IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1830/2019 and CMP.No.12445/2019

1. The Government of Tamil Nadu
   rep. by its Principal Secretary,
   Animal Husbandry Dairying & Fisheries (AHS)
   Department, Secretariat,
   Chennai-600 009.

2. The Commissioner of Animal Husbandry &
   Veterinary Services, DMS Compound,
   Chennai-600 006.

3. The Regional Joint Director,
   Animal Husbandry Department,
   Krishnagiri District, Krishnagiri.

4. The Assistant Director,
   Animal Husbandry Department,
   Dharmapuri District. ... Appellants

vs

1. A.Rama Rao

2. The Principal Accountant General (A&E),
   Tamil Nadu,
   No.361, Anna Salai,
   Chennai-600 018. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 12.04.2018 made in W.P.No.8944/2018 by a learned Single Judge of this Court.

For Appellants : Mr.L.S.M.Hasan Fizal, AGP.

For Respondents : No appearance

JUDGMENT

[Judgment of the Court was delivered by **R.SUBRAMANIAN, J.]**

Aggrieved by the direction of the writ court directing the appellants to include 50% of the service rendered by the 1st respondent on temporary basis in order to calculate his pensionary benefits under Rule 11 of the Tamil Nadu Pension Rules, 1978, the State is on appeal.

2. The 1st respondent herein was appointed as a daily rated employee in the year 1994 in the Animal Husbandry Department under Rule 10(a)(i) of the Tamil Nadu State Subordinate Service Rules on temporary basis and eventually, attained the age of superannuation on 30.06.2016, even before any order of regularization could be issued. The Government, while framing a New Pension Scheme, restricting the benefit of addition of 50% of the temporary service as pensionary service, imposed a cut off date as 01.04.2003. As a result, the employees, whose services were

regularized after 01.04.2003, were deprived of the benefit of inclusion of 50% of the temporary services for the purpose of pension. This became a subject matter of challenge and a Division Bench of this Court in *W.A.(MD) No.51/2018 etc. batch (V.Chinnaiyan vs. State)* held that imposing such a cut off date is not valid and the provision imposing the cut off date was struck down. Two other Division Benches of this Court in *State of Tamil Nadu rep. by its Secretary to Government (FR-2), Forest and Environment Department, Fort St. George, Chennai-600 009 v. S.Jayaraman (W.A.No.1482/2016 dated 22.01.2018)* and *Government of Tamil Nadu rep. by its Secretary to Government, Environment and Forest Department, Fort St. George, Chennai-600 009 v. S.Thillai Govindan (W.A.No.1733 of 2017 dated 13.02.2018)* had also reiterated the view taken in *Chinnaiyan's* case and following the above binding precedent, the writ court allowed the writ petition.

3. Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the appellants would contend that a Full Bench of this Court in **State of Tamil Nadu vs. Kaliyamoorthy in W.A.No.158/2016 etc. batch** reported in **2019 (6) CTC 705** has upheld the imposition of the cut off date.

4. There is no appearance on behalf of the respondents though they have been duly served.

5. In view of the Full Bench judgment referred to above, the judgment of the writ court has to be necessarily overturned. We find that the contention of the learned Additional Government Pleader is justified since the Full Bench in paragraph 45 of the judgment in W.A.No.158/2016 etc. batch dated 03.12.2019 has observed as follows:

"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."

Therefore, in view of the categorical pronouncement of the Hon'ble Full Bench, we are constrained to interfere with the order of the writ court.

6. In the result, the Writ Appeal stands allowed setting aside the order of the writ court passed in W.P.No.8944/2018 dated 12.04.2018. The writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.M.,J.] **[S.S.K.,J.]**
02.01.2023

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To

The Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP,J.

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