



W.A.(MD)Nos.157 & 161 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

W.A.(MD)Nos.157 and 161 of 2017
and
C.M.P(MD)Nos.1741, 1760 and 1761 of 2017

W.A.(MD)No.157 of 2017

- 1.The Government of Tamil Nadu,
rep. by Secretary to Government,
Finance (Pension) Department,
Fort. St. George, Chennai – 600 009.
- 2.The Principal Chief Conservator of Forests
Panagal Building, Saidapet,
Chennai – 600 015.
- 3.The District Forest Officer,
Social Forestry Division,
Tirunelveli.

: Appellants/Respondents

Vs.

- 1.K.Kottursami : 1st Respondent/Writ Petitioner
- 2.The Principal Accountant General
Office of the Accountant General of
Tamil Nadu,
Teynampet, Chennai – 18. : 2nd Respondents/3rd Respondent



W.A.(MD)Nos.157 & 161 of 2017

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 20.01.2014 passed in W.P.(MD) No.14159 of 2013.

For Appellants : Mr.A.K.Manikkam

For Respondents : Mr.P.Gunasekaran for R2
No appearance for R1

W.A.(MD)No.161 of 2017

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rep. by Secretary to Government,
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PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 20.01.2014 passed in W.P.(MD) No.14162 of 2013.



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For Appellants : Mr.A.K.Manikkam
For Respondents : Mr.P.Gunasekaran for R2
No appearance for R1

COMMON JUDGMENT

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

The respective first respondent, as the writ petitioners, have filed the writ petitions in W.P(MD)No.14159 and 14162 of 2013 seeking issuance of a Writ of Mandamus to direct the respondents 1 to 3 therein to count half of the service rendered by them as social forestry worker from 01.02.1987 to 06.08.2009 and 11.06.1987 to 06.08.2009 respectively along with the regular service as Forest Watcher from 07.08.2009 to 31.05.2011 and 07.08.2009 to 31.01.2011 respectively as a qualifying service and send the revised pension proposal to the second respondent/fourth respondent and to further direct the second respondent/fourth respondent to sanction the eligible pension and all other terminal benefits to the petitioners.

2. The Writ Court, by following the earlier order dated 29.06.2011 made in W.P(MD)No.13832 of 2011, allowed the writ petitions. Challenging the same, the present appeals have been filed.



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3. According to the appellants, the petitioners are not entitled to the said relief as ordered of the Writ Court as the issue has been settled by the Honourable Full Bench of this Court in favour of the appellants/State. The learned Special Government Pleader appearing for the appellants has produced a copy of the Judgment of the Honourable Full Bench of this Court in the case of **Government of Tamil Nadu vs. R.Kaliyamoorthy** reported in **2019(6) CTC 705**, wherein, the Honourable Full Bench of this Court has passed the following orders:-

(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.

(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



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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.

4. Though the above said Judgment was challenged before the Honourable Supreme Court in SLP (C) Diary No(s).15406 of 2021, the Hon'ble Apex Court has also upheld the view of the Hon'ble Full Bench of this Court in **Government of Tamil Nadu vs. R.Kaliyamoorthy** reported in **2019(6) CTC 705**.

5. According to the Hon'ble Apex Court, 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



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determining the qualifying service. Therefore, the Hon'ble Apex Court is of the view that there is no need to interfere with the order of the Hon'ble Full Bench of this Court reported in **2019(6) CTC 705** (cited supra) and accordingly, dismissed that SLPs. The Hon'ble Apex Court further observed that 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.

6. In view of the above settled law, we are of the view that the first respondents/writ petitioners are not entitled to count half of the service rendered by the respective writ petitioners.

7. In the result, these Writ Appeals are allowed. The order passed by the Writ Court dated 20.01.2014 passed in W.P.(MD) Nos.14159 and 14162 of 2013 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

[V.B.S.,J.] [K.K.R.K.,J.]

skn

27.02.2024

NCC : Yes/No

Index : Yes / No

Internet : Yes



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To
The Principal Accountant General
Office of the Accountant General of
Tamil Nadu,
Teynampet, Chennai – 18.



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