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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.09.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1292 of 2015
and
M.P.(MD)No.1 of 2015

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai.
- 2.The Secretary,
Department of Finance (Pension),
Secretariat,
Chennai-600 009.
- 3.The Director,
Department of Medical Education,
Kilpauk, Chennai-600 010.

...Appellants

/Vs./

Tamil Nadu Medical Department,
All Workers and Sanitary Workers Association
Represented by the President, M.Venkatachalam,
S/o.K.Muthusamy,
No.4/520-9, Ganga Nagar, Madurai.

...Respondent



PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to set aside the order dated 20.01.2014 made in W.P.(MD)No.14722 of 2010.

For Appellants : Mr.S.Shaji Bino
Special Government Pleader
For Respondent : Mr.Vetrivel
for Mr.S.Rajasekar

JUDGMENT

(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The respondents in the writ petition are the appellants herein.

2.The respondent herein, the Tamil Nadu Medical Department, All Workers and Sanitary Workers Association through their President/writ petitioner, has filed Writ Petition challenging an order dated 11.03.2010, wherein the request to be covered under the old pension scheme was rejected.

3.The members of the Writ Petitioner's Association were working as substitute workers in various Medical Institutions. Considering their long services, their services were regularised by way of G.O.Ms.No.149, H & W Department, dated 08.05.2007. Thereafter, the



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writ petitioners individually as well as association made an attempt to get themselves enrolled in the old pension scheme. The writ petitioner's request was rejected. Hence, they have filed the present writ petition. The Writ Court had allowed the writ petition on the ground that the old pension scheme is applicable to the members of the petitioner's association based on the date of their appointment. Challenging the said order, the present appeal has been filed by the State.

4.The full bench of our high Court in a judgment in *Government of Tamil Nadu rep by Secretary to Government and others vs. R.Kaliyamoorthy* [2019 (6) CTC 705] in paragraph No.45 (v) has held as follows:

“45....

(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.”

5.In view of the judgment of the Full Bench, the members of the writ petitioner Association, though were appointed prior to



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01.04.2003, were absorbed in regular service only with effect from 08.05.2007 and they will not be entitled to count their past services and they will not be entitled to get themselves enrolled under the old pension scheme. At the time, when the writ Court passed the order, the Writ Court did not have the benefit of this Full Bench Judgment. Therefore, the order of the Writ Court is liable to be set aside and accordingly, this Writ Appeal stands allowed. No costs. Consequently connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
15.09.2023

NCC :Yes/No
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)No.1292 of 2015

Dated:
15.09.2023