



W.A.(MD)No.100 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND**

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

**W.A(MD)No.100 of 2019
and**

C.M.P.(MD)No.670 of 2019

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai -600 009.

2.The Director of Town Panchayats,
Kuralagam, Chennai – 600 108.

3.The Assistant Director of Town Panchayats,
Theni Region, Theni.

4.The Executive Officer,
Kuchanur Town Panchayat,
Kuchanur, Theni District.

... Appellants

VS

1.R.Sugendra

2.The Assistant Director,
Local Fund Audit, Theni District, Theni.

...Respondents



W.A.(MD)No.100 of 2019

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 09.07.2018 passed in W.P(MD)No.11896 of 2018.

For Appellants :Mr.Veera Kathiravan
Additional Advocate General
for Mr.M.Senthil Ayyanar
Government Advocate
For R1 :Mr.S.Sankarapandian

JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The 1st, 2nd, 4th and 5th respondents in W.P.(MD)No.11896 of 2018 had filed the present Writ Appeal questioning a common order passed by the learned Single Judge in a series of Writ Petitions, whereby, the learned Single Judge by said order, dated 09.07.2018, had allowed all the Writ Petitions and had passed the following directions:

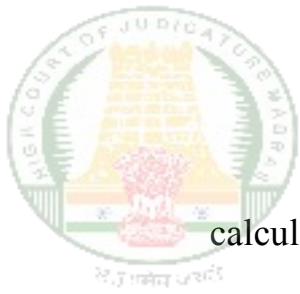
“45.In the result, these writ petitions are allowed and the respective respondents in each of the writ petitions are hereby directed to take into account the 50% of the past services rendered by each of the petitioners either as Vocational Instructors or any other employment either as a Part Time / Full time / adhoc / temporary / daily wages employees before they brought in under the regular time scale of pay on permanent basis or absorption and by calculating the said 50% of their past service, pension eligibility and pension enhancement or difference of pay and pension shall be calculated and disbursed in favour of



W.A.(MD)No.100 of 2019

the respective petitioners. After fixing the revised pension by taking into account the past 50% services, the revised pension arrears shall be calculated and to be disbursed to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioners shall continue to receive the revised pension.”

2.The Writ Petition had been filed in the nature of a Writ of Mandamus to direct the respondents therein to count half of the service rendered by the Writ Petitioner's husband from the date of joining of service as Drinking Water Pipe Line Fitter from 27.02.1986 till 31.08.2003 along with the regular service rendered as Motor Operator from 01.09.2003 to 23.07.2005 as qualifying service and to grant family pension with all consequential benefits and arrears with interest. In effect, it would imply that the Writ Petitioner's husband had joined the service on daily wage basis as Drinking Water Pipe Line Fitter from 27.02.1986. He was brought into regular service only on 01.09.2003 as Motor Operator. Till 31.08.2003, he was working only as a daily wage worker. The Writ Petitioner claimed that quite apart from the regular service, namely, from 01.09.2003 to 23.07.2005, the earlier service put in by her husband as daily wage worker from 27.02.1986 to 31.08.2003 should be considered and half of such service should be taken into consideration as part of his regular service for



W.A.(MD)No.100 of 2019

calculation of his qualifying years of service for pensionary benefits and other attendant benefits.

3.The learned Single Judge had, when the Writ Petition was examined and orders were passed, the benefit of a Division Bench judgment and following such Division Bench judgment, in a series of Writ Petitions, passed a common order directing the respondents therein to take into consideration the half of such service, which the Writ Petitioner's husband had been working as daily wage worker.

4.The learned Additional Advocate General who appeared for the Writ Appellants however brought to the notice of this Court the judgment of Full Bench in the case of ***the Government of Tamil Nadu vs R.Kaliyamoorthy***, delivered on 03.12.2019 after the order of the learned Single Judge. The reference before the Full Bench was as follows:

"Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O. Ms. No.259, Finance (Pension) Department dated 06.08.2003 and G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010."



W.A.(MD)No.100 of 2019

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5.The Full Bench had answered that particular reference by further sub classifying the same into five separate categories. The Writ Petitioner's husband fell into the fourth category. We would extract only the answer of the Full Bench as stated in the fourth category, which is as follows:

“(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.”

