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W.A.(MD) No.388 of 2021 etc. batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) Nos.388, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730,
731, 732, 1006 of 2021 & 548, 549, 550, 551, 552, 553, 554, 555, 579,
580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 853, 854,
855 & 856 of 2022**

and

**C.M.P.(MD) Nos.1394, 3243, 3248, 3249, 3250, 3251, 3252, 3253, 3254,
3255, 3257, 3258, 3259 & 4547 of 2021 & 4824, 4826, 4827, 4830,
4831, 4832, 4833, 4835, 4995, 4997, 5000, 5003, 5004, 5005, 5006,
5007, 5008, 5009, 5013, 5014, 5016, 7073, 7074, 7075 & 7076 of 2022**

W.A.(MD) No.388 of 2021:

- 1.The State of Tamil Nadu
rep.by its Secretary
Department of Health and Family Welfare
Fort St.George, Chennai-600 009
- 2.The State of Tamil Nadu
rep.by its Secretary
Department of Finance (Pension)
Fort St.George, Chennai-600 009
- 3.The Director of Medical and
Rural Health Services
Chennai-600 006



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4.The Additional Director of Medical and
Rural Health Services
Chennai-600 006

5.The Chief Medical Officer
The Government Hospital
Thirumangalam
Madurai District

... Appellants

-vs-

M.Kalai Selvi

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 05.03.2019, passed in W.P.(MD) No.4465 of 2019, on the file of this Court.

For Appellants : Mr.S.Kameswaran
Government Advocate

For Respondent : No appearance

COMMON JUDGMENT

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

These writ appeals are filed by the State against the common orders dated 09.01.2019, 05.03.2019, 10.04.2019 & 17.10.2019, passed by the learned Single Judges allowing the writ petitions in W.P.(MD) Nos.6723,



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6883, 7284, 7500 of 2015 & 4458, 4459, 4460, 4461, 4462, 4463, 4464, 4465, 4466, 4467, 4468, 4469, 4470, 4471, 8529, 8530, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 21455, 21459, 21462, 21465, 21470, 21471, 21473, 21474 of 2019, filed by the respondents – writ petitioners.

2. The respondents – writ petitioners instituted the writ proceedings mainly for a direction to the appellants to place them under the old pension scheme based on their initial date of appointment as Staff Nurse on contract basis.

3. The legal proposition regarding applicability of the benefits under old pension scheme i.e. the Tamil Nadu Pension Rules, 1978 is no more *res integra*. The Reference answered by the Full Bench of this Court in the case of ***Government of Tamil Nadu vs. R.Kaliyamoorthi***, reported in **2019 (6) CTC 705** would be the guiding factor to consider the relief as such sought for by the respondents in the writ petitions.



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4. The facts in nutshell are that the respondents were initially appointed as Staff Nurse on contract basis. The orders of appointment issued to them would indicate that they were temporarily appointed as Staff Nurse on contract basis in the Primary Health Centres and Government Medical Hospitals etc., at the consolidated pay, without any further allowance.

5. For easy reference, the terms and conditions of the the contractual appointment order, dated 02.02.2001, issued to the respondent in W.A.(MD) No.548 of 2022, are extracted hereunder:

“The individual is informed that the appointment made is only on Contract basis till the Project Period is over and she is not eligible for claiming any Preferential claims or service rights.

She is also informed that she will not be given any transfer from the PHCs where she is appointed till the Contract period is over.

She should produce a bond for Rs.50,000/- (Rupees Fifty Thousand only) as prescribed to the candidate selected for appointment as Staff Nurse on Contract basis under the RCH Project.



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She is informed that as already mentioned that the appointment is made only purely on Contract basis and her service will be terminated at the time of end of the Project period or her services will be terminated if her work or conduct are found to be unsatisfactory at any time without giving prior notice.”

6. The above conditions would unambiguously indicate that the respondents were not appointed under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules. They were appointed on contract basis at the consolidated pay and without any other allowances. Their contractual employment is liable to be terminated at the time of end of the project period or their services will be terminated if their works or conducts are found to be unsatisfactory at anytime without giving prior notice.

7. After completion of two years of the contract period, the respondents were absorbed as temporary Staff Nurse under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules. The orders of absorption of the respondents under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules would indicate that the respondents were appointed as Staff Nurse under Rule 10(a)(1) of the



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General Rules of the Tamil Nadu State and Subordinate Services Rules, in a time scale of pay and their appointments will take effect from the date of joining consequent to the orders of appointment issued under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules. Further, the respondents were informed that their appointments are purely temporary and by virtue of the same, they cannot claim any right for regular appointment in future. Therefore, the respondents are entitled to claim pensionary benefits by reckoning the period from the date on which they were absorbed under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules as temporary employees, subject to the condition that their services are regularized in the sanctioned post.

8. The Full Bench in the case of ***R.Kaliyamoorthi*** (cited supra) reiterates that contract appointments made in a project or otherwise cannot be taken into consideration for the purpose of bringing an employee under the old pension scheme. The date of regularization is to be taken into consideration for the purpose of ascertaining the eligibility of the employee whether old pension scheme would be applicable to him or not. The cut off date is 01.04.2003 and the services if regularized after the cut off date, then



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the employee is eligible only to the new pension scheme (CPS) and in the present case, though the respondents were appointed on contract basis prior to the cut off date of 01.04.2003, admittedly, they were absorbed as temporary Staff Nurse under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules only after the cut off date.

9. The relevant portion of the Judgment of the Full Bench of this Court in the case of **R.Kaliyamoorthi** (cited supra) in the above context are extracted hereunder:

“38. For instance if a government employee/servant was appointed and absorbed between the cut off dates i.e. 01.01.1961 and 01.04.2003, then he/she will be entitled to include half of the service rendered under the State Government in (i) non-provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services for determination of qualifying service.

39. On the other hand, if a Government employee / servant was not absorbed between the aforesaid cut off dates, he/she will not be entitled to include half of the service rendered under the State Government in (i) non-provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services even though such person may be entitled to Government Pension under the Rule if



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he/she was appointed in a cadre post on or before 01.04.2003 but was absorbed after the said date.

...

41. Thus, a government servant who may have been appointed before the cut-off date of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularisation is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10 (a) (i) alone will be entitled to get pension.

10. The Full Bench has further clarified that the employees, whose services were regularized before the cut off date of 01.04.2003 alone is entitled to the benefit of the old pension scheme and in the present case, the respondents were appointed under Rule 10(a)(1) of the General Rules of the Tamil Nadu State and Subordinate Services Rules after 01.04.2003 admittedly. Therefore, they are not entitled to avail the benefits under the Tamil Nadu Pension Rules, 1978, but, they are entitled to the benefit under the new pension scheme scheme (CPS)



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11. In view of the factum established, the common orders dated 09.01.2019, 05.03.2019, 10.04.2019 & 17.10.2019, passed in W.P.(MD) Nos. 6723, 6883, 7284, 7500 of 2015 & 4458, 4459, 4460, 4461, 4462, 4463, 4464, 4465, 4466, 4467, 4468, 4469, 4470, 4471, 8529, 8530, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 21455, 21459, 21462, 21465, 21470, 21471, 21473, 21474 of 2019 are set aside and the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[V.L.N., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Department of Health and Family Welfare,
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Fort St.George, Chennai-600 009.
- 2.The Secretary,
Department of Finance (Pension),
State of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 3.The Director of Medical and
Rural Health Services,
Chennai-600 006.
- 4.The Additional Director of Medical and
Rural Health Services,
Chennai-600 006.
- 5.The Chief Medical Officer,
The Government Hospital,
Thirumangalam,
Madurai District.



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