



WEB COPY



W.A.No.1369 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

**W.A.No.1369 of 2019
and
CMP.Nos.9362 & 9363 of 2019**

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai-9.

2.The Principal Secretary,
Social Welfare and Nutritious,
Meal Programme,
Fort St. George, Chennai-9.

3.The Director of School Education,
College Road, Nungambakkam,
Chennai-600 006.

4.The Chief Educational Officer,
Salem-1.

5.The Headmaster,
Govt. High School,
Kalpaganur – 636 104
Attur Taluk,
Salem District.

.. Appellants

VS



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1.S.Subramanian

2.The Principal Accountant General,
(Accounts and Entitlements),
Tamil Nadu,
Chennai-600 018.

.. Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 02.02.2016 in WP.No.3551 of 2016 and allow this Writ Appeal.

For Appellants : Mr.J.C.Durairaj,
Additional Government Pleader

For Respondents : No Appearance

JUDGMENT

(Order of the Court was made by Mr.ARUL MURUGAN.,J)

The appeal has been preferred against order dated 02.02.2016 passed in WP.No.3551 of 2016 where the writ Court directed the respondents to consider 50% of the services rendered by the petitioner in the post of Noon Meal Organiser for considering the pensionary benefits. Assailing the same, the State has preferred this writ appeal.

2.The writ petitioner had been originally appointed on 22.06.1984 as Noon Meal Organiser on a consolidated pay and thereafter he has been regularised in the post of B.T. Assistant as on 04.06.2008.

3.Subsequent to the introduction of Rule 2 of the Tamil Nadu



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Pension Rules, 1978 and also the amendment to Rule 11(4) imposing the cut off date as 01.04.2003, the services rendered by the employees appointed prior to 01.04.2003 on temporary basis and regularised in the said category prior to the cut off date will be entitled to count of 50% of services towards the pensionary benefits.

4.Be that as it may, as far as the present position is concerned, since there were different views on this issue, the matter was referred to a Full Bench for an authoritative pronouncement and the Hon'ble Full Bench in the case of the *State of Tamil Nadu v. R.Kaliyamoorthy*, reported in [2020 (2) MLJ 369] has held that the services put in by the employees either on temporary or adhoc basis and having been regularized after 01.04.2003 cannot be counted for the purpose of qualifying service for pension. Further, the Full Bench was also of the view that the cut-off date fixed as 01.04.2003 is valid. Paragraph 45 of the judgment reads thus:-

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



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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. In the instant case, admittedly, the writ petitioner had been working in the post of Noon Meal Organiser on consolidated basis, however, he had been appointed to the post of B.T. Assistant and was regularised only on 07.09.2006, that is, after the cut off date 01.04.2003, fixed by the Full Bench.

6. In view of the same, the order passed in the writ petition is to be interfered and accordingly the order dated 02.02.2016 passed in WP.No.3551 of 2016 by the learned single Judge is set aside and the Writ



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Appeal stands allowed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
20.08.2024

Index:Yes/No
Neutral Citation:Yes/No
vs

To

The Principal Accountant General,
(Accounts and Entitlements),
Tamil Nadu,
Chennai-600 018.



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