BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.833 of 2018
and
C.M.P.(MD)No.4996 of 2018

1.The Secretary to Government,
Department of School Education,
Fort St.George, Secretariat,
Chennai.

2.The Director of Elementary Education,
DPI Complex, Nungambakkam,
Chennai-06.

3.The Principal Accountant General,
Office of the Principal Accountant General,
361, Annasalai, Chennai-18.

4.The District Elementary Education Officer,
Nagercoil, Kanyakumari District.
5.The Assistant Elementary Education Officer,
Nagercoil, Kanyakumari District. ... Appellants

Vs.

1.F.Selvaraj

2.Arasu Rubber Corporation Limited,
Rep. by its Managing Director,
Vadasery, Post Box No.75,
Nagercoil-629 001, Kanyakumari. ... Respondents

(R2 is suo motu impleaded as per order dated 26.10.2018 in W.A.(MD)No.833 of 2018)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the orders passed in W.P.(MD)No.12742 of 2017, dated 18.07.2017 on the file of this Court.

For Appellants : Mr.D.Sadiq Raja,
Additional Government Pleader

For R1 : Mr.M.Gnanagurunathan

For R2 : Mr.A.K.Manikkam

JUDGMENT

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

This Writ Appeal has been instituted challenging the order dated 18.07.2017 passed in W.P.(MD)No.12742 of 2017.

2.The 1st respondent employee was appointed as B.T. Assistant on 21.03.1990 in a Government undertaking School, namely, Government Rubber Corporation Limited School in Kuttriyar and had been working in the said school till 02.06.2014. Pursuant to the Government Order, Rubber Corporation school had been brought under the direct administrative control of the Government in G.O.(Ms).No.253, dated 01.10.2009 and the Government issued further order in G.O.(Ms).No.73, dated 03.06.2014, absorbing all the teachers, working in the Rubber Corporation School into the Government services. On such absorption the 1st respondent employee was transferred to Keeriparai Government Middle School on 03.06.2014 and had put in a total service of 27 years as B.T Assistant, out of which 24 years was rendered in Rubber Corporation School, which was not a Government School.

3.It is not in dispute that the Rubber Corporation School was not under the administrative control of the Government of Tamil Nadu and it was functioning under the control of Arasu Rubber Corporation. Arasu Rubber Corporation School Service Rules are independent. Thus, the 1st respondent / employee was not appointed in a pensionable service. Admittedly, the service rendered by the 1st respondent in Arasu Rubber Corporation School is a non-pensionable service and he admittedly received all the monetary benefits admissible under the service rules, when got relieved from Arasu Rubber Corporation School. Thereafter, he joined in the Government Services, which is pensionable service.

4.The question arises whether the 1st respondent / employee is entitled to claim pensionery benefits in respect of the services rendered by him in Arasu Rubber Corporation School.

5.The learned Additional Government Pleader appearing on behalf of the appellants mainly contended that the 1st respondent was admitted in a non-pensionable service and therefore, the Tamil Nadu Pension Rules, 1978 are not applicable till such time, he was absorbed as a Government employee, pursuant to the Government Order issued in G.O.(Ms).No.73, dated 03.06.2014. Therefore, the 1st respondent is entitled to get pensionary benefits from the date of appointment into the Government services and in respect of the services rendered by him in Arasu Rubber Corporation School, benefits were already settled by the Corporation and thus, the grievances of the 1st respondent is misconceived and the Writ Petition is liable to be set aside.

6.The learned counsel appeairng for the 1st respondent objected the said contention by stating that the 1st respondent had served about 24 years in Arasu Rubber Corporation School and he was absorbed as a Government employee and therefore, the services rendered by him in Arasu Rubber Corporation School is to be calculated for reckoning the qualifying services under the Tamil Nadu Pension Rules, 1978.

7.To substantiate the said claim, the learned counsel for the 1st respondent relied upon the judgment of the Division Bench of this Court dated 18.07.2008 made in W.A.(MD)No.302 of 2008 (***State of Tamil Nadu, rep. by Secretary to Government, Animal Husbandry Diarying and Fisheries Department and another Vs. B.Subramanian***), wherein the Division Bench of this Court made the following observations:-

"10. Thereafter, in G.O.Ms.No.118 Finance (Pension) Department, dated 14.2.1996, the Government, after examining the question of extending the concession ordered in G.O.Ms.No.437, dated 23.6.1988, to the case of Government employees, who were borne on non-pensionable establishment and subsequently brought into pensionable establishment, have ordered to count half of the service rendered by the State Government employees under non-pensionable establishment along with regular service under pensionable establishment for pensionary benefits, subject to the following conditions:

i)Service under non-pensionable establishment should have been in a job involving whole time employment;

ii)The service under non-pensionable establishment should have been on time scale of pay;

iii)The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without a break."

8.In the order dated 26.07.2023 made in W.A.(MD)No.251 of 2020 (***The Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Limited Vs. K.Kanthavel***), the Division Bench of this Court made the following observations:-

"11.The petitioner was working as an Assistant in Tamil Nadu Magnesium and Marine Chemicals Limited (TMML) from 09.10.1987 and the Government of Tamil Nadu undertaking underwent liquidation and it was wound up. The Tamil Nadu Government had passed G.O.Ms.No.59 Industries (MIF~II) Department dated 20.02.1997 agreeing to absorb the employees of the liquidated company in any one of the public sector undertakings to a suitable post subject to eligibility and qualification. The petitioner has been appointed in the appellant Electricity Board vide order dated 31.12.2001 and posting order was issued to him by proceedings dated 04.01.2002.

12.A perusal of the appointment order and the posting order clearly reveal that he has been absorbed and appointed as an

Assessor in the time of scale of pay and it is not a fresh appointment.

