



W.A(MD)No.181 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A(MD)No.181 of 2019
and CMP(MD)No.1482 of 2019

1.The Principal Secretary to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Public Libraries,
No.737/a, Anna Salai,
Chennai – 600 002.

3.The District Library Officer,
Spencer Compound,
Near Bus Stop,
Dindigul – 624 003.

...Appellants/Respondents

Vs.

1.P.Sasikala Devi,
Grade III Librarian,
Branch Library,
Dharmathupatti,
Dindigul District.

..Respondent/Petitioner

2.The Accountant General,
Accounts and Entitlements,
Nandanam, Chennai – 600 018.

..Respondent/Respondent



W.A(MD)No.181 of 2019

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 05.03.2018 made in W.P(MD)No.13095 of 2013.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For R1 : Mr.S.Louis

J U D G M E N T

[Judgment was delivered by **L.VICTORIA GOWRI, J.**]

This Writ Appeal has been directed as against the order passed by the learned Single Judge in W.P.(MD)No.13095 of 2013, dated 05.03.2018.

2.The background of the facts and circumstances, which has led to the filing of this Writ Appeal is as follows:-

(a)The first respondent herein was appointed as a Full time Librarian through employment exchange on 01.06.2000 on consolidated pay on monthly basis in contingencies as per G.O.(1D)No.156, School Education Department, dated 10.09.1998.

(b)Following which, she was absorbed as a Grade III Librarian in regular time scale of pay on 26.10.2006 in Dindigul district vide G.O.Ms.No.64, School Education Department, dated 12.05.2006.

(c)Since then, the first respondent herein is continuously serving in the



W.A(MD)No.181 of 2019

Public Libraries Department without any break in service. While so, the first appellant herein ordered to include the first respondent herein in the contributory pension scheme in G.O.Ms.No.64, School Education (K1) Department, dated 12.05.2006.

(d)Contending that the first respondent herein was recruited as Full time employee on consolidated pay on 01.06.2000 prior to 01.04.2003, her inclusion in contributory pension scheme is not sustainable, this Writ Petition came to be filed seeking to direct the respondents to count her 50% service in contingencies as pensionable service for the purpose of calculation of her pension and include her in old pension scheme prior to 01.04.2003.

3.The learned Single Judge after relying upon various orders passed by this Court in the impugned judgment has discussed that a person already in service either as contingent staff or temporary staff continuously and observed in permanent establishment on or after 01.04.2004 cannot be termed as new entrant into service. The new pension scheme can be applied only to persons appointed for the first time as a casual or temporary or permanent employee on or after 01.04.2003. However, in the instant case, since the first respondent was appointed as Full time Village Librarian, through as sponsored by the employment exchange on consolidated pay on monthly basis in contingencies,



W.A(MD)No.181 of 2019

as early as on 01.06.2000 and was later absorbed in regular time scale of pay on 26.10.2006, since she had already been in service before 01.04.2003, the learned Single Judge directed the appellants herein to reconsider the case of the first respondent herein, in the light of the observations made in the impugned order, for the purpose of granting the relief of counting of service of 50% of the services rendered on temporary basis and pass appropriate orders after verifying the service records and based on Rule 11 of the Tamil Nadu Pension Rules, 1978, and communicate the decision taken to the first respondent herein as early as possible, preferably within a period of 4 months from the date of receipt of a copy of the impugned order.

4.It was further directed that in the event of counting 50% of the past services, the GPF account has to be opened after closing the CPF account, opened on account of the cut-off date of 01.04.2003, since the cut-off date was already quashed by this Court and there was no appeal against the order.

5.The appellants have filed this Writ Appeal on the ground that the first respondent herein was appointed in regular time scale of pay in the post of Librarian Grade III only on 26.10.2006 and hence she is likely to be covered only under new contributory pension scheme and already her contributory



W.A(MD)No.181 of 2019

pension number, that is, CPS number has been allotted as 7024812/SCI. In view of the same, it has been contended on behalf of the appellants that the service rendered by the first respondent herein on consolidated pay before 01.04.2003 cannot be considered for reckoning qualifying service under old pension scheme. It is also further contended that since she has already been brought under the contributory pension scheme as directed by the learned Single Judge, the General Provident Fund account cannot be also opened and pressed for allowing the writ appeal.

