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W.A.Nos.2965 and 2971 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.2965 and 2971 of 2019 and
C.M.P.Nos.19209, 19216 & 19218 of 2019

W.A.No.2965 of 2019

1. Government of Tamil Nadu,
Rep. by its Principal Secretary,
Animal Husbandry, Dairying and Fisheries (AH6) Department,
Secretariat, Chennai-9.
2. The Commissioner of Animal Husbandry and Veterinary Services,
DMS Complex, Chennai-600 006.
3. The Regional Joint Director,
Animal Husbandry Department,
Krishnagiri District, Krishnagiri.
4. The Deputy Director,
Animal Husbandry Department,
District Livestock Farm,
Hosur, Krishnagiri District.

... Appellants/Respondents

-VS-

1. Mrs.Pappamma
2. The Accountant General of Tamil Nadu,
Office of Accountant General,
Anna Salai, Teynampet,
Chennai-18.

... Respondent / Petitioner

... Respondent / 5th Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated



W.A.Nos.2965 and 2966

07.09.2017 made in W.P.No.23504 of 2017 and allow the Writ Appeal.

W.A.No.2971 of 2019

1. Government of Tamil Nadu,
Rep. by its Principal Secretary,
Animal Husbandry, Dairying and Fisheries (AH6) Department,
Secretariat, Chennai-9.
2. The Commissioner of Animal Husbandry and Veterinary Services,
DMS Complex, Chennai-600 006.
3. The Regional Joint Director,
Animal Husbandry Department,
Krishnagiri District, Krishnagiri.
4. The Deputy Director,
Animal Husbandry Department,
District Livestock Farm,
Hosur, Krishnagiri District.

... Appellants/Respondents

-vs-

1. K.Narayanappa
2. The Accountant General of Tamil Nadu,
Office of Accountant General,
Anna Salai, Teynampet,
Chennai-18.

... Respondent / Petitioner

... Respondent / 5th Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 07.09.2017 made in W.P.No.23505 of 2017 and allow the Writ Appeal.

For Appellants	:	Mr.M.Bindran Addl. Govt. Pleader (in both WPs.)
For R1	:	Mr.M.R.Jothimanian (in both WPs.)
For R2	:	No Appearance

COMMON JUDGMENT

(By D.Krishnakumar,J.)



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These Writ Appeals have been filed, challenging the common order of the learned Single Judge dated 07.09.2017, by which the Writ Petitions filed by the Writ Petitioners / 1st Respondents herein stood allowed, with a direction to the respondents to extend the benefits in the light of the amended Rule 11 of the Tamil Nadu Pension Rules, 1978.

2. For the sake of brevity, the facts (as put forth by the Appellants) are being taken from W.A.No.2971 of 2019 as under.

i) The 1st Respondent was engaged as a Part Time Casual Worker in the Appellant Department and consequent to the inclusion of his name in the seniority list for regularization, as per G.O.Ms.No.22 dated 28.02.2006 and G.O.(Ms) No.134, Animal Husbandry, Dairying and Fisheries (AH6) Department dated 12.11.2009 , his services have been regularized only on 11.12.2009 and therefore, he is not entitled to the enrollment into Old Pension Scheme.

ii) The Government had introduced New Pension Scheme, namely, Contributory Pension Scheme with effect from 01.04.2003 vide G.O.No.259 Finance (Pension) Department dated 06.08.2003, wherein it has been stated as follows:

“i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003.

ii) The employee's contribution and the Government contribution, if



any, towards the scheme shall be spelt out separately.

iii) After issue of detailed orders from Government of India, introducing new scheme to their employees, the State Government will, if necessary, modify these orders and issue rules and regulations for the Contributory Pension Scheme for State Government employees recruited on or after 1.4.2003.”

Hence, it was stoutly argued that taking note of the fact that the Contributory Pension Scheme was made applicable to employees, who joined services after 01.04.2003 and also the fact that the 1st Respondents' services were regularized much after the cut off date, viz., 01.01.2006, they cannot be brought back to Old Pension Scheme.

3. Learned counsel for the Appellants brought to the attention of this Court the judgment of a Full Bench dated 03.12.2019 made in Writ Appeal Nos.158, 314, 315, 316, 317, 343, 426, 455, 490, 536, 541, 610 and 1235 of 2016, etc. batch, (The Government of Tamil Nadu represented by Secretary to Government Public Works Department Secretariat Chennai - 600 009 and others vs. R.Kaliyamoorthy and others) wherein the reference was answered by the Full Bench as under:

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;



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(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 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. By relying on the aforesaid judgment, it was vehemently pleaded by the Appellants that the 1st Respondents herein are not entitled to any relief, as they had been absorbed into regular employment only after 01.04.2003.

5. In view of the above authoritative pronouncement of the Full Bench, which has not been disputed by the learned counsel for the 1st Respondents, we are of the view that the judgment rendered by the Full Bench is squarely applicable to the

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AND
K.KUMARESH BABU,J.,
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facts of this Court and the common order passed by the learned Single Judge in respect



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of 1st Respondents herein is liable to be set aside.

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6. Accordingly, these Writ Appeals are allowed and the common order dated 07.09.2017 passed by the learned Single Judge in W.P.Nos.23504 & 23505 of 2017 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition are closed.

[D.K.K., J.,]

[K.B., J]

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Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order

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