



W.A(MD) No.963 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.A(MD) No.963 of 2018
and
C.M.P(MD) No.6407 of 2018**

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Forest and Environment (FR-2) Department,
Secretariat, Chennai – 600 009.
- 2.The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet, Chennai – 600 015.
- 3.The Forest Range Officer,
Social Forest Range,
Pulienkudi, Tirunelveli District.
- 4.The Forest Extension Officer,
Forest Extension Centre,
Tirunelveli Division,
Ponnakurchi, Tirunelveli.

... Appellants/Respondents

-VS-

1.M.Sakthi

... 1st Respondent/Petitioner



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2.The Principal Accountant General Officer,
Accountant General Office,
Chennai – 600 018.

... 2nd Respondent/5th

Respondent

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order passed in W.P. (MD) No.22024 of 2015 dated 11.02.2016 and allow the present Writ Appeal.

For Appellants : Mr.M.Senthil Ayyanar
Government Advocate

For Respondents : Mr.K.Seemaraj for R1
Mr.P.Gunasekaran for R2

J U D G M E N T

(Judgment of the Court was made by C.V. KARTHIKEYAN, J.)

The first, second, third and fourth respondents in W.P. (MD) No. 22024 of 2015 have filed the present writ appeal aggrieved by the judgment of a learned Single Judge dated 11.02.2016, not only in that particular writ petition but also in a batch of other writ petitions, whereby, a writ petition filed in the nature of a Mandamus seeking a direction against the present appellants to pass orders to count one half of the service of the writ petitioner before his absorption on 07.08.2009 along with regular service for the purpose of pension and to settle all



retirement benefits with 6% interest within a stipulated time was allowed.

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2. The writ petitioner has been initially appointed as Supernumerary Plot Watcher on daily wage basis on monthly consolidated pay. He had been so appointed on 01.01.1982. He continued under the same condition of service. His services were regularised on 07.08.2009. Post retirement, he sought one half of the services rendered as 'Daily Wage Worker' from 01.01.1982 till the date of his regularisation/07.08.2009 to be counted for pension and other benefits.

3. The issue is no longer *res integra* and had been earlier referred to a Full Bench in a batch of writ appeals in **Government of Tamil Nadu and Others -vs- R. Kaliyamoorthy [reported in 2019 Vol.VI, CTC 705]** . The Full Bench had delivered judgment on 03.12.2019. The reference before the Full Bench was as follows:-

"In view of the provisions of the Tamil Nadu Pension Rules, as amended, if a government servant is regularised in service after 01.04.2003 whether such a person will be entitled to count 50% of the past service rendered prior to regularisation for the purpose of computing his pension under the old pension scheme."



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4. This reference was rephrased by the Full Bench 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."

(Emphasis Supplied)

5. After examining the Government Orders relating to the Pension Rules, the Full Bench had finally held as follows:-

"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*



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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 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."

(Emphasis Supplied)

The petitioner falls under Sub-clause (5) above.



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6. He had been appointed before 01.04.2003, on 01.01.1982 as a Daily Wage Worker but, who was paid monthly salary. He was brought into regular service on 07.08.2009. The Full Bench had held that those who had been absorbed in regular service after 01.04.2003 will not be entitled to count one half of their past service for the purpose of determination of qualifying service for pension.

7. This judgment of the Full Bench has been taken up further in appeal before the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.15406 of 2021. The Hon'ble Supreme Court had observed as follows:-

*“While disposing of Writ Appeals which orders are presently under challenge, the Division Bench of the High Court relied upon the law laid down by full bench of the High Court in **Govt. of Tamil Nadu and Others versus R. Kaliyamoorthy** [reported in **2019 Vol.VI, CTC 705**]. Paragraphs 40 to 42 of the decision of the Full Bench were as under:*

“40. For example, if a person is appointed prior to 01.04.2003 in a non-provincialised service or on consolidated pay or on honorarium or daily wage basis and later to a cadre post on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and such service is regularized after 01.04.2003, such



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Government employee is eligible for Government Pension under the Tamil Nadu Pension Rules but at the same time would not be eligible to include half of services rendered in such capacity viz. I) Non-provincialised services ii) Consolidated pay, iii) honorarium; or iv) daily wage basis to his regular service.

41. Thus, a government servant who may have been appointed before the cut-off dated of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularization is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10(a) (i) alone will be entitled to get pension.

42. The cut off date i.e. on or after 01.04.2003 in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 will not per se bar a person from getting pension if such a person had joined the service in accordance with the provisions of Tamil Nadu State and Subordinate Service Rules, i.e. in the cadre whether on temporary or permanent basis. Services rendered before the cut off date of 01.04.2003, can be added to the regular service only if the service was regularized



before the said date for determining the qualifying service. Therefore, in our opinion, it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. **Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service.**”

In so far as the instant matters are concerned, the Division Bench observed as under:

“22. Therefore, in view of the law laid down as aforesaid, we have no hesitation in holding that the appeals filed by the State are liable to be allowed. There is no more difficulty we may face. This is, with respect to catena of decisions available without taking note of the relevant provisions. Even this issue has been answered by the Full Bench of this Court referred to above, by holding that an issue which is not considered consciously leading to a decision may not be a binding precedent. Thus, illegality cannot be allowed to perpetuate.”

We have heard Mr. S. Nagamuthu, learned Senior Advocate in support of the petitions and Mr. Jaideep Gupta, learned Senior Advocate for the respondents.

Mr. Nagamuthu attempted to distinguish the instant matters, submitting inter alia that the services of the petitioners were regularized before 01.04.2003 and as such the decision of the Full Bench would not govern the fact situation before this



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Court. He could not however, point out any document nor was any such assertion made at any juncture in any of the pleadings.

We therefore, see no reason to entertain these petitions which are accordingly dismissed.

In case the regularization in the instant case had occurred before 01.04.2003, the petitioner shall be entitled to take appropriate proceedings as are open to them in law.”

(Emphasis Supplied)

8. In view of the direct pronouncement rendered by the Full Bench which had been affirmed by the Hon'ble Supreme Court, we hold that the learned Single Judge had erred in directing the appellants herein to consider one half of the service of the writ petitioner before his absorption on 07.08.2009 along with regular service as the period of service for calculating pension and other benefits.

9. The Writ Appeal naturally has to succeed and is accordingly allowed. No costs. Connected Miscellaneous Petition is closed.

[C.V.K., J.] [J.S.N.P., J.]
05.08.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No



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