



WEB COPY



W.A.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

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

W.A.No.490 of 2019
and C.M.P.No.4313 of 2019

The Block Development Officer,
Madurantakam Block,
Madurantakam,
Kancheepuram District.

... Appellant/Respondent

-VS-

1. T.S.Mohan

2. The Principal Accountant General,
(Accounts & Entitlements),
Tamil Nadu, 361, Anna Salai,
Chennai-600 018.

3. The Director of Rural Development and Panchayat Raj,
Panagal Buildings,
Saidapet, Chennai-600 015.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 21.08.2017 made in W.P.No.672 of 2016 and allow the Writ Appeal.

For Appellant : Mr.P.S.Sivashanmuga Sundaram

For R1 : Mr.Rajendran

J U D G M E N T



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(By D.Krishnakumar,J.,)

This Writ Appeal has been filed, challenging the order of the learned Single

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Judge dated 21.08.2017, by which the Writ Petition filed by the Writ Petitioner / 1st Respondent herein stood allowed, with a direction to the respondents to extend the benefits in the light of the amended Rule 11 of the Tamil Nadu Pension Rules, 1978.

2. The case of the Appellant is that the 1st Respondent was appointed as Part-Time Panchayat Clerk in the year 1985 on consolidated pay and thereafter, he was converted as Full Time Panchayat Assistant with effect from 01.10.1991. It is further case of the Appellant that the 1st Respondent was subsequently promoted as Rural Welfare Officer on 06.06.2005 and thereafter as Assistant on 07.09.2011. The 1st Respondent was later on granted promotion as Deputy Block Development Officer in the year 2014. It is also the case of the Appellant that since the services of the 1st Respondent have been regularized only on 06.06.2005, he is not entitled to the enrollment into Old Pension Scheme.

3. The case put forth by the Appellant 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, wherein it has been stated as follows:



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“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., 06.06.2005 and he was also allotted CPS No.7012926/Ga, he cannot be brought back to Old Pension Scheme.

4. Learned counsel for the Appellant 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, 490, 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:

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



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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 Appellant that the 1st Respondent is not entitled to any relief, as he had been absorbed into regular employment after 01.04.2003.

6. In view of the above authoritative pronouncement of the Full Bench, which has not been disputed by the learned counsel for the 1st Respondent, 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.



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7. Accordingly, this Writ Appeal is allowed and the order dated 21.08.2017

passed by the learned Single Judge in W.P.No.672 of 2016 is hereby set aside. No costs.

Consequently, connected Miscellaneous Petition is closed.

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

[K.B., J]

16.04.2024

Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order

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D.KRISHNAKUMAR,J.,

AND

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