



WEB COPY

W.P.No.33202 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.33202 of 2013

R.Subramani

...

Petitioner

versus

1.The Secretary to Government,
Social Welfare and Nutritious
Noon Meal Department,
Secretariat, Chennai - 600 009.

2.The Director,
Directorate of Social Welfare,
58/70, Arunachalam Street,
Chinthadripet, Chennai - 600 002.

3.The District Collector,
Thiruvallur District.

4.The Public Information Officer,
Office of the Principal Accountant General
(Accounts & Entitlements),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for the records



culminating in the impugned Letter of the fourth respondent in No.legal cell/RTI-813/2012-13/1009/145139 dated 29.10.2012 wherein the pensionary benefits of the petitioner are denied along with the remarks that, "as the official had joined service on 25.10.2010, after the introduction of the Contributory Pension Scheme (1.4.2003), he is not covered under the Tamil Nadu Pension Rules, 1978" quash the same and direct the respondents to bring the petitioner's service into regular establishment with effect from 25.08.1982 and grant petitioner's pension and other terminal benefits from 25.08.1982 applicable to similarly placed persons.

For Petitioner : Ms.Sona N.R.
For Mr.S.Namasivayam

For Respondents : Mr.P.Ananda Kumar
Government Advocate

ORDER

The writ petition is filed challenging the orders of the fourth respondent dated 29.10.2012, wherein the claim of the petitioner seeking to bring his service into regular establishment with effect from 25.08.1992 and grant the benefits with effect from that date was rejected.

2. The petitioner was originally working as a Helper to cook in the Ellapuram Central Kitchen under the control of Education Department and he was later appointed as cook in the year 1982. Some of the persons who



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have been appointed prior to 1981 were regularised by G.O.(Ms.)No.267, Rural Development Department, dated 22.12.1999. However, since the petitioner was not brought under regular establishment, he had approached this Court in W.P.No.25892 of 2008 and by order dated 29.04.2009, the writ petition came to be disposed of by directing the respondents to consider the representation of the petitioner.

3. Pursuant to the same, G.O.(Ms.)No.8, Social Welfare and Nutritious Noon Meal Scheme, dated 06.01.2010, was issued appointing the petitioner and others as Office Assistant (Night Watchman) in the scale of pay of Rs.4800-10,000. Since the petitioner had attained the age of superannuation, by the proceedings dated 29.10.2010, he was allowed to retire.

4. Pursuant to the retirement, the petitioner had made representations claiming to regularise his services by considering the service rendered by him as cook for grant of pensionary benefits. The claim of the petitioner was rejected by the orders of the fourth respondent dated



29.10.2012. Assailing the same, the petitioner had preferred the above writ petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the materials available on record.

6. Even though the petitioner was working as a daily wage employee, pursuant to the directions issued by this Court in W.P.No.14114 of 2010 dated 07.07.2010, by proceedings dated 18.10.2010 of the second respondent, the petitioner was appointed as Assistant (Night Watchman) in the Gummidipoondi Office. In view of the appointment of the petitioner, he got relieved from his temporary service as cook and he joined in the office of the second respondent with effect from 20.10.2010. Pursuant to his reaching the age of superannuation, he was allowed to retire and he got relieved from service on 31.10.2010.

7. After his retirement, the petitioner had made a claim for including his services, which he rendered as cook on daily wage basis for grant of pensionary benefits and the claim came to be rejected by the orders



of the fourth respondent dated 29.10.2012. The impugned order reads as under:-

“With reference to your application under RTI Act, it is informed that, as per this Office records, it is found that, your Service Register and proposals which were forwarded to this Office by the District Project Officer, Tiruvallur District, Tiruvallur, in letter no.ROC No.377/2012, dated 11.4.2012, was retransmitted to the Departmental Officer in this office letter no.Pen 27/2/1270534/RTD/11-12/69 dated 5.6.2012, without admitting pensionary benefits, along with the remarks that, “as the official had joined service on 25.10.2010, after the introduction of the Contributory Pension Scheme (1.4.2003), he is not covered under the Tamil Nadu Pension Rules, 1978.”

8. Since the pension rules were amended and all the employees who were appointed after 01.04.2003 were brought under a new contributory pension scheme and they will not be covered under the Tamil Nadu Pension Rules, 1978, there have been several claims made in this regard for considering the services rendered either temporary or adhoc or on a casual basis prior to appointment for regularisation in a regular service.

9. The issue in this regard came to be considered in a settled decision in the case of *State of Tamilnadu Vs. R.Kaliyamoorthy* reported in *(2020) 2 MLJ 369* wherein the Full Bench of this Court has held as follows:-



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“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 nonprovincialised 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 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.”*

10. In the instant case, it is submitted that, admittedly, the petitioner was appointed in service only on 18.10.2010, hence the services rendered by the petitioner on a daily wage basis cannot be considered for any grant of any pensionary benefits. Further, since all the employees who were appointed after 01.04.2003 are only covered under the contribution pension scheme, the claim of the petitioner was rightly rejected by the respondents.



11. In view of the same, the Writ Petition fails and it is accordingly
dismissed.

12. There shall be no order as to costs.

22.11.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

To

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G.ARUL MURUGAN, J.

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