6.Heard the learned Additional Government Pleader for the appellants, the learned counsel for the first respondent and carefully perused the materials available on record.

7.The short point that falls for consideration is as to whether the first respondent herein is entitled to count 50% of her services rendered on consolidated pay on monthly basis in contingencies in the post of full time Village Librarian along with regular service for the purpose of reckoning qualifying service under the Tamil Nadu Pension Rules, 1978.

8.The case of the appellants herein is that, half of the service rendered by



W.A(MD)No.181 of 2019

the first respondent herein on consolidated pay on monthly basis in contingencies could not be counted for the purpose of pension, since she was absorbed into regular service after 01.04.2003. According to the appellants, only if the absorption of consolidated pay employees took place prior to 01.04.2003, half of the service rendered by them could be counted along with regular service.

9.In this regard, we are of the view that, as per Rule 11(2) of the Tamil Nadu Pension Rules, half of the service rendered as consolidated pay employees shall be counted along with regular service for the purpose of pension.

10.Rule 11(2) of the Tamil Nadu Pension Rules, 1978, is extracted hereunder:-

“(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.



(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd of June 1988.”

11.Rule 11(2)(i) of the Tamil Nadu Pension Rules makes it clear that half of the service of the employees paid from contingencies in a job involving whole time employment shall be allowed to be counted towards qualifying service for pension along with regular service. Obviously, in the instant case, the first respondent has been appointed as a Full time Village Librarian on consolidated pay on monthly basis in contingencies as per G.O.(1D)No.156, School Education Department, dated 10.09.1998 and later she was absorbed as Grade III Librarian in regular time scale of pay on 26.10.2006 vide G.O.Ms.No. 64, School Education Department, dated 12.05.2006. Hence, precisely as per



W.A(MD)No.181 of 2019

Rule 11(2) of the Tamil Nadu Pension Rules, 1978, she is entitled to count half of the service rendered by her for the purpose of pension.

12.The next limb of argument raised by the appellants is that the first respondent herein is not entitled to the benefit of counting half of her service rendered in consolidated pay for the reason that she was absorbed into regular time scale of pay after 01.04.2003. However, the same is no more *res integra*. The learned Single Judge proceeded to rely upon the order passed by this Court in W.P.No.24236 of 2013 dated 18.06.2014, in which the learned Single Judge of this Court has dealt with a similar matter, wherein the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption was quashed as arbitrary and violative of Article 14 of the Constitution. The relevant portion of the said order is extracted as follows :-

“23. I am of the considered view that the action of the Departments in denying to count half of the long service rendered by the persons before the absorption into regular service, who are not fresh recruits, but absorbed into regular service after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, has no rationale basis.

24. The State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the



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employees like the petitioner; who had rendered more than three decades of service before absorption. The petitioner or the persons situated like him cannot be blamed for non-absorption before 01.04.2003, though they rendered 2 to 3 decades of service before 01.04.2003.

25. It is a different matter if a person joined the service after 01.04.2003 on daily wages basis and he was absorbed thereafter. But in my view, the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption has no rationale basis and the same is arbitrary and violative of Article 14 of the Constitution. In fact Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant, in view of Rule 11(2) of the Tamil Nadu Pension Rules. Rule 11(2) does not prescribe any cut off date as to absorption into regular service. The benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4). Thus, the cut off date of absorption as 01.04.2003 prescribed in Rule 11(4) shall be ignored. Otherwise, it will lead to grave injustice.

26. The Government cannot deny the pensionary benefit to the petitioner by fixing the cut off date as 01.04.2003 for absorption thereby refusing to take into account half the service rendered before absorption for the purpose of pension.”

13. That apart the learned Single Judge has also recorded that the learned Additional Government Pleader fairly conceded that the State has not preferred



W.A(MD)No.181 of 2019

any Appeal as against the said judgment in W.P.No.24236 of 2013 dated 18.06.2014 extracted supra. Only in the light of the same, the learned Single Judge proceeded to allow the Writ Petition and we are of the considered view that there is no infirmity in the same.

14. Accordingly, there is no necessity to interfere with the order passed by the learned Single Judge. In final, the Writ Appeal is dismissed. There shall be no order as to costs. Consequently, miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
10.06.2024

Index : Yes / No
Neutral Citation : Yes / No
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W.A(MD)No.181 of 2019

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MRN

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