



W.P.(MD)Nos.6696 to 6699, 6701 to 6704 and 6706 to 6709 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.6696 to 6699, 6701 to 6704
and 6706 to 6709 of 2018

W.P.(MD)No.6696 of 2018:

A.Indirani

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Principal Secretary,
Finance Pension Department,
Secretariat, St. Fort George,
Chennai-600 009.
- 2.State of Tamil Nadu,
represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, St. Fort George,
Chennai-600 009.



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3.The Secretary,
Department of Finance (Pension),
Secretariat, St. Fort George,
Chennai-600 009.

4.The Director,
Department of Medical Education,
Kilpauk, Chennai.

5.The Dean,
Government Rajaji Hospital,
Panagal Road, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in G.O.408, Finance (Pension) Department, dated 25.08.2009, on the file of 1st respondent and to quash the same as void, illegal, incompetent, unconstitutional and to direct the respondents to extend the benefit of pension under old pension scheme to the petitioner and applying the Rule 11(2) of Tamil Nadu Pension Rules, 1978, for the purpose of calculation of retirement benefits after superannuation.

In all cases: For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader



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COMMON ORDER

This writ petition in W.P.(MD)No.6696 of 2018 is filed for issuance of a writ of Certiorarified Mandamus, to call for the records in G.O.408, Finance (Pension) Department, dated 25.08.2009, on the file of 1st respondent and to quash the same as void, illegal, incompetent, unconstitutional and to direct the respondents to extend the benefit of pension under old pension scheme to the petitioner and applying the Rule 11(2) of Tamil Nadu Pension Rules, 1978, for the purpose of calculation of retirement benefits after superannuation.

2. The brief facts of as stated in the affidavit filed in W.P.(MD)No.6696 of 2018 are that the petitioner had filed W.P.(MD)No.15391 of 2013, before this Court challenging the Letter No.9774/Nidhith/(Oivuoothiyam)Thurai/2010, dated 11.03.2010. The said writ petition was allowed on 21.07.2015. Against the said order, the respondents had filed writ appeal in W.A.(MD)No.1121 of 2017 and



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the Hon'ble Division Bench vide order dated 28.08.2017 allowed the writ appeal on the ground that challenging the letter, dated 11.03.2010, alone without challenging the G.O., will not suffice and it was directed to challenge the G.O. 408, Finance (Pension) Department, dated 25.08.2009 and G.O.(MS) No.149, Health and Family Welfare (F-2) Department, dated 08.05.2009. Hence the present writ petition is filed

3. On 12.02.1993, the petitioner was appointed as daily wage employee in the hospital under the supervision of the 5th respondent. On 28.02.2006, the Department of Personnel and Administrative Reforms issued the G.O.Ms.No.22, for regularization of service of daily wage employees, who have completed 10 years of service as on 01.01.2006. Further, they have to be appointed in the time scale of pay in accordance with the service condition. Based on the aforesaid G.O., the Director of Department of Medical Education, sent a proposal to the



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Government through proceedings, dated 03.08.2006, to regularize nearly 383 employees. Based on some conditions, G.O.Ms.No.149 Health and Family Welfare (F2) Department dated 08.05.2007, came to be passed and the petitioner was regularized. However, the petitioner became eligible for regularization of service in the year 2003 itself i.e., after completion of 10 years.

4. In the meanwhile the Government passed G.O.No.408, Finance (Pension) Department, dated 25.08.2009, with guidelines to get pension benefits under old pension scheme. In the said G.O., the employees who were in non-provincialised service, consolidated pay, honorarium and daily wages whose service have been absorbed prior to 01.04.2003 are eligible for old pension scheme. The petitioner was regularized in the year 2007. Hence, the petitioner submitted a representation, dated 17.02.2010, requesting to extend the benefit of old pension scheme. However, the same was rejected, vide letter, dated



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11.03.2010. Aggrieved over the same, the petitioner filed W.P.(MD)No.15391 of 2013. The Government issued G.O.No.259, Finance (Pension) Department, dated 06.08.2003, introducing New Contributory Pension Scheme and it is applicable only to the employees recruited on or after 01.04.2003. Since the petitioner was recruited in the year 1993, i.e., prior to G.O.No.259, Finance (Pension) Department, dated 06.08.2003, the petitioner is seeking to regularize on completion of 10 years and to extend the old pension scheme benefits to the petitioner.

