



W.P(MD)No.15174 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.15174 of 2018

P.Chellaiah

... Petitioner

Vs

1.The State of Tamilnadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai -09.

2.The Director of Municipal Administration,
Chepauk, Chennai - 600 005.

3.The Director of Local Fund Audit,
Integrated Complex For Finance Department,
Animal Husbandry Hospital Campus,
Nandanam, Chennai- 600035.

4.The Commissioner,
Rajapalayam Municipality,
Rajapalayam,
Virudhunagar District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the fourth respondent in proceedings Na.Ka.No. C1/2281/2012 dated 09.05.2013 and quash the same and consequently direct the respondents 1 to 4 to allot G.P.F. Account Number to the petitioner for the purpose of bringing him under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme) by counting 50% of the services rendered by him from 10.12.1987 to 31.05.2009 as N.M.R. on daily wages along with his regular Service from 01.06.2009 with all consequential service and monetary benefits.

For Petitioner	: Mrs.M.Padmavathy
For R1 to R3	: Mr.P.T.Thiraviam
	Government Advocate
For R4	: Mr.N.Dilip Kumar

ORDER

As against the order passed by the Commissioner, Rajapalayam Municipality/the fourth respondent herein, rejecting the request of this petitioner to calculate 50% of service rendered by him on daily wage basis along with his regular service for pensionary benefits, the petitioner has filed this writ petition in the year 2018.



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2.The Petitioner was appointed as NMR in the fourth respondent Municipality in the year 1987. Pursuant to the Government Order in G.O.Ms.No.21, Municipal Administration and Water Supply Department dated, 23.02.2006, the petitioner's service was regularised with effect from 01.06.2009 and he was posted as Junior Assistant. According to the petitioner, as per Rule 11 of the Tamil Nadu Pension Rules, 1978, 50% of the services rendered by him on daily wages basis shall be taken into consideration as qualifying service for pension. Therefore, the petitioner has submitted several representations to the respondents to bring him under the Tamil Nadu Pension Rules 1978 (old pension scheme) and the same was rejected by the fourth respondent, by the order impugned in this writ petition and the same is challenged in this writ petition.

3.The learned counsel appearing for the petitioner submits that since the petitioner was appointed as NMR in the year 1987 and he has been regularized in the year 2009, he is entitled for



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pension benefits, as per the dictum laid down by the Division Bench of this Court in a batch of writ appeals in WA(MD) Nos.458 of 2019 etc., dated 14.12.2023. However, it was denied by the respondents.

4.The learned counsel appearing for the fourth respondent, by relying on the judgment rendered by the Honourable Full Bench of this Court in ***Government of India, Represented by the Secretary, Public Works Department, Chennai vs. B.Kaliyamoorthy***, reported in ***(2020) 2 MLJ 369*** submits that this issue has already been settled by the Honourable Full Bench and therefore, the impugned order cannot be interfered with.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.As rightly pointed out by the learned counsel for the fourth respondent that this issue has already been decided by the Honourable Full Bench of this Court, in ***Government of India,***



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Represented by the Secretary, Public Works Department, Chennai

vs. B.Kaliyamoorthy, reported in (2020) 2 MLJ 369, this Court is not inclined to interfere with the impugned order. The relevant portion extracted from the above judgment is as under:-

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.



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(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.*

(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."*

7. Since the issue is no longer *res integra* as it is already decided by the Honourable Full Bench of this Court as stated supra, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed. No costs.

05.11.2024

NCC: Yes/No
Index: Yes
vrn



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B.PUGALENDHI, J.

vrn

Order made in
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05.11.2024