IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.1786 of 2019
and
CMP.No.12129 of 2019

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary
Animal Husbandry dairying & Fisheries (AHS)
Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Animal Husbandry &
Veterinary Services,
DMS Compound, Chennai-600 006.

3.The Regional Joint Director,
Animal Husbandry Department,
Hossur District, Hossur.

4.The Deputy Director,
Animal Husbandry Department District
Livestock Farm, Hosur,
Hossur District. .. Appellants

vs

1.N.Muniappa

2.The Principal Accountant General (A&E) Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018. .. Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 12.04.2018 made in WP.No.8945 of 2018 passed by this Court.

For Appellants	: Mr.T.Chandrasekaran, Special Government Pleader
For Respondents	: Ms.T.Hemalatha (for R1) Mr.V.Sudhakar No Appearance (for R2)

JUDGMENT

(Order of the Court was made by Mr.ARUL MURUGAN.,J)

This appeal has been preferred against order dated 12.04.2018 passed in WP.No.8945 of 2018, wherein the Writ Court had directed the respondents to consider 50% of services rendered by the writ petitioner on temporary basis for considering the pensionary benefits. Assailing the same, the State has preferred the above writ appeal.

2.The writ petitioner had been originally appointed on 01.01.1994 on daily wages in the Animal Husbandry Department, wherein he had been continuing in service till 31.12.2005 and thereafter his services came to be regularised only on 01.01.2006 and therefore, the writ petitioner preferred the writ petition claiming benefits to count those periods by taking 50% of service towards the pensionary benefits.

3.Learned single Judge allowed the writ petition taking note of the fact that the cut off date 01.04.2003 fixed by amendment to Rule 11(4) of the Tamil Nadu Pension Rules, 1978 was declared inconsequential by the Division Bench.

4.Be that as it may, as far as the present position is concerned, since there were different views on this issue, the matter was referred to a Full Bench for an authoritative pronouncement and the Hon'ble Full Bench in the case of the *State of Tamil Nadu v. R.Kaliyamoorthy*, reported in [2020 (2) MLJ 369] has held that the services put in by the employees either on temporary or adhoc basis and having been regularized after 01.04.2003 cannot be counted for the purpose of qualifying service for pension. Further, the Full Bench was also of the view that the cut off date fixed as 01.04.2003 is valid. Paragraph 45 of the judgment 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 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."

5.Admittedly in the instant case, as the writ petitioner has been working as daily wages on temporary services and has been regularised only on 01.01.2006, that is after the cut off date 01.04.2003, fixed by the Full Bench, the order of the learned single Judge directing the respondents to count 50% of the service for pensionary benefits cannot be sustained. Accordingly, the order in the writ petition is set aside and the writ appeal stands allowed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
20.08.2024

vs
Index:Yes/No
Neutral Citation:Yes/No

To

The Principal Accountant General (A&E) Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

vs

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