IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2023

CORAM

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

Writ Appeal Nos.458, 463 to 465, 469, 475 and 510 of 2019
and
C.M.P.Nos.4106, 4107, 4140, 4141, 4150, 4153, 4157, 4144, 4147, 4190, 4192, 4476 and 4478 of 2019

1. The Secretary to Government,
   Municipal Administration & Water Supply Department,
   Fort St. George, Chennai -9.

2. The Director of Municipal Administration,
   Chepauk, Chennai – 600 005.

3. The Commissioner,
   Rasipuram Municipality,
   Rasipuram Municipality. ... Appellants in all W.As.

Vs.

1. T.Akilan ..1st respondent in W.A.No.458/19
1. M.Singaravel ..1st respondent in W.A.No.463/19
1. P.Krishnamurthy ..1st respondent in W.A.No.464/19
1. M.Shanmugam ..1st respondent in W.A.No.465/19
1. N.Manickavel ..1st respondent in W.A.No.469/19
1. R.Balasubramani ..1st respondent in W.A.No.475/19
1. R.Soundarapandian .. 1st respondent in W.A.No.510/19

2. The Directorate of Local Fund Audit,
   Integrated Complex for Finance Department,
   Animal Husbandry Hospital Campus,
   Nandanam, Chennai – 600 035 ... 2nd respondent in all W.As.

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, against the order of this Court passed in W.P.Nos.33489, 33490, 32642, 33491, 32529, 32530 and 32531 of 2017 dated 06.06.2018.

For Appellants [in all W.As.] : Mr.K.V.Sajeev Kumar Special Government Pleader

For Respondents [in all W.As.] : No appearance

COMMON JUDGMENT

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

These batch of writ appeals arise out of a common order passed by the Writ Court dated 06.06.2018 made in W.P.Nos.33489, 33490, 32642, 33491, 32529, 32530 and 32531 of 2017 etc., batch.

2. Those writ petitions were disposed of along with some other writ petitions.

3. Assailing the impugned order, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellants would contend

that the respondents/employees had been initially engaged as NMRs on a consolidated pay at the appellant Municipality. Though they had been working as NMRs on a consolidated pay, they have been regularized in the respective service only after 01.04.2003.

4. Insofar as the claim made by these employees to calculate 50% service they rendered before they got regularized for the purpose of calculating pensionary benefits is concerned, such a calculation cannot be made, because, Rule 11(2) and 11(4) of the Tamil Nadu Pension Rules, 1978, makes it clear that, the employees, who are in non-provincialised service, consolidated pay, honorarium, daily wage basis are paid only from the contingencies, therefore, Rule 11(2) is controlled by Rule 11(4) of the Tamil Nadu Pension Rules, 1978, which says that the employees, who had been in non-provincialised service on consolidated pay or daily wage basis or honorarium basis and their service had not been regularized on or before 01.04.2003, but has been regularized subsequent to 01.04.2003 are not entitled to calculate 50% of the service prior to the regularization for the purpose of calculating pensionary benefits.

5. When that being the position, since admittedly these employees had not been regularized on or before 01.04.2003, 50% of the service or past service rendered by them prior to the regularization cannot be counted for the purpose of pensionary benefits.

6. Though this legal position has been made clear in the said rule as well as in the judgment of the Full Bench of this Court in the matter of ***The Government of Tamilnadu Vs. R.Kaliyamoorthy [W.A.No.158 of 2016 & etc., batch],*** the learned Single Judge, who passed the impugned common order has allowed those writ petitions by giving directions to calculate 50% service rendered by them on daily wage basis along with their regular service and allot GPF account number for grant of pension to the petitioners under the Tamil Nadu Pension Rules, 1978 i.e., under old pension scheme.

7. The said order passed by the learned Single Judge according to the learned Special Government Pleader is contra to the provisions of the Tamil Nadu Pension Rules, 1978, as well as the dictum of the Full Bench judgment cited supra.

8. We have considered the said submissions made by the learned Special Government Pleader appearing for the appellants and also gone through the materials placed before this Court.

9. It is an admitted fact that all these employees, who are the respondents herein were engaged or employed or appointed by the appellant Department of-course on consolidated pay or daily wage basis in the early 1990's. It is to be noted that as on 01.04.2003 they had already completed 10 years of their temporary service on consolidated pay or daily wage basis, therefore their service ought to have been regularized well prior to 01.04.2003.

10. However, for the reasons best known to them, the appellant Department had come forward to regularize the service of these people only after 01.04.2003 and based on such regularization, which has been taken place after 01.04.2003, the benefit that has been accrued to these employees as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978 had been denied to them.

