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W.P.(MD) No.14455 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

W.P.(MD) No.14455 of 2013

T.Thirumal

... Petitioner

-vs-

1.The Government of Tamil Nadu
rep.by its Principal Secretary
Social Welfare and Nutritious
Meal Programme
Fort St.George, Chennai

2.The Principal Secretary
Government of Tamil Nadu
Home Department
Fort St.George, Secretariat
Chennai-600 009

3.The Principal District Judge
Tirunelveli

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to count 50% of the petitioner's Noon Meal/Anganwadi services for pensionary benefits and to award pension.



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For Petitioner : Mr.M.Saravanan

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1 & R2
Mr.N.Mohideen Basha for R3

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Prayer in this writ petition is to direct the respondents to count 50% of the petitioner's Noon Meal/Anganwadi services for pensionary benefits and to award pension to him.

2. According to the petitioner, on 24.01.1983, he was appointed as a Noon Meal Organizer in the Panchayat Union School, Subbiapuram, by the P.A. to District Collector, Chief Minister's Nutritious Meal Programme, Tirunelveli. Thereafter, by proceedings of the third respondent, dated 04.12.2007, he was appointed as Junior Assistant based on the employment seniority and he joined in the said post on 07.12.2007. Subsequently, he was retired from service on attaining the age of superannuation.



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3. Further, according to the petitioner, as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, 50% of the contingency services shall be taken into account for the purpose of pension, if the employee is subsequently absorbed in regular service. The Government has also issued G.O.Ms.No.408, Finance Department, dated 25.08.2009, for counting 50% honorarium, daily wages, consolidated pay and non-provincialized services for pensionary benefits.

4. Further, according to the petitioner, considering the grievance expressed by the employees, who served in Noon Meal Scheme/ICDS Scheme for more than 25 years and subsequently absorbed in a regular Government posts, the Government issued G.O.Ms.No.6, Social Welfare and Noon Meal Scheme Department, dated 06.01.2020, for counting 50% of the Noon Meal Scheme / ICDS services while calculating pension. Though the benefit of the said Government was granted to some of the employees, it was not extended to the others. Therefore, the aggrieved employees, filed W.P.(MD) Nos.7070, 7529, 8287 and 8425 of 2011 and this Court has allowed the said writ petitions by holding that G.O.Ms.No.6, dated 06.01.2010, grants benefit of



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calculating 50% of the services to the Noon Meal/ICDS workers. The grievance of the petitioner herein is that though he is a similarly placed person, in spite of several requests, his case has not been considered by the respondents. Therefore, he has filed the present writ petition.

5. Learned Special Government Pleader appearing for the respondents 1 and 2 strongly objected the submissions of the petitioner. He would submit that since the service of the petitioner has not been regularized sofar, Rule 11(2) of the Tamil Nadu Pension Rules, 1978 will not apply to the case of the petitioner. Further, he would submit that the earlier service of the petitioner, namely, Noon Meal Organizer was only a part time service and therefore, 50% of the said service cannot be counted for pensionary benefits.

6. Learned Special Government Pleader would further submit that though the petitioner claims that this Court in W.P.(MD) No.7070 of 2011 etc., batch, has considered the relief sought for by the similarly placed persons and allowed the writ petitions, in the writ appeals preferred by the Department in W.A.(MD) Nos.587 of 2014 etc., the Division Bench of this Court, by a common Judgment dated 03.12.2014, has allowed the writ appeals and dismissed the



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writ petitions. The relevant portion of the said Judgment is extracted hereunder:

“27.A combined reading of G.O.(Ms) No.408, Finance (Pension) Department, dated 25.08.2009; G.O.(Ms) No.6, Social Welfare and Nutritious Meals Scheme Department, dated 06.01.2010; G.O.No.41, Finance (Pension) Department, dated 09.02.2010; and G.O.(Ms) No.34, Social Welfare and Nutritious Meals Scheme Department, dated 14.03.2013 and Rule 11 (4) of the Pension Rules would clearly reveal that the respondents are not entitled to the benefit of counting of 50% of their services rendered in Noon Meal Programme and ICDS services. Accordingly, we are of the considered opinion that the orders passed by the learned Single Judge, warrant interference at the hands of this Court.

28.In the result,

(i) all the Writ Appeals in W.A.(MD) Nos.587, 605, 606 and 1024 of 2014 are allowed and orders of the learned Judge are set aside and the writ petitions are dismissed; Consequently, connected miscellaneous petitions are 42 closed;

(ii) In view of the same, W.P.(MD) No.12689 of 2014 also fails and the same is dismissed; and

(iii) There shall be no order as to costs, in all the cases.”



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7. Further, the Government has also issued G.O.(Ms) No.34, Social Welfare and Nutritious Meal Programme, dated 14.03.2013, clarifying the G.O.(Ms) N.6, dated 06.01.2010 as follows:

மேற்படி அரசாணையின் பத்தி 4ல் இரண்டாவது வரியில் பணிபுரிந்து என்பதை தொடர்ந்து 01.04.2003க்கு முன்னர் நிரந்தர அரசு பணியிடத்தில் ஈர்க்கப்பட்ட என்பதை சேர்க்க வேண்டும்.

Therefore, learned Special Government Pleader prays for dismissal of this writ petition.

8. Heard the learned counsel on either side and carefully perused the materials available on record.

9. At the outset, it is to be noted that the issue regarding counting of 50% of service with reference to the provisions of the Tamil Nadu Pension Rules, 1978, as amended, was considered by the Full Bench of this Court in the case of ***Government of Tamil Nadu and others vs. R.Kaliyamoorthy***, reported in ***2019 (6) CTC 705*** and the relevant portion of the said decision is extracted hereunder:



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“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 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*



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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."*

10. Admittedly, in the case on hand, the petitioner was appointed as Noon Meal Organizer on 24.01.1983 and subsequently, by proceedings of the third respondent dated 04.12.2007, he was appointed as a Junior Assistant on temporary basis i.e. much after the cut-off date of 01.04.2003.

11. Further, the petitioner, in support of his contentions, relies upon G.O.Ms.6, dated 06.01.2010, wherein, 50% of the Noon Meal Scheme / ICDS services were directed to counted while calculating pension. However, we are of the considered opinion that in G.O.Ms.No.6, dated 06.01.2010, the



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Government has taken a policy decision. It cannot be applied to all the cases in general. Further, the Government, G.O.(Ms) No.34, Social Welfare and Nutritious Meal Programme, dated 14.03.2013, has clarified the G.O.(Ms) No. 6, dated 06.01.2010 by stating that those whose services were absorbed on regular time scale of pay prior to 01.04.2003 alone are entitled for counting 50% of the earlier service. But, in the case on hand, the service of the petitioner has not at all been regularized and his appointment as Junior Assistant was only on temporary basis. Further, there is no material to show that the petitioner has approached the authority concerned for regularizing his service from the initial date of appointment. In such circumstances, we are of the view that the petitioner is not entitled to the relief as such sought for in this writ petition.

12. Accordingly, the writ petition is dismissed. No costs.

[D.K.K., J.]

[K.K.R.K., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

- 1.The Principal Secretary,
Social Welfare and Nutritious
Meal Programme,
Government of Tamil Nadu,
Fort St.George, Chennai.
- 2.The Principal Secretary,
Government of Tamil Nadu,
Home Department,
Fort St.George, Secretariat,
Chennai-600 009.



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and
K.K.RAMAKRISHNAN, J.

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