cannot be taken into account for the purpose of total pensionable service.



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7. This stand taken by the appellant Department before the Writ Court was rejected and ultimately, the learned single Judge had allowed the writ petition by giving such direction, as against which, the writ appeal has been directed.

8. Heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellant. Despite of notice served on the first respondent, there has been no representation for the first respondent.

9. The learned Special Government Pleader appearing for the appellant would point out that, insofar as the entitlement of calculating the past service into the current service for those who joined in the service after 01.04.2003 is concerned, the issue had been referred to a Full Bench of this Court for getting an authoritative pronouncement and ultimately in the matter of ***The Government of Tamilnadu Vs. R.Kaliyamoorthy [W.A.No.158 of 2016 & etc., batch]***, the Full Bench of this Court after having threadbare analysis has given the following verdict:

“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 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



Writ Appeal No.1859 of 2018

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.”

10. In view of the said judgment, since admittedly the first respondent joined in service only on 30.08.2006 i.e., well after the cut off date i.e., 01.04.2003 he is not entitled to get the full pension by taking into account the 50% of service already rendered by him as Noon Meal Organizer from 1983 onwards, therefore the approach of the learned single Judge, though made in the year 2017, cannot be approved now because of the law having been declared by the Full Bench in the aforesaid judgment.

11. We have considered the said submissions made by the learned Special Government Pleader appearing for the appellant.

12. At the time when the impugned order was passed on 22.09.2017, since there was a conflicting view taken by the two different Division Benches with regard to the entitlement of such employees like



the first respondent to include the earlier service rendered by them for the purpose of calculating the full pensionable service, such a view was taken by the learned Judge.

13. Subsequently, a Full Bench on 03.12.2019 had given the said verdict in paragraph 45 as has been quoted herein above. The Full Bench has made it very clear that, 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 such service rendered shall be counted for the purpose of conferment of pensionary benefits.

14. Here in the case in hand, the service of the first respondent has never been regularized before 01.04.2003.

15. The reason being that, only on 30.08.2006, he joined service, therefore, the question of regularizing his service before 01.04.2003 does not arise. Knowing well that he joined only on 30.08.2006 i.e., after 01.04.2003, he cannot seek for pension as he would only be included in the new pension scheme Hence his past service would not be taken into account for the purpose of calculating the full pension since he joined



Writ Appeal No.1859 of 2018

service on 30.08.2006. As per the law declared by the Hon'ble Full Bench of this Court cited supra, the first respondent is not entitled to seek for calculation of 50% past service rendered by him as Noon Meal Organizer since 1983. Therefore, for calculating such service, he cannot seek for any relief from this Court.

16. In this context, it is to be noted that at the time of passing the order in the writ petition dated 22.09.2017, since there was a judgment in support of the employees, probably that might have been taken by the learned Judge, which is reflected in the impugned order. However, on 03.12.2019, the issue has been decided by to a Full Bench of this Court bu giving authoritative pronouncement, which is binding, based on which alone, the issue has to be decided. Hence, the said view taken by the learned Judge by following the earlier Division Bench judgment cannot be approved by us at this juncture, because on 03.12.2019 itself the law has been well settled by the pronouncement of the Full Bench judgment, under which, the first respondent is not entitled to get any relief from this Court.



Writ Appeal No.1859 of 2018

In the result, the impugned judgment dated 22.09.2017 made in W.P.No.25707 of 2017 by the learned single Judge is hereby set aside and accordingly, the writ appeal stands allowed. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

01.08.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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Writ Appeal No.1859 of 2018

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

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