11. Challenging the said denial, when they approached the Writ Court, all similar writ petitions were grouped together and decided by the learned Single Judge, where the issue has been discussed by the learned Single Judge in the following paragraphs of the impugned order:

10. Let us see the reasons given in P.Chinnaiyan's case for allowing the said Writ Petition. The said case was filed against the denial of the respondents to grant pensionary benefits to the petitioner therein by taking into account the cut off date as 1.4.2003 for absorption and refusing to count half of the services rendered before absorption. In this regard, it is useful to extract Rules 11(2) and 11(4) of the Tamil Nadu Pension Rules, 1978 hereunder:

"Rule 11(2) and 11(4) of the Tamil Nadu Pension Rules:

11. Commencement of qualifying service-

(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part-time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been

sanctioned, for example Chowkidar.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1 st January 1961 for which authentic records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23 rd June, 1988.'

11. Commencement of qualifying service-

(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January, 1961 in respect of Government Employees absorbed in regular service before 1 st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-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 1 st April 2003 without a break.

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January 1961 and absorbed in regular service before 1 st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1 st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

11. A reading of Rule 11(2) shows that all the employees, who are in non-provincialized service, on consolidated pay/honorarium/daily wages basis, are paid only from contingencies and the said Rule 11(2) makes it *very clear that an employee is entitled to count half of the service rendered by him for the purpose of pension along with the regularised service and the service paid from contingencies shall be continuous and followed by absorption in regular employment without any break. While so, a reading of Rule 11(4) says that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January, 1961 in respect of Government Employees absorbed in regular service before 1 st April 2003 shall be counted for retirement benefits along with regular service subject to three conditions, namely, 1) the service rendered on daily wages basis shall be in a job involving whole time employment, 2) Service rendered on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service and 3) Such service shall be followed by absorption in regular service before 1 st April, 2003 without a break.*

12. This rule is applicable to all the employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January, 1961 and absorbed in regular service before 1 st April 2003. The service of any employee is regularised after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, *such employee is not entitled to get the benefit of counting half of the service rendered in daily wage basis along with regular service. The decision in P.Chinnaiyan's case says that the crucial date i.e. on 01.04.2003 has been chosen since a New Pension Scheme was introduced for those employees who entered into Government Service after 01.04.2003. Hence the Tamil Nadu Pension Rules, 1978 are not applicable to the persons who were recruited after 01.04.2003. Fixing the crucial date as 01.04.2003 makes a difference between Rule 11(2) and Rule 11(4) of the Tamil Nadu Pension Rules because one should have been absorbed in regular service before 01.04.2003 for the benefits of Rules 11(2) and Rule 11(4) of the Tamil Nadu Pension Rules, 1978.*

13. After comparing the hardships faced by the employees who entered into service after 01.04.2003 and those who were appointed prior to 01.04.2003, but, given the benefit of regularisation after 01.04.2003, the Government came to the conclusion that the persons who are freshly recruited after 01.04.2003 into the Government Service are governed by the New Pension Scheme and the persons who are absorbed after 01.04.2003 are not extended the benefit of New Pension Scheme and held that the action of the department in denying to count the half of the long service rendered by the employees before their absorption into regular service who are not fresh *recruiters, but absorbed into regular service after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules has no rationale basis. Hence, the State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the employees like the petitioners herein, who had rendered more than 2 or 3 decades of service before absorption."*

12. Though in the said order, the learned Single Judge has relied upon and followed the judgment in the case of ***P.Chinnaiyan Vs. State of Tamil Nadu rep. By its Secretary to Government, Forest and Environment (FR-2) Department, Chennai and Ors.*** reported in ***(2014) 6 MLJ 316,*** it is the argument of the learned Special Government Pleader now that subsequent to the impugned order, the issue, since had already been referred to a Full Bench, had been concluded by the pronouncement of the Full Bench judgment dated 03.12.2019, therefore according to the dictum that has been held by the Full Bench, the view taken by the learned Single Judge is erroneous, he contended.

13. In order to delve into that issue, let us take the dictum of the Full Bench judgment, which is at paragraph 45, which reads thus:

"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 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."

14. In paragraph 45(3), the Full Bench judgment has held 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 and if such service were regularized before 01.04.2003, half of service rendered shall be counted for the purpose of conferment of pensionary benefits.

15. This is purely in tune with the language used in Rule 11(2) of the Tamil Nadu Pension Rules, 1978.

16. However, the fact remains that even though these employees are entitled to get regularization well prior to 01.04.2003 as we stated supra, for the reasons best known to them, the employer had not come forward to regularize their service before 01.04.2003 and they were regularized only after 01.04.2003.

17. In this context, it is to be noted that from 01.04.2003, the new pension scheme has been introduced, therefore, those who have been appointed after 01.04.2003 are not entitled to seek for any benefit under the old pension scheme i.e., Tamil Nadu Pension Rules, 1978.

18. The same logic according to the employers, would apply to these employees, who have been regularized after 01.04.2003 is their submissions. The reason being that, as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, such of those employees, who had already been engaged on daily wage basis or consolidated basis and had been regularized before 01.04.2003 alone would be entitled to seek for the benefit of calculating 50% of the past service rendered by them and not by the employees, who have been regularized only after 01.04.2003 and these employees since have been regularized after 01.04.2003 as per Rule 11(4), they are entitled to seek for such benefits of calculating 50% of the past service.

