BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.06.2024

PRONOUNCED ON : 01.08.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A(MD)Nos.2172 of 2023 and 1040 of 2024
and
C.M.P.(MD)Nos.17391 of 2023, 2716 and 7604 of 2024

W.A.(MD)No.2172 of 2023:-

The Accountant General (Accounts & Entitlements),
No:361, Anna Salai, Teynampet, Chennai. ... Appellant

vs

1.D.Ameer Raja
District Registrar,
Joint IV Sub Registrar Office,
Palanganatham Madurai South,
Madurai District.

2.The Inspector General of Registration,
Registration Office,
100, Santhome High Road,
Chennai.

3.The Joint Director of Agriculture,
Collectorate Office, Theni.

4.The Assistant Director of Agriculture,
Uthamapalayam, Theni.

5.The Assistant Director of Intelligence
Bureau (Establishment),
Ministry of Home Affairs,
Sardar Patel Marg, Chanakyapuri, New Delhi. ...Respondents

For Appellant	: Mr.P.Gunasekaran
For R1	:Mr.Isaac Mohan Senior Counsel for M/s.Isaac Chambers
For R2	:Mr.P.Ragavendran Government Advocate
For R3 and R4	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.N.Satheesh Kumar Additional Government Pleader
For R5	:Mr.S.Jeyasingh Senior Panel Counsel

W.A.(MD)No.1040 of 2024:-

1.The Joint Director of Agricultural,
Collectorate Office, Theni.

2.The Assistant Director of Agriculture,
Uthamapalayam, Theni. ... Appellants

vs

1.D.Ameer Raja
District Registrar,
Joint IV Sub-Registrar Office,
Palanganatham, Madurai South,
Madurai District.

2.The Accountant General (Accounts & Entitlements),
No:361, Anna Salai, Teynampet, Chennai.

3.The Inspector of General Registration,
Registration Office,
100, Santhome High Road,
Chennai.

4.The Assistant Director of Intelligence
Bureau (Establishment),
Ministry of Home Affairs,
Sardar Patel Marg, Chanakyapuri, New Delhi. ...Respondents

COMMON PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 30.10.2023 passed in W.P(MD)No.10817 of 2019.

For Appellants	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.N.Satheesh Kumar Additional Government Pleader
For R1	:Mr.Isaac Mohan Senior Counsel for M/s.Isaac Chambers
For R2	:Mr.P.Gunasekaran
For R3	:Mr.P.Ragavendran Government Advocate
For R4	: Mr.S.Jeyasingh Senior Panel Counsel

COMMON JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Petition preferred by the first respondent challenging the order rejecting his claim to fit him into the old pension scheme was allowed by the Writ Court and challenging the same, the first respondent in the Writ Petition, ie., the Accountant General of the Pension Department has preferred W.A.(MD)No.1040 of 2024 and challenging the very same impugned order, the third and fourth respondents in the Writ Petition the Agricultural Department, had preferred separate appeal W.A.(MD)No.2172 of 2023.

2.Since both the appeals arise out of the same impugned order, by consent of parties, both the appeals are heard together and disposed of by this common judgment.

3.The short facts involved in the appeals is that the first respondent/Writ Petitioner originally was selected as Junior Assistant-cum-Typist in the Agricultural Department on 04.07.2002 through direct recruitment by the Tamil Nadu Public Service Commission. The Writ Petitioner joined in the service on 12.07.2002 and while undergoing the service, he had also appeared for the competitive examination conducted by the Intelligence Bureau, Ministry of Home Affairs, New Delhi and was selected as Assistant Central Intelligence Officer Grade-II and was directed to report for duty on 14.04.2005. In view of the selection to the Central Government service, the Writ Petitioner submitted his resignation to the Agricultural Department on 06.04.2005 and the resignation was accepted on the same day. Pursuant to the same, the first respondent had joined the Central Government service in the fourth respondent office and while he was serving in the Central Government service, he had again applied and appeared for the examination conducted by the Tamil Nadu Public Service Commission in Combined Subordinate Service Exam-I. As the first respondent successfully got selected to the post of Sub Registrar Grade-II, he had tendered his resignation from the Central Government service, which was accepted by the fourth respondent on 29.08.2008, and he was relived from the service by accepting the technical resignation. The first respondent had, thereafter, joined as Sub Registrar Grade-II in the second respondent Registration Department on 01.09.2008. After being in service, he was promoted to various posts and now serving as Joint IV Sub Registrar, Palanganatham, Madurai.

4.When the first respondent initially joined in the service of the Agricultural Department, as Junior Assistant–cum–Typist on 12.07.2002, the Old Pension Scheme was in force, but however, the State Government introduced the new pension scheme, known as “Contributory Pension Scheme (CPS)” and as per the scheme, the employees, who had joined in the service on or after 01.04.2003, are only eligible to be included in the Contributory Pension Scheme (CPS).

