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W.A.No.1432 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

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1. The Government of Tamil Nadu
Rep by its Principal Secretary,
Social Welfare and Nutritious Meal Programme,
Fort St.George, Chennai – 600 009.
2. The Principal Secretary
Revenue Department,
Government of Tamil Nadu,
Fort St.George,
Secretariat, Chennai – 600 009.
3. The District Collector
Thoothukudi District.
4. The Revenue Divisional Officer
Thiruchendur,
Thoothukudi District.
5. The Tahsildar
Thiruchendur Taluk,
Thoothukudi District.

.. Appellants

Vs

B.Vanajakumari

.. Respondent



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Prayer: Appeal under Clause 15 of the Letters Patent to set aside the order dated 28.11.2013 passed by the learned Single Judge in W.P.No.32217 of 2013.

For the Appellants : Mr.V.Manoharan
Addl. Government Pleader

For the Respondent : Mr.S.Balasubramanian

JUDGMENT
(Delivered by *D.KRISHNAKUMAR,J.*)

Heard Mr.V.Manoharan, learned Additional Government Pleader appearing on behalf of the appellants; and Mr.S.Balasubramanian, learned counsel for the respondent.

2. Calling into question the order dated 28.11.2013 passed by the learned Single Judge in W.P.No.32217 of 2013, the respondents in the writ petition have filed this writ appeal.

3. The undisputed facts are that the respondent was appointed as Balasevika in Hanumanthapuram Child Welfare Centre, Kelamangalam Panchayat Union and she joined duty on 14.5.1982.



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Thereafter, the respondent appeared in the selection process for the post of Village Administrative Officer and was selected by order dated 13.2.2009. The respondent was relieved from the Noon Meal Services on 18.2.2009 and joined the Revenue Department on 19.2.2009. She retired from service on 30.6.2013.

4. Claiming that by virtue of Rule 11(2) of the Tamil Nadu Pension Rules 50% of the contingency services will have to be reckoned for the purpose of computing pension, the respondent herein filed the writ petition seeking a direction against the appellants herein to count 50% of the Noon Meal Scheme services rendered by her for computing the pensionary benefits and awarding pension.

5. The learned Single Judge, vide the order impugned in this writ appeal, placing heavy reliance on G.O.Ms.No.6, Social Welfare and Noon Meal Scheme Department, dated 6.1.2010 and the previous judgments of this court, directed the appellants herein to include 50% of the respondent's service under the Noon Meal



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Scheme along with regular service for the purpose of pensionary benefits. Assailing the said order, the present appeal is filed.

6. Learned Additional Government Pleader appearing on behalf of the appellants submitted that the government order in G.O.Ms.No.6, Social Welfare and Noon Meal Scheme Department, dated 6.1.2010, is not applicable to the facts and circumstances of the present case. It is submitted that the respondent appeared in the test and was selected as a Village Administrative Officer on 19.2.2009, much after the cut-off date (1.6.2003) prescribed in the aforesaid government order.

7. Learned counsel for the respondent reiterated the contentions that weighed with the learned Single Judge in granting the pensionary benefits to the respondent and prayed for dismissal of the appeal.

8. It is beyond any cavil that the respondent herein, who was initially appointed as Balasevika on 12.5.1982, continued as such



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and was relieved from the Noon Meal Services on 18.2.2009. She joined the Revenue Department as Village Administrative Officer, after qualifying in the special test. The respondent was not promoted as Teacher or Supervisor Grade-II or Multipurpose Sanitary worker under Nutritious Meals Scheme or Integrated Child Development Scheme before 1.6.2003, as contemplated under G.O.Ms.No.6, dated 6.1.2010.

9. It is a matter of fact G.O.Ms.No.6, dated 6.1.2010, was amended by G.O.Ms.No. 34, Social Welfare and Nutritious meals Scheme (S & S-2) Department, dated 14.03.2013. Considering the overall conspectus of the matter, a Division Bench of this Court in ***the Principal Accountant General (Accounts and Entitlements) and Ors. vs. R. Saraswathy and others., [Order dated 24.3.2023 made in W.A.No.102 of 2015 and batch cases]***, to which one of us (*D.Krishnakumar,J.*) is a party, held as under:

"8. At this juncture, It is useful to extract the G.O.Ms.No.6, Social and Nutritious Meals Scheme (S & S-2) Department



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dated 06.01.2010, which reads as under.

Order:

*Government in G.O. cited above have ordered for counting half of the service rendered under Government from 01.01.1061 in non-provincialised consolidated, Honorarium and daily wage basis and **absorbed before 01.04.2003 in regular service**, as qualifying service, subject to conditions, for pensionary benefits along with regular service period.*

2. In letter cited 2 above, the Commissioner of Social Welfare, sought for orders for counting the service in respect of those who have served as Nutritious Meals Organiser under Nutritious Meals Scheme and got posting as Teachers, those Child Centre Workers promoted as Women Rural Welfare Officers, Supervisors Grade-2 and appointed under Government Service for pension and death-cum-retirement gratuity.

3. At this stage, Hon'ble Chief Minister, in the thanksgiving meeting conducted by the Nutritious Meals, Child Centre Workers on 22.11.2009, had announced as follows.

"Half of the service rendered by Teachers, Supervisors Grade-2 and those promoted as Multipurpose Sanitary Workers under Nutritious Meals Scheme and Integrated Child Development Scheme on the basis of consolidated pay shall be



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counted for pension".

