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W.A.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.741 of 2019
and C.M.P.No.5963 of 2019

1. Government of Tamil Nadu,
Rep. by its Secretary,
Rural Welfare and Panchayat Raj Department,
Fort St.George, Chennai-600 009.

2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.

3. The District Collector,
Villupuram District.

... Appellants/Respondents

-vs-

1. M.Malik Batcha

... Respondent / Petitioner

2. The Accountant General of Tamil Nadu,
Office at Teynampet,
Chennai-600 018.

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 29.11.2016 made in W.P.No.41840 of 2016.

For Appellant	:	Mr.R.Neelakandan Addl. Advocate General Assisted by Mr.P.Balathandayutham Spl.Govt.Pleader
For R1	:	No Appearance



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For R2 : Mrs.Hema Murali Krishnan

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J U D G M E N T

(By D.Krishnakumar,J.,)

This Writ Appeal has been filed, challenging the order of the learned Single Judge dated 29.11.2016, by which the Writ Petition filed by the Writ Petitioner / 1st Respondent herein stood allowed, with a direction to the respondents to count half of the service rendered by him from 28.12.1990 to 29.06.2004.

2. The case of the Appellants is that the 1st Respondent was appointed as Part-Time Panchayat Clerk in the year 1988 on consolidated pay and thereafter, he joined the permanent post of Rural Welfare Officer (Grade-I) in the category of Junior Assistant on 30.06.2004. It is further case of the Appellants that the services of the 1st Respondent in the said post had been regularized only on 30.06.2008 as Junior Assistant and since the regularization had taken place after 01.04.2003, the 1st respondent is not entitled to the enrollment into Old Pension Scheme.

3. The case put forth by the Appellants is that the Government had introduced New Pension Scheme, namely, Contributory Pension Scheme with effect from 01.04.2003 vide G.O.No.259 Finance (Pension) Department dated 06.08.2003,



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wherein it has been stated as follows:

“i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003.

ii) The employee's contribution and the Government contribution, if any, towards the scheme shall be spelt out separately.

iii) After issue of detailed orders from Government of India, introducing new scheme to their employees, the State Government will, if necessary, modify these orders and issue rules and regulations for the Contributory Pension Scheme for State Government employees recruited on or after 1.4.2003.”

Hence, it was stoutly argued that taking note of the fact that the Contributory Pension Scheme was made applicable to employees, who joined services after 01.04.2003 and also the fact that the 1st Respondent's service was regularized much after the cut off date, viz., 30.06.2008, he cannot be brought back to Old Pension Scheme.

4. Learned Additional Advocate General for the Appellants brought to the attention of this Court the judgment of a Full Bench dated 03.12.2019 made in Writ Appeal Nos.158, 314, 315, 316, 317, 343, 426, 455, 741, 536, 541, 610 and 1235 of 2016, etc. batch (The Government of Tamil Nadu represented by Secretary to Government Public Works Department Secretariat Chennai - 600 009 and others vs. R.Kaliyamoorthy and others), wherein the reference was answered by the Full Bench as under:



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“45-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. By relying on the aforesaid judgment, it was vehemently pleaded by the Appellants that when the judgment of the Full Bench was sought to be reconsidered, yet another Full Bench, in W.A.Nos. 714 to 716 of 2024, etc. batch, declined to entertain the appeals for reconsideration, vide its judgment ***dated 20.03.2024*** and therefore, the 1st Respondent is not entitled to any relief, as he had been absorbed into regular employment after 01.04.2003 and the period cannot be treated as qualifying service for



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the purpose of pensionary benefits.

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6. There is no representation on behalf of the 1st Respondent. However, in view of the above authoritative pronouncements of the Full Bench, we are of the view that the judgment rendered by the Full Bench is squarely applicable to the facts of this Court and the order passed by the learned Single Judge is liable to be set aside.

7. Accordingly, this Writ Appeal is allowed and the order dated 29.11.2016 passed by the learned Single Judge made in W.P.No.41840 of 2016 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.,]

[K.B., J]

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Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order
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D.KRISHNAKUMAR,J.,

AND

K.KUMARESH BABU,J.,

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