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W.A.No.1992 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.1992 of 2019 and
C.M.P.No.13468 of 2019

1.The Director of Rural Development,
Panagal Building,
Saidapet, Chennai – 600 015.

2.The District Collector,
Salem District,
Salem.

3.The Block Development Officer,
Thalaivasal Panchayat Union,
Salem District.

... Appellants

Vs.

1.Puttanna

2.The Principal Accountant General,
(Accounts and Entitlements), Tamil Nadu,
361, Anna Salai, Teynampet,
Chennai – 600 018.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 28.04.2018 in W.P.No.11414 of 2018.

For Appellants : Mr.M.Murali
Government Advocate



WEB COPY



W.A.No.1992 of 2019

For Respondents : No appearance for R1
: Served - No appearance for R2

JUDGMENT

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

The 1st respondent herein was initially appointed as Work Assistant at the Engineering Division of Hosur Panchayat Union with effect from 18.03.1986. In that capacity he had been working for long years on temporary basis.

2. Subsequently the Government had come forward to issue G.O.Ms.No.22 Personal and Administrative Reforms Department dated 28.02.2006 under which those who had been appointed on temporary basis or daily wage basis or consolidated basis who have completed 10 years of service G.O.Ms.No.22 dated 28.02.2006 would be entitled to get regularised their services.

3. In view of the said Government Order since the 1st respondent was eligible to be considered for regularisation and the same has not been undertaken, the 1st respondent had approached this Court by filing



W.A.No.1992 of 2019

writ petition in W.P.No.7358 of 2007 seeking for a mandamus to regularise the service of the 1st respondent as Work Assistant from the date of initial appointment i.e. on 18.03.1986.

4. In the said writ petition, order was passed on 08.10.2009 directing the respondents therein to regularise the service of the 1st respondent as per G.O.Ms.No.22 P & AR Department dated 28.02.2006. Though such a direction was given to comply with the order within 12 weeks period, after 3 years on 20.09.2012, the authorities had passed an order appointing the 1st respondent afresh as Record Clerk and he was posted at Thalaivasal Panchayat Union, Salem District.

5. In that capacity he was working upto 2017 and retired from service on superannuation on 31.03.2017.

6. After his retirement since his service from 2012 to 2017 alone was taken into account it has not become a qualifying service for the purpose of giving any pension and moreover, since the said appointment was made in the year 2012 only i.e. after 01.04.2003 since there has been no pension for those who joined in service on or before 01.04.2003 and



W.A.No.1992 of 2019

only Contributory Pension Scheme alone would be available, the pension benefits to the 1st respondent since has been denied, he approached the Writ Court by filing the writ petition in W.P.No.11414 of 2018.

7. The said writ petition was considered and disposed by the learned Judge on 28.04.2018 wherein the learned Judge has quashed the rejection orders made in this regard passed by the appellant Department and they were directed to reconsider the case of the 1st respondent/writ petitioner in the light of the observation made in the said order for the purpose of granting the relief of counting of 50% of the services rendered on temporary basis and pass appropriate orders.

8. Aggrieved over the said direction given by the learned Judge, the Department has preferred this appeal.

9. Heard Mr.M.Murali, learned Government Advocate appearing for the appellants who would submit that, as per the Full Bench judgment in *The Government of Tamil Nadu represented by Secretary to Government Public Works Department, Secretariat Chennai - 600 009 Vs. R.Kaliyamoorthy* reported in (2019) 6 C.T.C. 705 (FB), those who



W.A.No.1992 of 2019

joined in service after 01.04.2003 is not entitled for any pension.

Moreover, if the service is regularised after 01.04.2003, the past service cannot be taken into account for the purpose of calculating the full pensionable service.

10. Therefore, the learned Government Advocate would contend that the 1st respondent was appointed only in the year 2012 as Record Clerk and he retired from service on superannuation in the year 2017, therefore the said service period itself is well after the cut off date i.e. on 01.04.2003 and therefore he is not entitled to get any service benefits by taking into account of the earlier service on temporary basis rendered by him prior to 01.04.2003.

11. The learned Government Advocate therefore submits that the said aspect has not been considered in proper perspective by the learned Judge who passed the impugned order, hence he seeks indulgence of this Court against the order impugned.

12. Though the learned counsel entered appearance for the 1st respondent, when the case is called, there is no representation for the 1st respondent.



W.A.No.1992 of 2019

13. We have considered the said submissions made by the learned Government Advocate and have perused the materials placed before this Court.

14. Insofar as the case of the 1st respondent is that, he was appointed as a daily wage employee i.e. Work Assistant with effect from 18.03.1986 in a Panchayat Union i.e. Hosur Panchayat Union and in that capacity he had been working for several years.

