IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.562 of 2024

1. The Secretary to the Government
   Department of Personnel, Pension and Grievances
   Fort St. George, Chennai – 600 009.

2. The Commissioner of Revenue Administration
   Chepauk, Chennai.

3. The District Collector
   Krishnagiri – 635 001.

4. The Sub Collector
   Hosur Sub Division
   Hosur – 635 109.

5. The Tahsildar
   Denkanikottai – 635 107. .. Appellants

Vs.

1. Rajamma

2. The Accounts Officer
   Office of the Principal Accountant General
   (Accounts and Entitlement)
   Tamil Nadu, Chennai. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 23.06.2023 in W.P.No.30644 of 2022.

For the Appellants	:	Mr.M.Alagu Goutham Government Advocate
For the Respondents	:	Mr.T.Sai Krishnan for R1

JUDGMENT

(Order of the Court was made by R.SURESH KUMAR, J.)

The first respondent, who was the petitioner before the Writ Court, approached the Writ Court challenging the order dated 24.06.2022, whereby, the 50% of the past services rendered by the husband of the writ petitioner, right from the year 1974 as Village Assistant, was not taken into account for the purpose of calculating pensionary benefits. Therefore, challenging the said order, the writ petition was filed and the learned Writ Court, considering the legal position, by taking into account the Division Bench Judgment of this Court in W.A.(MD)No.370 of 2019 dated 22.10.2019, allowed the writ petition, against which the present intra-Court appeal has been directed.

2. Heard *Mr.M.Alagu Goutham*, learned Government Advocate appearing on behalf of the appellants and *Mr.T.Sai Krishnan*, learned counsel appearing on behalf of the first respondent.

3.1. As far as the facts with regard to the job of the husband of the writ petitioner is concerned, he was appointed some time in the year 1974 as a Village Assistant, which was erstwhile called as "*Thalaiyari*" and subsequently given the nomenclature as Village Assistant. In the said post, he had been working from 1974 and in the year 1995, by virtue of G.O.Ms.No.625, Revenue Department, dated 06.07.1995, all those people like the husband of the writ petitioner, have been brought under the regular time scale of pay.

3.2. Subsequently, the husband of the writ petitioner retired from service and on retirement, when his pensionary benefits was calculated, his service, only from the date of the issuance of G.O.Ms.No.625, that is 06.07.1995, alone was taken into account by the Government and the service rendered by him from 1974, i.e., right from his appointment, has not been taken into account.

3.3. Only in this circumstances, he approached the authorities, which request was negated and the same was under challenge before the Writ Court. That is how, the present intra-Court appeal has come up for consideration.

4.1. Insofar as the issue raised in this writ appeal is concerned, it has been exhaustively discussed and decided by the Full Bench Judgment of this Court in the matter of ***The Government of Tamil Nadu and Ors. Vs. R. Kaliyamoorthy***[1], where, the Full Bench, in respect of the reference made to them, has given their answer in paragraph 45, which reads thus:-

> *"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*
>
> *(ii) 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 before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be*

1 *W.A.No.158 of 2016; dated 03.12.2019.*

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."

4.2. What are all the circumstances under which such benefit could be denied and what are all the circumstances such benefits cannot be denied on taking into account the past services for the purpose of calculating the pensionary benefits has been clearly demarcated in the aforesaid judgment. Where, in paragraph 45(iii), the situation mentioned by the Full Bench is "*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*".

4.3. Therefore, in unequivocal terms, the Full Bench has held that if a person has entered into service prior to 2003, either by way of non-provincialised service or consolidated pay or on honorarium or on daily wage basis, such service is regularised prior to 01.04.2003, certainly, the 50% of the past service rendered by the employee shall be calculated for the purpose of pensionary benefits.

5.1. Here, in the case in hand, the employee (husband of the writ petitioner) entered into service admittedly in the year 1974 and he has been continuously in service and in the year 1995, his service has been regularized and he has been brought under regular time scale of pay and thereafter, he retired from service. Therefore, in all fours, the 50% of the past service rendered by him right from inception, that is from the very admission of the employee concerned, could be taken into account for the purpose of calculating pensionary benefits.

5.2. When that being so, the service rendered by the employee from 1974 to 1995, that is 50% of the past service, being denied for the purpose of calculating the pensionary benefits, will go directly against the dictum of the Full Bench, especially, paragraph 45(iii) of the Full Bench judgment cited *supra*.

5.3. Hence, apart from the reasons that has been cited by the learned Single Judge in allowing the writ petition, for the aforesaid legal position in the context of the Full Bench judgment cited *supra*, we have no hesitation in holding that the denial of 50% of the past service rendered by the employee for the purpose of calculating the pensionary benefits is unsustainable. Therefore, we find no error apparent in the judgment of the learned Single Judge, which is impugned herein.

6. In the result, the writ appeal fails, hence, stands dismissed. However, there shall be no order as to costs. Consequently, C.M.P.No.3893 of 2024 is closed.

(R.S.K., J.) (C.S.N, J)
25.11.2024

Neutral Citation:Yes/No

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To:

1. The Accounts Officer
Office of the Principal Accountant General
(Accounts and Entitlement)
Tamil Nadu, Chennai.

R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

W.A.No.562 of 2024

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