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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.715 of 2019

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.
2. The Director of School Education,
DPI Complex, College Road,
Thousand Lights West,
Chennai-6.
3. The District Education Officer,
Perambalur District,
Perambalur.
4. The Headmaster,
Government Girls Higher Secondary School,
Kunnam-621 708.
Perambalur District.

... Appellants/Respondents

-VS-

1. R.Shanmugam
2. The Principal Accountant General of Tamilnadu,
Office at DMS Compound,
Teynampet, Chennai-600 018.

... Respondent / Petitioner

... Respondent / 5th Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated



WEB COPY



W.A.No.

28.04.2018 made in W.P.No.11401 of 2018.

For Appellants : Mr.V.M.Ravichandran
Spl. Govt. Pleader
For R1 : No Appearance
For R2 : Mrs.Hema Murali Krishnan

J U D G M E N T

(By D.Krishnakumar,J.,)

This Writ Appeal has been, challenging the order dated 28.04.2018 of the learned Single Judge, by which the Writ Petition, claiming pensionary benefits by counting 50% of the services rendered as Noon Meal Centre Organizer on temporary basis along with the regular service was allowed.

2. The facts in nutshell are that the a huge number of employees were employed in Noon Meal Centres to work as Cook Assistants, Noon Meal Cooks and Noon Meal Organizers under Noon Meal / Integrated Child Development Scheme for providing food to children, among whom, the 1st respondent was the one. Though he was initially appointed on temporary basis on payment of a meagre amount as Honorarium, subsequently, he was selected and appointed as B.T.Assistant Teacher on 30.08.2006 and attained superannuation on 31.05.2017. Thereafter, he made a demand for counting 50% of their services rendered in Noon Meal schemes along with his regular service for the purpose of pension. Since there were divergent views expressed by two Division



W.A.No.

Benches, the issue in respect of counting 50% of the services had been referred to the Full Bench of this Court.

WEB COPY

3. Today, learned Special Government Pleader has produced a copy of the judgment of the Full Bench **dated 20.03.2024** passed in **W.A.Nos.714 to 716 of 2024, etc. batch**, wherein the Full Bench, after considering a judgment of the Supreme Court in the case of **Prem Singh V State of Uttar Pradesh and others** reported in **(2019) 10 SCC 516** and giving thoughtful consideration to the provisions of Rule 3(8) of the Uttar Pradesh Retirement Benefits Rules, 1961 and Rule 11 of the Tamil Nadu Pension Rules, 1978, answered the reference as follows:

“10. Rule 11 of the Tamil Nadu Pension Rules, 1978 [for brevity, “the Pension Rules, 1978”] deals with “qualifying service”. Sub-rule (4) is added to Rule 11 with effect from the year of 2010 and the same reads thus:

“11. Commencement of qualifying service – (1) to (3)
(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January 1961 in respect of Government employees absorbed in regular service before 1 st April shall be counted for retirement benefits along with regular service, subject to the following conditions, namely;- (i) Service rendered in non-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 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 1 st April 2003



W.A.No.

without a break;

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January 1961 and absorbed in regular service before 1 st April 2003. Provided further that whatever there was break in service before their absorption in regular service before 1 st April 2003, the same shall be specially condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.”

11. Rule 11(4)(iii) mandates that the services rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1 st April 2003 without a break. The proviso to the said sub-rule further clarifies that “this sub-rule is applicable to all employees who rendered service under the State Government in nonprovincialised service, consolidated pay, honorarium or daily wages basis on or after 1 st January, 1961 and absorbed in regular service before 1 st April, 2003”.

12. In the case of Prem Singh, supra, the provision under challenge was not pari materia to the provision which is the subjectmatter of consideration before us. Rule 11(4)(iii) provides for calculating the services rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis only if the said employee is absorbed in regular service before 1.4.2003 without break. The said provision has been considered by the Full Bench of this Court.

13. In the present matter, the vires of Rule 11(4) is not the subject-matter of challenge. The doctrine of reading down a provision would apply only in two situations: (i) To save a statute from being struck down on account of its unconstitutionality; and (ii) Where the provisions of the statute are vague and ambiguous. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. Reference can be had to the judgments of the Apex Court in the case of Delhi Transport Corporation v. DTC Mazdoor Congress and



W.A.No.

others, 1991 Supp (1) SCC 600.

14. The amendment to Rule 11(4) was introduced in the year 2010. However, it is given effect to retrospectively. Unless the rule is challenged, the principle of reading down cannot be made applicable.

15. The Government Order referred to in the order under reference does not state anywhere with regard to the grievance of the petitioners/appellants. The judgment of the Apex Court on the basis of which the matter was referred to the Full Bench (Prem Singh) also would not be applicable. Even we cannot apply the principle of reading down in a particular manner, as the constitutionality of the said Rule is not challenged. It is for the appellants/petitioners to take appropriate steps as may be permissible in law. "

4. By relying on the aforesaid Full Bench judgment, it was vehemently pleaded by the learned Special Government Pleader appearing for the Appellants that the 1st respondent herein is not entitled to relief and his 50% of the services cannot be counted for pensionary benefits.

5. There is no representation on behalf of the 1st respondent. However, in view of the above authoritative pronouncement of the Full Bench, we are of the view that the claim of the 1st respondent herein cannot be entertained, as he was admittedly absorbed in the regular service after 01.04.2003.

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

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6. Accordingly, the Writ Appeal is allowed and the order dated 28.04.2018



W.A.No.

passed by the learned Single Judge is hereby set aside. No costs. Consequently,
connected Miscellaneous Petition is closed.

WEB COPY

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

[K.B., J]

23.04.2024

Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order

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W.A.No.715 of 2019