IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.A.Nos.366 & 376 of 2014
and
M.P.Nos.1, 2 & 1 of 2014

W.A.No.366 of 2014:

1.State of Tamil Nadu.
Represented by Secretary,
Fort St. George,
Chennai – 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai – 600 015.

3.The Divisional Forest Officer,
Social Forest Division,
Thiruvannamalai District. ... Appellants

Vs.

P.Subramani ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.1122 of 2013 dated 11.11.2013 and allow the present writ appeal.

For Appellants : Mr.M.S.Prem Kumar
Government Advocate
[For Forest]

For Respondent : Mr.K.M.Ramesh
Senior Counsel
For Mr.K.Vasudevan

W.A.No.376 of 2014:

1.State of Tamil Nadu.
Represented by Secretary,
Forest Department,
Fort St. George,
Chennai – 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai – 600 015.

3.The Divisional Forest Officer,
Social Forest Division,
Vellore District.

4.The Accountant General of Tamil Nadu,
Office of the Accountant General,
Office at Teynampet,
Chennai – 18. ... Appellants

Vs.

A.Kasi ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.25279 of 2013 dated 11.11.2013 and allow the present writ appeal.

For Appellants	: Mr.M.S.Prem Kumar Government Advocate [For Forest]
For Respondent	: Mr.M.R.Jothimanian

COMMON JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The Intra-Court Appeals on hand have been instituted challenging the common order dated 11.11.2013 passed in the writ petitions.

2. The undisputed facts between the parties are that the respondents were initially appointed as temporary Plot Watchers and considering their length of service as temporary employees, the Government formulated a scheme for regularisation of these temporary employees and consequently their services are regularised with effect from 09.07.2012 and 12.07.2012 respectively in sanctioned post of Plot Watcher in the time scale of pay.

3. It is not in dispute that the initial appointment of the respondents were made not in a sanctioned post, but on temporary basis. Therefore, the

initial appointment of the respondents were not under pensionable establishment under the provisions of the Tamil Nadu Pension Rules, 1978.

4. The Government framed a scheme for the benefit of these temporary employees as a concession. Accordingly, their services are subsequently regularised in sanctioned posts in the time scale of pay in the year 2012. Therefore, the temporary Plot Watchers were brought under the pensionable establishment only in the year 2012. By that time, the new pension scheme came into force and the cut-off date for old pension scheme is 01.04.2003. All the employees appointed / regularised after the cut-off date of 01.04.2003 are eligible to receive benefits under the contributory pension scheme and not under the Tamil Nadu Pension Rules, 1978 (old pension scheme).

5. The relief sought for by the respondents are to count half of the services under Rule 11 of the Tamil Nadu Pension Rules.

6. Rule 11(2) in clear terms stipulates that "half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with the regular services subject to conditions". However, the said Rule 11 would be applicable only if these temporary employees were

appointed / regularised prior to the implementation of the new pension scheme i.e., on 01.04.2003. The employees appointed / regularised after 01.04.2003 are not falling under the Tamil Nadu Pension Rules, 1978.

7. That being the legal position, application of the Tamil Nadu Pension Rules, 1978 to the employees regularised after the cut-off date of 01.04.2003 would not arise at all. Once these employees are eligible under the new pension scheme i.e., contributory pension scheme, the benefits as admissible under the new pension scheme alone is to be paid and they cannot seek benefit under the old pension scheme for counting of 50% of their temporary services. It cannot be applied in either way. Once the eligibility of the employee comes under the new pension scheme, benefits are to be settle under the new pension scheme. The respondents are entitled to get benefits under the new pension scheme, in view of the fact that the services are regularised in the year 2012.

8. Mr.K.M.Ramesh, learned Senior Counsel appearing on behalf of the respondent in W.A.No.366 of 2014 would rely on the order passed by the Division Bench of this Court dated 06.07.2021 in W.A.No.1590 of 2017.

9. We have considered the said order, wherein, there is no factual discussion about the service particulars of those employees. The principles laid down in the case of ***Government of Tamil Nadu and Others vs. R.Kaliyamoorthy***[1] has been referred. But the implications were not considered by the Division Bench. Thus, the said order need not be followed as a precedent for the purpose of granting relief to all other cases falling under the contributory pension scheme i.e., new pension scheme.

10. Pertinently, in none of the cases relied on, the application of Tamil Nadu Pension Rules, 1978 to the employees appointed / regularised after 01.04.2003 has not been considered by the Courts. Courts in such cases are carried away without considering the application of the Tamil Nadu Pension Rules, 1978.

11. When the legal position with reference to the application of the Tamil Nadu Pension Rules, 1978 has not been considered in earlier orders, the same need not be followed as precedents for the purpose of deciding the other cases. Therefore, we are of the considered opinion that the case of the respondents are falling under the new pension scheme i.e., contributory

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pension scheme and they are entitled for all the benefits as applicable under the new pension scheme. Therefore, by relying on the old Pension Rules, the respondents cannot seek benefit of counting of services. However, the benefits under the new pension scheme can be availed by the respondents.

12. Accordingly, the writ order dated 11.11.2013 passed in W.P.Nos.1122 & 25279 of 2013 is set aside and the Writ Appeals stand allowed. No costs. Connected Miscellaneous Petitions are closed.

[S.M.S., J.] **[N.S., J.]**
05.07.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

S.M.SUBRAMANIAM, J.
and
N.SENTHILKUMAR, J.

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W.A.Nos.366 & 376 of 2014

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