WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2023

CORAM

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

W.A.No.2839 of 2019
and
C.M.P.No.18278 of 2019

1.The Director of Town Panchayats,
Kuralagam, Chennai – 108.

2.The Executive Officer,
Thammampatti Selection Grade
Town Panchayat,
Thammampatti, Salem District.

3.The Examiner of Local Fund Audit,
4th Floor, Kuralagam,
Chennai – 108. ... Appellants

Vs

T.Thangaraj [Deceased]

1.S.Vimala
2.T.Viayan .. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the final order dated 15.12.2017 made in W.P.No.20903 of 2012.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellants : Mr.Vadivelu Dheenadayalan
Additional Government Pleader

For Respondents : No appearance

JUDGMENT

(Judgment of the Court was delivered by K.KUMARESH BABU,J.)

This intra-court appeal had been preferred by the Government being aggrieved by the order passed by the learned Single Judge, wherein the learned Single Judge directed the appellants to count the services rendered by the deceased employee prior to 2009 for calculating the pension payable to the deceased employee.

2.Heard Mr.Vadivelu Dheenadayalan, learned Additional Government Pleader appearing for the appellants.

3.The order passed by the learned Single Judge was on 15.12.2017. Thereafter, orders have also been passed by various Division Benches and since there was an inconsistency, the issue was referred to the Full Bench. The Full Bench in the matter of ***The Government of Tamilnadu Vs. R.Kaliyamoorthy [W.A.No.158 of 2016 & etc., batch],*** by its order dated 03.12.2019 after considering various

https://www.mhc.tn.gov.in/judis

WEB COPY

aspects had issued the following directions:

"*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.

WEB COPY

(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."

4.In the present case, the deceased employee was originally appointed in the year 1989 as a Electric Motor Operator and thereafter, his services were regularized with effect from 17.12.2009. Hence, admittedly the services of the deceased employee had been regularized only in the year 2009. Applying Clause (iv) of Paragraph 45 of the Full Bench judgment extracted supra, the services rendered by the deceased employee prior to the date of regularization cannot be counted for determining the pension.

5.In such view of the matter, the order of the learned Single Judge in view of the subsequent judgment will have to be interfered with. Accordingly, the order of the learned Single Judge which is impugned herein is set aside.

https://www.mhc.tn.gov.in/judis

WEB COPY

6.It is also brought to our notice that pursuant to the regularization of service in the year 2009, the deceased employee had been contributing to the Contributory Pension Scheme [CPS]. The above order will not be an embargo for disbursal of the amount along with any other benefits that would have been accrued to the deceased employee.

7.With the above directions, the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) **(K.B., J.)**

09.08.2023

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

WEB COPY

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

cse

W.A.No.2839 of 2019

09.08.2023