17.The Board proceedings cited supra and the order of the Division Bench of this Court in W.A.No.1914 of 2011 will clearly disclose that the writ petitioner has been granted pay protection as Assessor in Tamil Nadu Electricity Board considering his past services in TMML. The Board proceedings cited supra further point out that the regularize services rendered by absorbed employees in their parent department shall be taken into account for allowing service weightage. That apart the appointment order of the Electricity Board itself points out that he has been absorbed and appointed. There is no dispute that the writ petitioner was in regular service as an Assistant in TMML. Hence, it is clear that the services of the writ petitioner in TMML covering the period between 09.10.1987 to 18.01.2002 should be taken into consideration for calculating his pensionary benefits. However, the said period shall not be taken into consideration for any other monetary benefits in view of the fact that the writ petitioner has already received those benefits from the official liquidator on 06.12.2010."

9.The Hon'ble Apex Court in Civil Appeal Nos.4446 & 4448 of 2008, dated 15.07.2008 held as follows:-

""Therefore, in view of the consistent approach of this Court, it is no more res integra that the incumbent on transfer to the new department may not get the seniority but his experience of the

past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the Government"

Therefore, in the series of judgment given by this Court the view has been taken that in case of a transfer / absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs."

10.Relying on the above judgments, the learned counsel for the 1st respondent has made a submission that once the 1st respondent was brought under pensionable services and he was working in Arasu Rubber Corporation School, which is also the Government owned Corporation, the services are to be reckoned as qualifying services for the purpose of calculation of pension and therefore, the order passed by the learned Single Judge is to be confirmed. Further, pay protection was granted to the 1st respondent in the Government Order and he was not appointed as a new entrant and his services were continued. That being the factum, the services rendered with Arasu Rubber Corporation cannot be separated and is to be calculated together with qualifying services rendered as a Government employee. When the Government has considered the period of services rendered in Rubber Corporation for fixation of pay and to grant pay protection, other benefits for the pensionable services are to be extended.

11.We have considered the rival submissions made between the parties to the lis on hand. Regarding the applicability of the Tamil Nadu Pension Rules, 1978 in respect of non-pensionable service, Rule 3(o) defines 'qualifying service' means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment. The definition of qualifying service unambiguously stipulates that service rendered in pensionable services alone is to be reckoned for the purpose of calculating qualifying services.

12.Sub Rule (1) to Rule 11 states that ‘subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October 1969, temporary or officiating service in the **pensionable post** ,whether rendered in a regular capacity or not shall count in full as qualifying services even if it is not followed by confirmation.

13.Sub Rule (2) to Rule 12 contemplates that 'For the purposes of sub-rule (1) the expression "service" means service under the Government and paid by the Government from the Consolidated Fund of the State, or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

14.Rules referred supra would be sufficient enough to form an opinion that an employee served in pensionable services / establishment alone is entitled to avail benefits under the Tamil Nadu Pension Rules, 1978 and service rendered in non-pensionable service before absorption into the Government services cannot be construed as pensionable service and thus, such employees are not entitled for counting of the past services rendered in non-pensionable establishment for pensionary benefits under the Tamil Nadu Pension Rules, 1978.

15.In the present case, it is not in dispute that the 1st respondent was appointed in a non-pensionable service and received all the terminal benefits as applicable under Arasu Rubber Corporation Service Rules. Once the employee had received all the terminal benefits applicable under the relevant rules in respect of the service rendered by him in Arasu Rubber Corporation, he cannot turn around and now claim for reckoning the services rendered by him in a non-pensionable service for the purpose of availing benefit under the Tamil Nadu Pension Rules, 1978, which is applicable only in respect of the services rendered in pensionable establishment. Therefore, the 1st respondent is entitled to get benefits under the Tamil Nadu Pension Rules, 1978 only from the date on which he was absorbed into the Government service by virtue of G.O.(Ms).No.73, dated 03.06.2014. Since he was absorbed with effect from 03.06.2014, he is entitled to claim benefits under new pension scheme ie., Contributory Pension Scheme. In respect of the pay protection granted to the employees, the Government, while absorbing these employees, granted concession not to deprive them from getting salary, which they were receiving in Arasu Rubber Corporation and such a concession would not be a ground to claim benefits under the Tamil Nadu Pension Rules, 1978, since it is not applicable in respect of non-pensionable service.

16.The judgments relied on by the learned counsel for the 1st respondent are of no avail, since the distinction between pensionable service and non-pensionable service and the applicability of the provisions of the Tamil Nadu Pension Rules have not been discussed in the above judgments and cases decided based on the facts cannot be followed as a precedent, as every case is to be decided based on its own facts established and the issues raised. Thus, the judgments relied upon by the learned counsel for the 1st respondent are of no avail to secure the relief from the hands of this Court.

17.As far as the order under challenge is concerned, the learned Single Judge has not considered the Tamil Nadu Pension Rules, its applicability and the nature of services rendered by the 1st respondent in non-pensionable establishment. Thus, we are inclined to interfere with the order under challenge. Accordingly, the order dated 18.07.2017 made in W.P.(MD)No.12742 of 2017 is set aside and this Writ Appeal is allowed.

18.At this juncture, the learned counsel for the 1st respondent made a submission that a proposal has already been submitted to the Government to extend the benefits of the Tamil Nadu Pension Rules, 1978, so as to calculate the services rendered by the 1st respondent in Arasu Rubber Corporation as qualifying services. It is for the 1st respondent to pursue the remedy before the Government. No costs. Consequently, connected miscellaneous petition is closed.

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

11.10.2023

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

Yuva

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AND

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