



W.A.(MD)No.838 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.08.2023

PRONOUNCED ON: 30.10.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.838 of 2019

The Commissioner,  
Cumbum Municipality,  
Cumbum.

...Appellant

/Vs./

1.N.Chandra

2.The Commissioner of Local Administration,  
Chepauk, Chennai – 6.

3.The Director of Local Fund Audit,  
Kuralagam, 4<sup>th</sup> Floor,  
Chennai – 600 108.

...Respondents

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order of this Court in W.P.(MD)No.462 of 2016 dated 20.02.2019 on the file of this Court is liable to be set aside by this Court and ought to have dismissed the same.



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For Appellant : Mr.K.Hema Karthikeyan  
For Respondents : Mr.S.Visvalingam (R1)  
Mr.T.Amjadkhan (R2 & R3)  
Government Advocate

### **JUDGMENT**

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The writ petitioner, R1 in writ appeal, had approached the writ Court seeking a quash of an order passed by the Director of Local Fund Audit arrayed as R3 in writ appeal and a consequential direction is sought for sanction of family pension without insisting upon the date on which the petitioner's husband has been brought into regular timescale of pay. All parties are henceforth referred to by their array in writ petition.

2. The Writ Court noticed the facts as under:-

(i)The husband of the writ petitioner was employed with the Commissioner of Cumbum Municipality on 05.04.1990. He was brought under timescale of pay on 25.05.2006. He challenged the same relying



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upon a decision of this Court in *Government of Tamil Nadu and Others vs. K.Sakthivel and Another* (2018 (1) CWC 689).

(ii)The Division Bench of this Court in *K.Sakthivel's* case, had in turn relied upon its earlier decision in the case of *P.Chinniyan v. State of Tamil Nadu* (2014 (6) MLJ 316). In *P.Chinniyan's* case, the Court held that cut-off of date fixed for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, 1978 (in short 'Rules') as 01.04.2003 had no rational basis and was arbitrary and violative under Article 14 of the Constitution of India.

(iii)As against some of those decisions, the State had preferred Special Leave Petitions, which was dismissed on merits.

(iv)In light of the above, the decision in *P.Chinniyan's* case binds the State and a contra view cannot be taken in the case of the writ petitioner.

3. There does not appear to have been a very serious contest put forth by the State and the writ Court notes this as well at para 4 of its



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decision. Thus, the writ petition was allowed and the order impugned was quashed. A direction was issued to the respondents to count half of the service of the writ petitioner's husband prior to absorption on 25.02.2006 along with regular service for the purposes of pension computation. A timeframe was fixed for compliance.

4. The order of the writ Court was challenged in writ appeal by R3. The specific grounds are to the effect that the service of writ petitioner's husband was regularised only on 25.02.2006 and as on the date of absorption, it was the contributory pension scheme (CPS) that was in force. The old pension scheme under which husband of the writ petitioner sought relief had been abolished in 2003, with the coming into effect of CPS on 01.04.2003.

5. The writ petition was itself liable to be dismissed as belated and on the ground of laches, since the impugned order is dated 30.04.2010, but the writ petition had been filed only in 2016. No opportunity was given to the respondents in writ petition to file a counter. The decisions in the cases of *K.Sakthivel* and *P.Chinniyan*, are related to



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the persons who were eligible for pension under the old pension scheme and finally, that the writ petitioner's husband was working as a park watchman in the capacity of a contingent employee and thus, there was no question of calculating such service for permanent benefits.

6. The Municipality also relied on a decision of the Full Bench of this Court in *Government of Tamil Nadu, Rep. By Secretary to Government, Public Works Department, Secretariat, Chennai and others vs. R.Kaliyamoorthy* (2020 (2) MLJ 369). The decision is dated 03.12.2019 and the Writ Court had not had the benefit of the same.

