



W.A.(MD)No.316 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**

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and
C.M.P(MD)No.3190 of 2017

- 1.Thiruchirapalli Corporation,
Represented by Commissioner,
Thiruchirapalli Corporation,
Trichy.
- 2.The Deputy Director,
Local Fund Audit,
Thiruchirapalli Corporation,
Trichy.
- 3.The Director,
Local Fund Audit,
4th Floor, Kolannagar,
Chennai – 108.
- 4.State of Tamil Nadu,
Represented by Secretary of Government,
Finance & Pension Department,
Secretariat, Chennai – 9.

: Appellants/Respondents

Vs.

M.Perumal

: Respondent/Writ Petitioner



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PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 09.01.2017 passed in W.P.(MD) No.8651 of 2010.

For Appellants : Mr.A.K.Manikkam
Spl. Govt. Pleader

For Respondents : No appearance

JUDGMENT

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

The respondent, as the writ petitioner, has filed the writ petition seeking for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 4th respondent in connection with the order passed by him in G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009 and to quash the same to the extent of cut off date as 01.04.2003 fixed for claiming the Pensionary benefits and direct the respondent to pay the retirement and Pensionary benefits including the monthly pension from 31.10.2008.

2. The Writ Court, by following the case reported *in (20 1 4) 6 MLJ 31 (P.Chinniyan vs. State of Tamil Nadu)* has disposed of the writ petition with the following order:-



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(i) The third respondent is directed to consider the proposal forwarded by the second respondent vide his proceedings in Na.Ka.No.115/T1/2009 dated 09.03.2009.

(ii) While considering the said proposal, the third respondent must take into account the clarifications issued by way of order of this Court reported in (2014) 6 MLJ 316 in the matter of P.Chinniyan v. State of Tamil Nadu.

(iii) After considering the said proposal, of course, as directed above, without insisting upon the cut off date of 01.04.2003 indicated in G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009, the third respondent shall pass orders regarding the retirement and pensionary benefits within a period of three months from the date of receipt of a copy of this order.

3. According to the appellants, the petitioner is not entitled to the said relief as ordered by the Writ Court as the issue has been settled by the Honourable Full Bench of this Court. 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:-



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(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 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 upheld the view of the Hon'ble Full Bench of this Court in



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Government of Tamil Nadu vs. R.Kaliyamoorthy reported in 2019(6) CTC

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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 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 respondent/writ petitioner is not entitled to count half of the service rendered by the respondent/petitioner.



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7. In the result, this Writ Appeal is allowed. The order passed by the Writ Court dated 09.01.2017 made in W.P.(MD) No.8651 of 2010 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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

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NCC : Yes/No

Index : Yes / No

Internet : Yes



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