4. Therefore, as announced by the Hon'ble Chief Minister Government orders for counting 50% of service rendered on consolidated basis by those who have served under Nutritious Meals Scheme, integrated Child Development Scheme and promoted as Teachers, Supervisors Grade-2 and Multipurpose Sanitary workers under Nutritious Meals Scheme, Integrated Child Development Scheme for the purpose of pension."

9. The above said G.O.Ms.No.6, dated 06.01.2010, was amended by G.O.Ms.No.34, Social Welfare and Nutritious meals Scheme (S & S-2) Department, dated 14.03.2013, which is extracted hereunder.

*Government in order 3 cited above, have ordered for counting 50% period of service rendered on consolidated pay by those **who have served in Nutritious Meals Scheme/ Integrated Child Development Scheme and promoted as teachers, supervisors Grade-2 and Multipurpose sanitary Workers for the purpose of pension.***

2. The Deputy Accountant General in letter cited four above, had stated that many Nutritious Meals Organizers, who were regularized on or after 01.04.2003, misinterpreting the provision of G.O.Ms.No.6, Social Welfare and Nutritious Meals



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Scheme (S & S2) Department dated 06.01.2010, as if they are also entitled to count 50% of their consolidated pay service and applied for pension or filed Writ petitions as their proposals were rejected. As filing writ petitions impleading the Principal Accountant General are on the rise, the Deputy Accountant General (Pension) sought for clarifications as to whether 50% of service rendered under consolidated pay could be reckoned for pension in respect of those who were regularised on or after 01.04.2003.

3. Further, the Director of Social Welfare stated that those appointed as Women Rural Welfare Officers/Supervisors Grade-2 from the post of Child Centre Worker are denied pensionary benefits comparing them to those who were newly appointed on or after 01.04.2003. Therefore, the Director requested to grant pensionary benefits as a special case, to those who were promoted on or after 01.04.2003 as Women Rural Welfare Officer, Supervisor Grade 2 from the post of Child Centre Workers.

4. The Points raised by the Deputy Accountant General (Pension) and the Director of Social Welfare were examined carefully with Finance Department and accordingly order the following amendment to G.O.Ms.No.6 Social Welfare and Nutritious Meals Scheme (S & S2) Department



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dated 06.01.2010.

AMENDMENT

After the word " served" in the second line, paragraph 4 of the above said Government Order, the wording "absorbed regularly in Government service before 01.04.2003" to be added.

Therefore, **the above G.O.Ms.No.34 dated 14.03.2013, specially stipulate that the claimant should have been absorbed in Government Service before 01.04.2003, in order to be eligible for pension.** It is also necessary to mention that the Government had issued a letter No.8579/NMP2/2010, dated 23.04.2013, in which, it was clarified that, **50% of the service period in consolidated pay would be included for calculation of pension, if the claimants absorbed to permanent government posts before 01.04.2003.**

10. Further, it is also pertinent to extract Rule 11(4) of Tamil Nadu Pension Rules, which reads as follows.

11. Commencement of qualifying Services.

(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 01.04.2003 shall be counted for retirement



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benefits along with regular service, subject to the following conditions, namely:-

- (i) Service rendered in on-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment.*
- (ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis, paid on monthly basis and subsequently absorbed in regular service under the State Government.*
- (iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.*

11. It is also necessary to rely upon the decision of the Full Bench of this Court in a batch of cases, in W.A.Nos.158 of 2016, etc., (State Government, rep. by Secretary to Government versus R.Kaliyamoorthy), wherein, it has been categorically held as under, in paragraphs 44 and 45:

"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



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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 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



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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.***

12. Admittedly, the writ petitioners were absorbed in the regular service only after 01.04.2003. When the G.O.Ms.No.6, dated 06.01.2010 was amended as per G.O.Ms.No.34, dated 14.03.2013; and further clarified by the Government Letter dated 23.04.2013; it is unambiguous that the benefit of reckoning 50% of the services for pension is applicable only to those whose services were attracted to permanent government posts before



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01.04.2003. Therefore, in the light of the above discussion and also the decision of the Full Bench of this Court, we are of the view that the writ petitioners are not entitled to count half of the service period rendered in Non provincialised service, for pensionary benefits and hence, the impugned common order passed by the learned Single Judge warrants interference by this Court.”

10. The aforesaid decision rendered in ***the Principal Accountant General (Accounts and Entitlements) and Ors. vs. R. Saraswathy and others.*** (supra) applies on all fours to the facts of the present case. The said decision also refers to the Full Bench decision of this Court in a batch of cases in W.A.Nos.158 of 2016, etc., (***State Government, rep. by Secretary to Government versus R.Kaliyamoorthy***), In the instant case, the respondent was selected as Village Administrative Officer after participating in a special test. The respondent was not promoted as Teacher or Supervisor Grade-II or Multipurpose Sanitary worker under Nutritious Meals Scheme or Integrated Child Development Scheme before 1.6.2003 as per G.O.Ms.No.6, dated 6.1.2010 and G.O.Ms.No.34, Social Welfare and Nutritious Meals Scheme (S & S-



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2) Department, dated 14.3.2013. She joined the services as Village Administrative Officer on 19.2.2009, much beyond the cut-off date prescribed in the aforesaid government order on which the respondent places heavy reliance.

11. For the foregoing reasons, we are of the firm view that the respondent is not entitled to seek counting of half of the service period rendered in Non-provincialised service for pensionary benefits.

In the result, the writ appeal is allowed and the order passed by the learned Single Judge dated 28.11.2013 is set aside. There shall be no order as to costs. Consequently, C.M.P.No.9275 of 2022 is closed.

(D.K.K., J.) (K.B., J.)
18.06.2024

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D.KRISHNAKUMAR,J.
AND
K.KUMARESH BABU,J.

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