



Writ Appeal No.3527 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 28.11.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Appeal No.3527 of 2019
and C.M.P.No.22631 of 2019**

1. The Government of Tamil Nadu,
rep. By its Secretary,
Environment and Forest Department,
Secretariat, Chennai – 9.
 2. The Principal Chief Conservator of Forests,
having office at Panagal Maaligai, Saidapet,
Chennai – 600 015.
 3. The District Forest Officer,
Vellore.
 4. The Accountant General of Tamil Nadu,
Office at D.M.S. Compound,
Teynampet, Chennai – 600 018.
- ... Appellants

Vs

S.Kothandam ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.19245 of 2015 dated 01.07.2015 and allow the present appeal.



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For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader
For Respondent : Mr.S.Mani

JUDGMENT

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

This intra-court appeal has been directed against the order passed by the Writ Court dated 01.07.2015 made in W.P.No.19245 of 2015.

2. The respondent was appointed as Plot Watcher on 01.11.1982 in the Forest Department on daily wage basis. Thereafter, he was regularized in service as Forest Watcher on 05.01.2007. Subsequently, he was promoted as Forest Guard on 03.05.2013 and thereafter, on superannuation he retired from service on 30.06.2014.

3. After retirement, the employer since has calculated only the period from 05.01.2007 to 30.06.2014, it was not eligible for getting the minimum pension under the Tamil Nadu Pension Rules, therefore the pension has been denied to the respondent. However, the respondent as



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per Rule 11(2) of the Tamil Nadu Pension Rules and also the various judgments made in this regard by the Court of law is entitled to calculate the 50% of the past service rendered by him prior to his regularization in service, for which he approached the appellants, but the same was not considered, therefore, seeking for a writ of mandamus the writ petitioner/respondent had approached the Writ Court by filing the writ petition, which was allowed by the learned Judge through the impugned order dated 01.07.2015.

4. Heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellants and Mr.S.Mani, learned counsel appearing for the respondent.

5. Insofar as the issue raised in this intra-court appeal is concerned, it is no more *res-integra* as the issue has been concluded long back by number of judgments and in fact in paragraph 3 of the impugned order the learned Judge has quoted one of the judgment made in ***W.A.Nos.27 and 28 of 2012*** dated ***13.02.2012*** in the case of ***Government of Tamil Nadu rep. By its Secretary to Government Vs.M.Gopal*** and the relevant portion of the impugned order reads as follows:

“3. The grievance of the petitioner is that 50% of



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*the services rendered by him prior to regularization is not taken into account for the purpose of pension and other benefits as per Rule 11(2) of the Tamil Nadu Pension Rules. He has relied on a decision of the Division Bench of this Court in **W.A.Nos.27 and 28 of 2012 dated 13.02.2012 (Government of Tamil Nadu rep. By its Secretary to Government Vs. M.Gopal)** which was confirmed by the Honourable Apex Court in SLP Nos.14838 – 14839 of 2012 on 10.05.2012. The Government implemented the same in G.O.Ms.No.183, Environment and Forests (FR-2) Department, dated 18.07.2012. Further, I have also passed an order in detail to count 50% of service rendered before regularization in the case of **P.Chinniyar Vs. State of Tamil Nadu [2014 (6) MLJ 316]**. In this regard, the petitioner also made a representation dated 05.07.2014 to the respondents 1 and 2.”*

6. That apart many number of such cases had come up before this Court, where orders have been passed, recently also this Bench had come across one or two such cases, where the view already been taken by the various Benches of this Court having been considered and the cases were allowed in favour of the employees, where the employees were entitled to seek for calculation of 50% of the past service rendered by them before they got regularized for the purpose of calculating the pensionary benefits.

7. Herein the case in hand, it is an admitted fact that on



01.11.1982, the respondent/writ petitioner has been engaged or appointed as Plot Watcher and he had been working in that capacity without getting him regularized till 05.01.2007, for all these years i.e., about 25 years, he had rendered long service to the Department, which cannot be given a go-by and such service should be taken for the purpose of pensionary benefits.

8. That is the reason why, 50% of the past service as per the Government Orders, which were in vogue have been taken into account for the purpose of pensionary benefits. Here also, it falls under the same category, where the employee is entitled to get his 50% of the past service to calculate for the purpose of pensionary benefits. Therefore, the direction given by the learned Judge in the impugned judgment cannot be said to be unsustainable and it is in consonance with the number of earlier decisions that has been made, which we had also concurred in one or two cases.

9. In view of the same, we do not find any merit in the said contention raised by the learned Special Government Pleader assailing the order, which is impugned herein, therefore the impugned order is to be



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sustained.

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10. As a result, this writ appeal fails, hence it is to be dismissed, accordingly it is dismissed.

11. The needful as directed by the learned Judge through the impugned order shall be undertaken by the appellants within a period of three months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(G.A.M., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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