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W.A.No.2938 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.2938 of 2019 and

CMP No.19034 of 2019

1. The Home Secretary,
Government of Tamil Nadu, Fort St. George,
Chennai-9.
2. The Director General of Police,
Chennai-4.
3. The Principal, Police Recruit School,
Vellore

... Appellants

Vs.

1. Shelly
2. Samu
3. Muniammal
4. Narashimmam
5. Babu
6. Pappammal
7. S.Pichandi

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8. G.Vijayakumar

9. C.Murugan

10. K.Mangammal

11. Kondiah

12. V.Gangadharan

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed by this Court dated 06.06.2018 in W.P.No.5833 of 2016 and allow this writ appeal.

For Appellants : Mr.P.Kumaresan, Addl.Adv.General

Assisted by Mr.M.Bindran,

Addl.Govt.Pleader

For Respondents : Mr.P.T.Thirumoorthy for R1 to R12

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra-Court Appeal has been filed by the Government, to set aside the order passed by the learned Single Judge in W.P.No.5833/2016, dated 06.06.2018, in and by which, the appellants were directed to count 50% of the respondents' services rendered on daily wage basis along with their regular service and to allot GPF account number for grant of pension to the petitioners under Tamil Nadu Pension Rules 1978 (Old Pension Scheme)



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and also directed to complete the said exercise within four weeks from the date of receipt of the copy of the order.

2. The learned Additional Advocate General appearing for the appellants has brought to the notice of this Court a decision of the Full Bench of this Court in W.A.Nos.158 of 2016, etc., (***The Government of Tamil Nadu represented by Secretary to Government Vs. R.Kaliyamoorthy, reported in (2019) 6 CTC 705 (FB)***), wherein, the Full Bench had answered the reference, in the following terms.

“44. The aforesaid Judgment of the Honourable Supreme Court (***State of Maharashtra v. Digambar [(1995) 4 SCC 683]***) would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as resjudicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by



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the Court at the instance of similarly placed persons.

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.”

3. The aforesaid Full Bench Judgment squarely applies to the facts of



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the present case on hand and accordingly, the respondents herein are not entitled to count half of their past service for the purpose of determination of qualifying service for pension, since their services were regularized only after 01.04.2003, viz., on 11.10.2007, vide G.O.(Ms)No.1426, Home (Police-XV) Department, dated 11.10.2007.

4. Therefore, in the light of the Full Bench Judgment cited supra, as the respondents/writ petitioners are not entitled to any relief, the impugned order passed by the learned Single Judge is set aside. Consequently, the Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(K.B.J.)

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Internet: Yes/No

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