



W.A.(MD) No.455 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.455 of 2018

and

C.M.P.(MD) No.2687 of 2018

- 1.The State of Tamil Nadu,
Rep., by its Secretary,
Department of Municipal and
Water Supply Department,
Fort St. George, Chennai-600 009.
- 2.The Director,
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai-600 108.
- 3.The Director of Town Panchayat,
Kuralagam Buildings,
Chennai-600 108.
- 4.The Assistant Director,
Local Fund Audit Department,



W.A.(MD) No.455 of 2018

WEB COPY

Dindigul,
Dindigul District.

5.The Commissioner,
Pallapatti Municipality,
Karur District.

... Appellants/Respondents

*[5th Appellant – Suo motu replaced vide order
dated 30.04.2024 in W.A.(MD) No.455 of 2018]*
Vs.

P.Rajasekaran

... Respondent/Petitioner

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated
04.01.2017 made in W.P.(MD) No.24408 of 2016.

For Appellants : Mr.A.Baskaran
Additional Government Pleader

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

Learned Additional Government Pleader informs the Court that the 5th
appellant has since been upgraded into a Pallapatti Municipality. This Court



W.A.(MD) No.455 of 2018

therefore, *suo motu* replaces the 5th appellant as “Commissioner, Pallapatti Municipality, Karur District”.

2. This appeal is preferred by the respondents in W.P.(MD) No.24408 of 2016 challenging an order of the learned Single Judge of this Court directing them to consider the claim of the respondent herein for payment of pension and other terminal benefits to the respondent.

3. The facts are minimal and they are stated as below:

- (a) On 14.08.1986, the respondent joined the then 5th respondent-Panchayat as a plumber. He claims that on 06.07.2001, he was absorbed as Water Tank Helper and that on 28.07.2006, his appointment was regularised and that he superannuated on 31.12.2015. As he was not granted any pension, he approached this Court for a direction to the then 5th respondent for granting pension.
- (b) Before the learned Single Judge, the appellants herein took up a stand that the Old Pension Scheme was replaced with Contributory Pension Scheme that the Government had introduced *vide* G.O.Ms.No.259,



W.A.(MD) No.455 of 2018

WEB COPY

Finance (Pension) Department, dated 06.08.2003 in terms of which any one, who is newly recruited after 01.04.2003 would not be entitled to the Old Pension Scheme, but they would be covered by the Contributory Pension Scheme. Now, inasmuch as the employment of the respondent herein was regularised on 28.07.2006, he would fall only within the newly introduced Contributory Pension Scheme, but not under the Old Pension Scheme that was in vogue before the introduction of the Contributory Pension Scheme.

4. The learned Single Judge took the view that since the Government Order specifically states that it would apply to only recruitments made after 01.04.2003, it cannot be made applicable to all those who have already joined duty, but whose regularisation alone are taken place after G.O.Ms.No.259, dated 06.08.2003. Indeed, the learned Single Judge has invested time to distinguish the expressions “recruitment” and “joining duty” etc. This order of the learned Single Judge is now under challenge, at the instance of the respondents in the writ petition.



W.A.(MD) No.455 of 2018

WEB COPY

5. Despite service of notice, the respondent did not appear and his name is printed in the cause list. Heard the learned Additional Government Pleader appearing for the appellants.

6. The learned Additional Government Pleader strongly canvassed the case of the appellants along the very lines that they have adopted before the learned Single Judge. This Court, however records it's difficulty in subscribing to the submissions as canvassed by the learned Additional Government Pleader. As very rightly distinguished by the learned Single Judge, “regularisation” should be distinguished from “appointment”. Now, let us consider a case where an individual is appointed some time prior to 01.04.2003 and if the probation is confirmed after two years, well after the cut off date of 01.04.2003, will the authorities deny him pension? Similarly, in the instant case, the respondent was appointed admittedly prior to 01.04.2003 and his appointment was only regularised after the date. This apart, where there is some degree of ambiguity in understanding any executive order, then it must be read depending on the field of its operation. Pension being a beneficial



W.A.(MD) No.455 of 2018

feature of Government service, this Court reckons the same and constructs it in favour of the respondent herein.

7. In conclusion, this Court agrees with the line of reasoning of the learned Single Judge and confirms his order.

8. Accordingly, this Writ Appeal is dismissed and the order of the learned Single Judge dated 04.01.2017 in W.P.(MD) No.24408 of 2016 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

30.04.2024

Note: Registry is required to carry out necessary amendment.

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR



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W.A.(MD) No.455 of 2018

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

ABR

W.A.(MD) No.455 of 2018

30.04.2024