5. The petitioners in other writ petitions are also making the same claim. Hence, a common order is passed for all the writ petitions.

6. The respondents have filed counter affidavits in all the writ petitions stating that it was the policy decision of the Government to bring in all the



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employees who has joined on or after 01.04.2003 under the new Contributory Pension Scheme. If any person is working as a daily wage or any other category, they will be eligible for regularization based on G.O.Ms.No.22, Finance (pay cell) Department, dated 28.02.2006. However, the same would come to effect only subsequently and not prior to 01.04.2003. When there were several irregularities in implementing the G.O.Ms.No.22, Finance (Pay Cell) Department, dated 28.02.2006 due to misinterpreting, the Government subsequently issued G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, wherein it is clearly stated that said G.O. is applicable to persons who have rendered 10 years of service as on 01.01.2006 and it will come into effect from the date of issuance of the G.O. Hence, the claim of the petitioners in the writ petitions to regularize from the date of completion of 10 years could not arise. The petitioners would not come under the zone of consideration immediately after completion of 10 years and the same will not give any right for



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the petitioners to confer regularization from the date of appointment or from the date of completion. Moreover, the G.O.No.408, Finance (Pay Cell) Department, dated 25.08.2009 was issued to amend the pension rules and the same cannot be confused with that of the regularization issue. Hence, the respondents prayed to dismiss the writ petitions.

7. Heard Mr.V.Raghavachari, learned Counsel appearing for the petitioner in all the writ petitions and Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents in all the writ petitions.

8. There were several claims from the daily wage employees to regularize their services in the permanent posts. Their persistent claim was considered and the Government issued G.O.Ms.No.22, Personnel and Administrative Reforms, dated 28.02.2006, directing to regularize the persons who were employed under



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daily wage basis, NMR etc. The said G.O. states that the benefits of regularization are applicable to persons who have completed 10 years on 01.01.2006. The G.O.Ms.No.22 reads as under:

“ABSTRACT

Public Services Employees working on daily wages-Bringing into regular establishment on completion of ten years of service as on 01.01.2006-Orders issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (F) DEPARTMENT G.O. Ms. No.22 Dated 28.02.2006 ORDER:

The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 08.02.2006, that the services of employees working in various Government Departments on daily wages basis who have completed more than 10 years of service as on 01.01.2006 will be regularized.

*2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all Government Departments **who have rendered 10 years of service as on 01.01.2006 be regularized** by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.*

3. The Departments of Secretariat may therefore, be directed to pursue action to regularize the services of the daily wages employees working in all



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Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required proposal shall be sent to Government.

4. This order issues with the concurrence of Finance Department vide its U.O. No.985/FS/P/2006 dated 28.02.2006."

On perusing the G.O. it indicates that the condition is imposed to confer the benefits of regularisation to persons who have completed 10 years as on 01.01.2006. Therefore the persons who have completed 10 years would come under the zone of consideration.

9. The subsequent G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, makes it abundantly clear that the regularisation can be from the date of issue of the government order only. The G.O. reads as:



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“G.O.No.74 Personnel and Administrative Reforms Department dated 27.06.2013, reads as follows:

"6) In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularisation of services of full time daily wage employees working in all Government departments as detailed below:

(i) This Order shall be deemed to have been come into force with retrospective effect from 01.01.2006.

*(ii) The services of the full time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamilnadu Basic Service and **complete 10 (ten) years of service as on 01.01.2006** shall be regularised against regular vacancies in the sanctioned cadre strength.*

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23(a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit shall be allowed with effect from the date of regularisation;

(vi) The part-time and casual employees are not entitled to the concession referred to at para (ii) above;



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(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularised;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularisation of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved." But unfortunately this order G.O.Ms.No.74, could not be placed by the Government before the learned Judges, as it came only subsequently."