19. The said argument *prima facie* may be appears to be in consonance with Rule 11(4) of the Tamil Nadu Pension Rules, 1978 as well as the Full Bench judgment.

20. However, the fact remains that, these employees whether were entitled to seek for such regularization prior to 01.04.2003 is an important facet, which has to be looked into. The reason being that, if an employee has been in a consolidated pay or daily wage basis that he has

rendered service more than 10 years certainly he would be entitled to seek for regularization. Such a gesture had already been shown to number of employees, whose services, on completion of 10 years of service, have been regularized.

21. These employees since have been employed since early 90's even in 2000 or in 2001 at least well before 01.04.2003 they all become eligible to seek for regularization.

22. Therefore, the belated regularization made by the employer against these employees cannot be put against these employees seeking the benefit accrued on them under the provisions of the Tamil Nadu Pension Rules, especially under Rule 11(2) and 11(4) of the Tamil Nadu Pension Rules, 1978.

23. Therefore, the factual matrix of the present case shall be taken into account and if the aforestated facts are fit in even according to the dictum of the Full Bench judgment in paragraph 45(3) as well as the Rule 11(2) and 11(4) of the Tamil Nadu Pension Rules, 1978, these employees are entitled to seek for regularization before 01.04.2003 and if not before

01.04.2003 i.e., on completion of 10 years period, at least on 31.03.2003 all these people can be taken into account for the purpose of regularization in order to calculate 50% of the past service.

24. Otherwise, the very purpose of the Rule 11(2) of the Tamil Nadu Pension Rules, 1978 would be defeated insofar as these employees are concerned.

25. Moreover, the Government already had come forward with two Government Orders viz., G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.(Ms.)No.74, Personnel and Administrative Reforms(F) Department, dated 27.06.2013. Insofar as G.O. G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 is concerned, those temporary employees, who have been appointed under 10(a)(1) of the Rules as well as in other methods had rendered 10 years of service are entitled to seek for regularization on completion of 10 years of service on or before 01.04.2006.

26. Subsequently, G.O.(Ms.)No.74, Personnel and Administrative Reforms(F) Department, dated 27.06.2013 was issued, which curtails

such regularization to be made beyond 01.04.2006.

27. The relevant portion of the G.O.(Ms.)No.74, dated 27.06.2013 i.e., paragraph 6 of the G.O.(Ms.)No.74, Personnel and Administrative Reforms(F) Department, dated 27.06.2013 was put under challenge before this Court and by number of judgments, the period restricted for such regularization upto 01.04.2006 has been extended, by setting aside paragraph 6 of G.O.Ms.No.74, dated 27.06.2013, till the date of issuance of G.O.Ms.No.74 i.e., dated 27.06.2013. Therefore, these kind of temporary employees on consolidated pay or daily wage basis, who had been regularized upto 27.06.2013 have become eligible to seek for benefits including the pensionary benefits and number of decisions have been rendered by this Court and this Bench also have come across some of such cases, which were allowed in tune with the aforesaid legal proposition.

28. When that being so, as far as these employees are concerned, who were very well entitled to seek for such regularization before 01.04.2003 and if, we take the import of G.O.Ms.No.22, dated 28.02.2006 as well as G.O.Ms.No.74, dated 27.06.2013 cumulatively, the intention of the Government since has been made explicitly that, those

who have rendered service of more than 10 years can be regularized provided if they have joined service or initially engaged as NMRs or temporary employees on consolidated pay or daily wage basis before 01.04.2003, the date on which the new pension scheme had come, are all entitled to seek for such benefit of regularization i.e., before 27.06.2013 and would be entitled to seek for the benefit of calculating 50% service they rendered prior to their regularization for the purpose of calculating the total pensionary benefits. When such being the legal position, based on which, several employees' plea having been accepted by this Court, the benefit had been extended and number of such orders have been passed including our Division Bench judgment, therefore those judgments are binding.

29. If we apply the aforesaid principle and various decisions, which have been rendered in consonance with the aforesaid legal principle, the view taken by the learned Single Judge through the impugned order of-course prior to the judgment of the Full Bench cannot be said to be an erroneous one or flawed one. Hence, the order impugned is to be sustained in the considered opinion of us.

30. Resultantly, the impugned order is sustained. Hence, these writ appeals fail and accordingly, they are liable to be dismissed, hence, they are dismissed. No costs. Connected miscellaneous petitions are closed.

(R.S.K.,J.) **(G.A.M., J.)**

14.12.2023

Index: Yes
Speaking Order
Neutral Citation:Yes
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R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

mp

Writ Appeal Nos.458, 463 to 465, 469, 475 and 510 of 2019

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