IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2024

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.289 of 2021
and C.M.P.No.1184 of 2021

1.The Government of Tamil Nadu,
Represented by its Secretary,
Education Department,
Fort St.George, Chennai – 600 009.

2.The Directorate of School Education,
Chennai 0 600 006.

3.The Chief Educational Officer,
Tiruvannamalai. ... Appellants

Vs

1.S.Sugumar

2.The Accountant General of Tamil Nadu,
Office at DMS, Compound,
Teynampet, Chennai – 600 018. ... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 14.09.2017 made in W.P.No.24695 of 2017.

For Appellants	:	Mr.R.Kumaravel Additional Government Pleader
For R1	:	Served – No appearance
For R2	:	Ms.T.S.Selvarani

JUDGMENT

(Judgement of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal has been preferred challenging the order of the learned Single Judge, wherein a direction was issued to count the half of the temporary services of the 1st respondent along with service after regularisation as qualified service for the purpose of pension.

2. Heard Mr.R.Kumaravel, learned Additional Government Pleader for the Appellant. In spite of notice being served on the 1st respondent, he had neither entered appearance through his counsel nor has he been present before this Court.

3. The learned counsel for the appellant would submit that the issue of counting of services had been laid to rest by a subsequent Full Bench judgment of this Court and the Hon'ble Full Bench had answered the reference made to it by holding that the Government employees/ servants whose services have been regularised on or after 01.04.2003 will not be entitled to count half of their past services for the determination of qualifying services. He would submit that, in the present case, the 1st respondent's service as Drawing Master had been regularised only on 01.01.2006 and therefore, the direction issued by the learned Single Judge would have to be interfered with.

4. We have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

5. The following are the directions that have been issued by the

Hon'ble Full Bench of this Court in its order dated 25.07.2019 in W.A.No.158 of 2016 etc batch is as hereunder:-

> *"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."

6. The claim of the 1st respondent before the learned Single Judge from the affidavit filed in support of the Writ Petition was that the petitioner's services was regularised on 01.06.2006, to which post he was

appointed on a consolidated basis only on 11.01.2005. For better appreciation, the relevant averment made in the affidavit file in support of the Writ Petition is extracted hereunder:-

> *"3. I humbly submit that after a long wait, I was brought into time scale of pay after my painful service on daily wage basis. On 11.01.2005 I was appointed as Drawing Master on Consolidated pay of Rs.3000/- My service was also regularised on 01.06.2006 as Drawing Master. However, after putting in less than 10 years of service from the date of my bringing into regular service, I am getting to be retired from service on 31.03.2019."*

7. From the admitted facts, it is seen that even though, the 1st respondent was working as a Noon Meal Organiser at a daily wage, he was appointed as a Drawing Master on consolidated pay on 11.01.2005 and his services were regularised on 01.06.2006. Hence, the petitioner's services were regularised only after 01.04.2003.

8. In such circumstances, by applying the answer to the reference made by the Hon'ble Full Bench order, impugned before us cannot be

sustained.

9. In fine, this Writ Appeal is allowed. The impugned order made in W.P.No.24695 of 2017, dated 14.09.2017 is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) **(K.B., J.)**
02.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No

gba

To
The Accountant General of Tamil Nadu,
Office at DMS, Compound,
Teynampet, Chennai – 600 018.

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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