7. The Bench has, in paragraph 44 of the above decision, categorically held that earlier orders of the Court in favour of the employee on an identical position as put forth by subsequent writ petitioners, would not be considered as laying down any binding precedent to be followed in other cases. The question referred to the Full Bench is as follows:-

*“Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of*



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*the amendments to the aforesaid rules vide G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003 and G.O.Ms.No.41, Finance (Pension) Department dated 08.02.2010."*

8. The reference has been answered in the following terms:-

*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*

*(i) 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 services were regularised before 01.04.2003, half of 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*



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*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."***

*(emphasis in bold, by the Court)*

9. Learned counsel for the writ petitioner would vehemently argued that the decision in *R.Kaliyamoorthy* could have no bearing on the pension to be paid to the husband of the writ petitioner, as he had passed away on 15.10.2009 and hence, a decision of the Court passed after the lifetime of the writ petitioner's husband could hardly be pressed into service by the contesting side. On the contrary it was *P.Chinniyan's* case that was clearly applicable to the facts of the present matter and hence, the appeal of the Commissioner, Cumbum Municipality has no merit.

10. We have heard the rival contentions and applied our mind



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to the facts of the case. The plea for pension has been made by the widow of employee and that he was employed from 05.04.1990 with Cumbum Municipality.

11. The State had introduced G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, under which Rule 2 was brought into the Tamil Nadu Pension Rules, 1978 (Rules). G.O.Ms.No. 41, Finance (Pension) Department, dated 08.02.2010 introduced sub-rule (4) to Rule 11 of the Rules.

12. There was a cleavage of opinion by different Benches of the Court on the eligibility of persons who were absorbed and/or regularised after 01.04.2003 to pension. While one line of decisions held that those persons were entitled to count half of their past service along with services rendered after regularisation, for pension, another line of decisions held that those persons whose services had been regularised after 01.04.2003 would not be entitled to count half of their past service along with the services rendered after regularisation, for pension.

13. The Full Bench notes at para 6 that the contest was put



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forth by daily wage employees who had joined services under the staunch belief that their services would be regularised by the State and that they would be inducted into the permanent rolls of the Government. While in some cases such regularisation was effected even prior to 01.03.2003, in some cases, there was no regularisation till their superannuation.

14. Thus, the Full Bench noted the two extreme cases as above, where, in the former situation, they would be entitled to the benefit of pension, whereas in the latter, they would not be so entitled, since they would not hold the minimum qualifying service of years. The CPS was brought in with effect from 01.04.2003 and simultaneously, G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, amended the Rules inserting the proviso to Rule 2 of the Rules reading thus:-

*"Provided that these rules shall not apply to Government servants appointed on or after the 01.04.2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent"*



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15. In the subsequent amendments to the Rules in 2010, sub-rule (4) was added to Rule (11) of the Rules, providing for some situations where the Rule would be applicable to State Government employees. Challenges were laid before this Court by daily wage earners employees employed prior to 01.04.2003 whose services were regularised after 01.04.2003, identical to the case of the writ petitioner.

16. After a detailed consideration of the matter, the Full Bench concluded that the employee would be entitled to pension under the old scheme, only if the appointment was made prior to 01.04.2003, in accordance with Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, in which case, 50% past service could be added along with regular service.

17. Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules reads thus:-

*“10. Temporary appointments:— a (i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service,*



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*class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.”*

18. In the present case, the husband of the writ petitioner had been appointed on contingent basis and thus, would not have the benefit of the directions in clause (ii) of para 45 of the decision of the Full Bench per conclusion at paragraph 45 (v) of the decision extracted at paragraph (7) above.

19. As regards the applicability of the decisions in *K.Sakthivel* and *P.Chinniyan*'s cases now, the Full Bench at para 44 has stated thus:-

*“44. The aforesaid Judgment<sup>1</sup> of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as res judicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for*

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<sup>1</sup> State of Maharashtra V. Digambar (1995) 4 SCC 683



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*maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons.”*

20. By virtue of the above conclusion, which is specifically intended to provide stability and certainty in respect of pending matters, all earlier decisions of this Court cease to have any effect. The question that arises before us is a legal question in deciding which empathy, unfortunately, would play no part.

21. For the reasons as assigned above, the order of the Writ Court dated 20.02.2019 is reversed and this Writ Appeal is allowed. No costs.

**[A.S.M.J.] & [R.V.J.]**  
**30.10.2023**

NCC :Yes/No  
Index :Yes/No  
Internet :Yes  
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TO

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**DR.ANITA SUMANTH, J.**  
**AND**  
**R.VIJAYAKUMAR, J.**

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Pre-delivery Judgment made in  
W.A.(MD)No.838 of 2019

Dated:30.10.2023