15. In the year 2006, G.O.Ms.No.22 was issued as stated supra. By virtue of G.O.Ms.No.22 since the 1st respondent was entitled to get regularisation, he had made an attempt to get such regularisation which was not fructified, therefore he approached this Court and filed writ petition in W.P.No.7358 of 2007 where a mandamus was issued by the Writ Court on 08.10.2009 directing the Department to regularise the service of the 1st respondent as per G.O.Ms.No.22 dated 28.02.2006 within 12 weeks period.

16. Pursuant to which instead of regularisation of the service of the 1st respondent, the Department has issued a fresh appointment order



W.A.No.1992 of 2019

appointing him as Record Clerk at Thalaivasal Panchayat Union, Salem District on 20.09.2012 and thereafter he was working in that capacity for 5 years till his superannuation on 31.03.2017.

17. With these facts it is the stand of the appellant Department that, after 01.04.2003 if any one has got appointed and retired from service who is not entitled for regular pension under the Contributory Pension Scheme i.e. the New Pension Scheme and in this case he was appointed only in the year 2012 i.e., well after the cut off date 01.04.2003 and retired from service in 2017, therefore he did not earn the qualifying service to sanction even the minimum pension under the Pension Rules 1978, therefore he is not entitled to get any such pension.

18. Therefore, when the plea was raised by him to calculate his past service and it was rejected, the same has been intervened by the Writ Court where those orders were set aside, with the result a direction was given to include the 50% of the past service. In this context, the main objection on the part of the appellant is that, as per the Full Bench judgment dated 03.12.2019, as stated supra, those who got regularised after 01.04.2003 would not be entitled to get any pensionary benefits,



W.A.No.1992 of 2019

therefore the 1st respondent also since has been appointed only in the year 2012, he is not entitled for any pensionary benefits.

19. However, the appellant Department very conveniently omitted to note the earlier direction given by the Writ Court in his first writ petition i.e. W.P.No.7358 of 2007, where, by order dated 08.10.2009 the Writ Court directed the appellant Department to regularise the service of the 1st respondent from the date of their initial appointment i.e. 18.03.1986.

20. The 1st respondent was engaged on 18.03.1986 and had been working for several years, of course, on a consolidated pay as a temporary employee, therefore the fruits of G.O.Ms.No.22 certainly the 1st respondent would be entitled to get and hence the direction issued by the Court as stated supra ought to have been complied by the appellant Department.

21. Had it been complied with the regularisation would have been taken place with effect from the original date of appointment or atleast after completion of 10 years of service from 18.03.1986, in both way it is



W.A.No.1992 of 2019

well prior to 01.04.2003, therefore at any rate the 1st respondent would be entitled to get the regularisation and consequential pensionary benefits.

22. However, the least only was asked for by the 1st respondent in the second round of litigation where his prayer was only to calculate the 50% of service he has rendered right from 1986 till his appointment in the year 2012. If that is taken into account, his service would become an eligible one for the purpose of calculating the pension.

23. In this context, even though it has been heavily relied upon, by the appellant Department, the Full Bench judgment dated 03.12.2019, the import of the Full Bench judgment especially paragraph 45 has made it clear 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 services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.



W.A.No.1992 of 2019

24. Here in the case in hand, before 01.04.2003 he had rendered several years of service and is entitled to get regularised, that was in fact directed by the Writ Court, as stated supra. When that being so, in all respect the 50% of service atleast rendered by the 1st respondent prior to his further appointment or a fresh appointment as Record Clerk in the year 2012 should have been very well taken into account.

25. In that view of the matter, we do not feel that the stand of the appellant Department that the 1st respondent is not entitled to get the past service into the entire service for the purpose of pension cannot be accepted in view of the Full Bench judgment as stated supra. The said proposition as projected by the appellant Department, in fact, is against the Full Bench judgment and the case of the 1st respondent alone is supported by the Full Bench judgment especially clause (iii) of para 45 as referred to above. In view of the aforestated, we are inclined to dispose of this writ appeal with the following orders:

That there shall be a direction to the appellant Department to take 50% of the earlier service rendered by the 1st respondent either as a Work Assistant or under any other capacity from 18.03.1986 and accordingly such service



W.A.No.1992 of 2019

WEB COPY

shall be added along with the service he rendered as a Record Clerk from 2012 to 2017 and both the service put together the total pensionable service shall be calculated, based on which, the pension payable to the 1st respondent shall be fixed and accordingly with arrears the pension shall be disbursed to him. The aforestated direction shall be complied with by the appellant Department within a period of 12 weeks from the date of receipt of a copy of this judgment. To that extent, the order impugned of this writ appeal is suitably modified.

26. With this directions, this Writ Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]

01.08.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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WEB COPY



W.A.No.1992 of 2019

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

Sgl

To
The Principal Accountant General,
(Accounts and Entitlements), Tamil Nadu,
361, Anna Salai, Teynampet,
Chennai – 600 018.

W.A.No.1992 of 2019

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