6.The Full Bench had given a very categorical finding that those Government servants who had appointed in aforementioned four categories and the Writ Petitioner's husband fell into one of the said four categories, before the cut-off date, namely, 01.04.2003 and later had been appointed under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and later 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. This would effectively



W.A.(MD)No.100 of 2019

mean that the Writ Petitioner's husband having been appointed on daily wage basis on 27.02.1986 and having been regularised after 01.04.2003, namely, on 01.09.2003, was not entitled to seek half of the earlier service period from 27.02.1986 till 31.08.2003 to be considered as past service for the determination of qualifying service for pension.

7.The learned Counsel for the first respondent/Writ Petitioner however drew the attention of this Court to G.O.(Ms)No.198, Municipal Administration and Water Resources Department, dated 26.10.19100, wherein, the concept of regularisation had been brought in, to benefit those who were working for a continuous period of ten years on daily wage basis. But, subsequently, in the year 2002, the Government issued a Letter No. 35199/TP2/2002.2, dated 27.09.2002, Municipal Administration and Water Resources Department and we would extract the said letter in entirety:

“I am directed to refer your letter cited where in it has been reported that 1224 NMR Water Supply Workers have been brought under regular establishment on time scale to pay as per order issued in G.O.M.S.No.1100, MA&MS Department Dt. 26.10.19100.

2. Govt. have examined the issued in detail and have decided that the scheme sanctioned in the G.O.M.S.NO.1100 MA &W WA Department Dt 26.10.19100 relating to regularisation of the service of 1224 NMR water supply workers may be kept in abeyance in view of the financial crunch experienced by many of



W.A.(MD)No.100 of 2019

the town panchayats and it will be reviewed as soon as the financial position of the town panchayats are improved.”

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8.It had thus seen that the Government had kept the scheme sanctioned in G.O(Ms)No.198, Municipal Administration and Water Resources Department, dated 26.10.1998, relating to regularisation of service of NMR water supply workers in abeyance in view of financial crunch experienced by many of the Town Panchayats. Unfortunately, for the husband of the Writ Petitioner between the years 1998 and the date of this particular letter in the year 2002, he had not made any representation seeking regularisation of his service which he had put in from 1986 onwards.

9.Subsequently, in the year 2006, the Government had passed G.O(Ms)No.60, Rural Development and Panchayat Raj Department, dated 23.06.2006, wherein, the Government had again given effect to the scheme of bringing into regular service those who were under daily wage basis, thus putting an end to the effect of the letter dated 27.09.2002. It was on that basis that the Writ Petitioner's husband was brought into regular service



W.A.(MD)No.100 of 2019

from 01.09.2003. Even though this is a factor to be considered and even though the learned Counsel for the first respondent/Writ Petitioner stated that it was only owing to administrative delay on the part of the appellants that the service of the Writ Petitioner's husband was not brought into regular service, we would point out that the onus was on the husband of the first respondent/Writ Petitioner to have made a representation between the year 1998 and 2002 to seek regularisation.

10.Unfortunately, the decision of the Hon'ble Full Bench now holds the fort. The Hon'ble Full Bench had answered the issue of regularisation by stating that those who were brought into regular service on and after 01.04.2003, would not be entitled to seek half of their past service to be counted for qualifying service for pensionary benefits. This judgment of the Full Bench had also been affirmed by the Hon'ble Supreme Court in an appeal taken by one of the affected persons in ***S.L.P(Cvil) Diary No.15406 of 2021, M.Varghese -vs- State of Tamil Nadu and others***, wherein, the Hon'ble Supreme Court had refused to entertain the challenge to the judgment of the of the Full Bench and had dismissed the appeal.



W.A.(MD)No.100 of 2019

11. In view of the binding nature of the judgment pronounced by the Hon'ble Full Bench, we hold that the Writ Appeal will necessarily have to be allowed and the judgment of the learned Single Judge dated 09.07.2018 will have to be set aside. Accordingly, the Writ Appeal stands allowed by setting aside the order of the learned Single Judge insofar as W.P(MD)No. 11896 of 2018 is concerned. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[C.V.K., J.] & [J.S.N.P., J.]
03.09.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No

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To

The Assistant Director,
Local Fund Audit, Theni District, Theni.



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W.A.(MD)No.100 of 2019

C.V.KARTHIKEYAN, J.

AND

J.SATHYA NARAYANA PRASAD, J.

cmr

Judgment made in
W.A(MD)No.100 of 2019

03.09.2024
(3/3)