



WEB COPY



W.P.(MD)No.19143 of 2022 & 2629 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)Nos.19143 of 2022 and 2629 of 2023

K.Sankaran
K.S.Subbiah

... Petitioner in W.P.(MD)No.19143/2022
... Petitioner in W.P.(MD)No.2629/2023

Vs.

1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Secretariat, Chepauk,
Chennai-9.

2.The Additional Director,
Survey & Land Records Department,
Survey House, Chepauk,
Chennai-5.

...Respondents in both petitions

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to declare the Government Order in G.O.No. 408, Finance (Pension) Department, dated 25.08.2009 issued by the first respondent as unconstitutional and null and void for the purpose of calculating the full service rendered insofar the service of Surveyor on consolidated pay.



W.P.(MD)No.19143 of 2022 & 2629 of 2023

In both petitions:

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates
For R1 & R2 : Mr.S.Shanmugavel
Additional Government Pleader

COMMON ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

Writ of declaration have been instituted to declare the Government Order in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 issued by the first respondent as null and void.

2.Chapter III, Rule 11 of the Tamil Nadu Pension Rules, 1978 enumerates commencement of qualifying services. Sub Rule 4 of Rule 11 was inserted pursuant to the Government Order issued in G.O.Ms.No.41, Finance (Pension) Department, dated 09.02.2020. Prior to that, the Government has extended the benefit of counting half of the services rendered under the State Government non-provincialised service, consolidated pay, honorarium or daily wage basis on or after 01.01.1961, in respect of Government employees absorbed in regular service before 01.04.2003. After granting the benefit through



W.P.(MD)No.19143 of 2022 & 2629 of 2023

G.O.Ms.No.408 dated 25.08.2009, the Government brought in an amendment to Sub Rule 4 of Rule 11 vide G.O.Ms.No.41 dated 09.02.2020. However, the present writ petitions have been instituted to declare, G.O.Ms.No.408 dated 25.08.2009 as unconstitutional.

3.Prior to the amendment and insertion of Rule 11(4) of the Tamil Nadu Pension Rules, the employees served in non-provinisialised services, consolidated pay and honorarium or daily wage basis, were not entitled for counting half of their services as temporary employees. The benefit of counting 50% of the temporary services was granted by way of concession by the Government, though the services are not permanent and the employees are not the regular members of the service.

4.That being so, the concession extended by the Government cannot be further extended by the Court in exercise of powers of judicial review. Service conditions relating to pension are prerogative of the Government. In the present case, the amendment impugned is not causing any infringement of service rights already in existence. In addition the benefit of counting 50% of the temporary services was granted as a concession for reckoning the period of



W.P.(MD)No.19143 of 2022 & 2629 of 2023

qualifying services in order to settle the pensionary benefits of the retired employees.

5.Since the impugned amendment is an additional benefit extended by way of concession and the said concession is not violating the service conditions already in existence in respect of the employees, the very ground set out in the writ of declaration is untenable and deserves no further consideration. Accordingly, the order impugned in these writ petitions stands confirmed and these writ petitions are dismissed. No costs.

(S.M.S., J.) & (V.L.N., J.)

28.11.2023

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

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To

1.The Principal Secretary,
Secretariat, Chepauk,
Chennai-9.

2.The Additional Director,
Survey & Land Records Department,
Survey House, Chepauk, Chennai-5.

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W.P.(MD)No.19143 of 2022 & 2629 of 2023

S.M.SUBRAMANIAM, J.

AND

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W.P.(MD)Nos.19143 of 2022 and 2629 of 2023

28.11.2023