10. It is an admitted fact that the petitioners in these writ petitions were appointed in the year 1993 on a daily wage basis and they have completed the 10 years **as on 01.01.2006** and hence they are eligible for regularisation / absorption. The claim of the petitioner is that they have completed 10 years of service as on 01.01.2003, hence they are entitled to the regularised from the date of 01.01.2003. The said G.O. is not stating that the persons are entitled to regularization on the



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date of completion of 10 years, it only states that persons who have rendered 10 years of service as on 01.01.2006 be regularized. The said condition ought to be construed that the petitioners are entitled for consideration and they have come under the zone of consideration. Nowhere the said G.O. states that on date of completion of 10 years the employees would be entitled to regularization. Infact G.O.Ms.No.22, Finance (Pay Cell) Department, dated 28.02.2006, only states that it is the policy decision of the Government that whoever has completed 10 years on 01.01.2006, would be entitled for consideration to regularize the service. This does not mean that on the date of completion of 10 years, the petitioners are entitled to regularization. Therefore, the respondents are absolutely right in stating that the regularization will come into effect from the date of issuance of the regularization order and not prior to the said date.



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11. The petitioners have challenged G.O.Ms.No.408, Finance (Pay Cell) Department, dated 25.08.2009. Subsequently based on the G.O.Ms.No.408 the rules were amended in the Pension Rules under Rule 11(4). The validity of Rule 11(4) was challenged in subsequent writ petitions and the rule was upheld. When the rule is specifically stating if any person is regularized after 01.04.2003, he is not entitled to calculate 50% of the daily wages employment / the past service. The claim of the petitioners is that since they have completed 10 years in the year 2003 itself, the petitioners are entitled to grant regularization, consequently the petitioners are entitled to pensionary benefits. The said plea cannot be accepted, since the petitioners have come under the zone of consideration on completion of 10 years. On applying G.O.Ms.No.22, Finance (Pay Cell) Department, dated 28.02.2006, the Government has considered the service of the petitioners and subsequently issued an order to regularize the petitioners' service on 08.05.2007, through G.O.Ms.No.149 Health and Family Welfare (F2) Department dated



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08.05.2007. The regularization will come into effect from the date of issuance of the G.O., and in the present case it is on 08.05.2007. The petitioners cannot claim over and above what has been stated in the G.O.Ms.No.149 Health and Family Welfare (F2) Department dated 08.05.2007. Based on Hon'ble Full Bench order if the regularisation is after 01.04.2003, then the persons are not entitled to claim 50% past service as daily wages and on this ground also the petitioners are not entitled to.

12. It is also to be noted that the government intended to stop the old pension scheme and shift to new scheme, wherein the new scheme of contributory pension scheme was introduced from 01.04.2003 onwards. During this period of major shifting to different scheme, the government also banned fresh recruitment through G.O.Ms.No.212, Personnel and Administrative Reforms Department, dated 29.11.2001, thereby completely banning filling-up of all vacant posts by



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direct recruitment. Also banned any regularisation so that uniformity could be followed. The ban was lifted through G.O.Ms.No.14, Personnel and Administrative Reforms Department, dated 07.02.2006. When the regularisation have financial implications on the government, the government has every power to restrict the regularisation. Hence the government had passed an order granting regularisation from 01.01.2006 onwards.

13. Therefore this Court is of the considered opinion that there is no illegality in granting regularisation on 08.05.2007 through G.O.Ms.No.149 Health and Family Welfare (F2) Department dated 08.05.2007 and the claim of the petitioners is rejected and all the writ petitions are dismissed. No costs.

Index : Yes / No

Internet : Yes

NCC : Yes / No

03.01.2023

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To

- 1.The Principal Secretary,
State of Tamil Nadu,
Finance Pension Department,
Secretariat, St. Fort George,
Chennai-600 009.
- 2.The Secretary,
State of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, St. Fort George,
Chennai-600 009.
- 3.The Secretary,
Department of Finance (Pension),
Secretariat, St. Fort George,
Chennai-600 009.
- 4.The Director,
Department of Medical Education,
Kilpauk, Chennai.
- 5.The Dean,
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