



W.A.No. 1659 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No. 1659 of 2016

and

CMP.No.20512 of 2016

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Social Welfare Department,
Fort St.George, Chennai – 9.

2.The Commissioner Director,
Social Welfare Department,
Cinthathiri Pettai,
Chennai-2.

3.The District Social Welfare Officer,
O/o.The District Social Welfare Officer,
Erode, Erode District.

Vs

1.E.Rajakumari.

2.The Principal Accountant General,
O/o. The Principal Accountant General,
(Accounts & Entitlements)
361, Anna Salai, Chennai -18.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside

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the order of this Court made in W.P.No.28302 of 2013 dated 11.10.2023.

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For Appellant : Mr.G.Krishna Raja, AGP
For Respondents : No appearance – R1
R2 – Given up.

JUDGEMENT

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

Challenging the order of this Court made in W.P.No.28302 of 2013 dated 11.10.2013, the instant writ appeal has been filed.

2. The brief facts leading to filing of the Writ Appeal, is as follows.

The writ petitioner/1st respondent herein was appointed as Noon Meal Organiser on 01.02.1983. on 01.09.2008, she was selected by the Teachers Recruitment Board for the post of B.t.Assistant and on reaching superannuation on 30.05.2013, the petitioner retired. As per G.O.Ms.No. 6, Social Welfare and Nutritious Meal Programme Department dated 06.01.2010 the Government ordered to count 50% of service in case of employees who rendered services in Noon Meal Centres and thereafter got



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absorbed as teachers/Rural Welfare Officer Grade II/Multipurpose Health Workers, for the purpose of pension. Since the petitioner served 25 years, 6 months and 29 days in the category of Noon Meal Organiser, she seeks the benefit of counting 50% of her regular service for the purpose of pensionary benefits. In this regard she gave a representation on 08.04.2013, since no action was taken by the department, she filed a writ petition in W.P.No.28302 of 2013. The learned Single Judge by order dated 11.10.2013 has disposed of the said writ petition directing the appellants herein to consider the request the writ petitioner and grant pensionary benefits by counting 50% of the services rendered along with regular service and sanction the pension and other benefits within a period of eight weeks. Challenging the same, the instant writ appeal has been filed by the appellants.

3. The learned Additional Government Pleader appearing for the appellants would submit that the 1st respondent/writ petitioner is not eligible to claim benefit under Rule 11(4) of the Tamil Nadu Pension Rules as she was not absorbed into regular service prior to 01.04.2003. The learned



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Additional Government Pleader would further submit that G.O Ms.No.6, Social Welfare and Nutritious Meal Programme Department, date 06.01.2010 will be applicable only to the persons absorbed into regular service prior to 01.04.2003, the Government issued clarification vide G.O.Ms.No. 34, Social Welfare and Nutritious Meal Programme Department, dated 14.03.2013 wherein it is clearly ordered that in para 4 of the G.O. Ms.No. 6, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2010 that absorption should be made prior to 01.04.2003. In view of the aforesaid factual reasons, the order of the learned Judge is liable to be set aside.

4. The learned Additional Government Pleader appearing for the appellants placed reliance of the judgment of this Court made in W.A.Nos 102, 103, 104, 105, 106, 107, 108 and 109 of 2015, dated 24.03.2022 and submitted that the decision made in the said judgment squarely applies to the facts of the present case and therefore similar order may be passed in the present writ appeal.



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5. In the aforesaid batch of writ appeals relied by the learned additional Government Pleader for the appellants, this Court has observed as follows;

“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, 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



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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.

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



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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

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



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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:-

(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.



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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, 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



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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.”

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



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

6. On facts of the present case, as discussed above, the 1st respondent/writ petitioner herein was worked as Noon Meal Organiser and was selected and appointed as B.T. Assistant on 01.09.2009 and retired on superannuation on 30.05.2013. It is clear that the 1st respondent was absorbed in the regular service only after 01.04.2003. In view of G.O.Ms.No.6, dated 06.01.2010 and G.O.Ms.No.34, dated 14.03.2013 and in the light of the above discussion and also the decision of the Full Bench of



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this Court, we are of the view that the 1st respondent/writ petitioner is not entitled to count 50% of the service period rendered in Non provincialised service, for pensionary benefits and hence, the impugned order passed by the learned Single Judge warrants interference by this Court and the same is liable to be set aside.

7. In fine, the impugned order passed by the learned Single Judge in W.P.No. 28302 of 2013, dated 11.10.2013 is set aside. Consequently, the instant Writ Appeal is allowed. No costs. Connected miscellaneous petitions, if any, are closed.

(D.K.K.J.)

(K.G.T.J.)

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Index : Yes/No
Internet : Yes/No
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