5.The first respondent made a claim by submitting a representation on 23.03.2016 to the Accountant General, claiming that since the new Contributory Pension Scheme (CPS) has been introduced only from 01.04.2003, and since he had originally joined in the service on 12.07.2002 which is prior to the cut off date, he must be included in the Old Pension Scheme. The first respondent in the Writ Petition/Accountant General, by the impugned proceedings in the Writ Petition, had rejected the claim on the ground that since the Writ Petitioner had resigned voluntarily from the Agricultural Department for personal reasons, the same will not amount to technical resignation. The order of rejection was put to challenge by the

Writ Petitioner and the Writ Court held that since the Writ Petitioner had joined in the services on 12.07.2002 and had resigned on 06.04.2005, those period has to be calculated for the pensionable service and the Writ Petitioner has to be fit in the Old Pension Scheme. Challenging the impugned order passed by the Writ Court, the Accountant General and the Agricultural Department are before this Court with two separate Writ Appeals.

6.Mr.Veera Kathiravan, learned Additional Advocate General appearing for the State, argued that the first respondent was only a temporary employee and the probation has not been declared and since he had resigned from the services, even prior to the declaration of his probation, his services in the Agricultural Department for the period from 12.07.2002 to 06.04.2005, cannot be counted for the pensionary benefits. The learned Additional Advocate General further contended that when once the employee voluntarily resigned from service, then the past services will be forfeited as per Rule 23 of the Tamil Nadu Pension Rules, 1978, and therefore, the first respondent cannot claim any benefits in respect of the past service. Further, even as per the proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978, since no permission was granted to the first respondent, while resigning from service, it will not come to the aid of the first respondent to claim any shelter under the proviso to Rule 23. He further submitted that after resigning from the services of the Agricultural Department, the first respondent had joined the Central Government service under the New Pension Scheme (NPS) and having consciously opted and accepted the New Pension Scheme in the Central Government service, the first respondent, on coming back to the State service, cannot avail any benefits under the Old Pension Scheme.

7.It is the further contention of the learned Additional Advocate General that even the resignation letter submitted by the first respondent is missing and the first respondent had also not enclosed the resignation letter in the typed set of papers, which is only because of the fact that the first respondent had voluntarily resigned from the services on personal grounds. He further submitted that the first respondent having joined in the Central Government service in the year 2005 under the National Pension Scheme and have thereafter, resigned and joined the State Government service in the Registration Department on 01.09.2008, did not make any claim, as he was completely conscious that he is covered only under the new Contributory Pension Scheme, but, however, as an afterthought, had made a claim to be included in the Old Pension Scheme only in the year 2016.

8.The learned Additional Advocate General also submitted that even though the three years period cannot be taken into account for any purpose in view of the forfeiture of past service contained under Rule 23 of the Tamil Nadu Pension Rules, 1978, still, at the best, the first respondent can claim benefits of these period to be taken into account for the Contributory Pension Scheme, but, definitely not eligible to be included under the Old Pension Scheme. It is further submitted that when the probation was not declared, as the first respondent had not underwent the mandatory Bhavanisagar training and resigned from the State Government service, even prior to declaration of probation, as temporary employee, the learned Judge erroneously had allowed the Writ Petition by directing the appellants to include those period for pensionary benefits and had also directed to fit the first respondent in the old Pension Scheme and therefore, sought for interference of this Court in the impugned order passed by the Writ Court.

9.Mr.P.Gunasekaran, learned Counsel appearing for the Accountant General argued that the purpose for which, the first respondent had resigned from the Agricultural department is very well reflected through the entries made in the service register book. The entry made in the service register of the first respondent clearly states that the first respondent had resigned on 06.04.2005 due to personal reasons. The learned Counsel further contended that when the entry in the service register clearly discloses the reasons and the first respondent consciously accepted the same and had never challenged the said entry, the resignation of the first respondent cannot be taken as a technical resignation and therefore, the past services rendered stand forfeited in view of Rule 23 of the Tamil Nadu Pension Rules, 1978.

10.It is his further contention that when the first respondent consciously opted and accepted the New Pension Scheme, which is reflected even in the appointment order issued by the Central Government Department and further, the relieving order issued by the Central Government Department clearly contains all the details, as the first respondent was to join in the services of the State Government, which alone amounts to a technical resignation. The learned Judge misinterpreted the provisions and had erroneously allowed the Writ Petition, which cannot be sustained both on facts and on law, he contended. The learned Counsel further submitted that the first respondent being an entrant into the service of the State Government in the Registration Department, on 01.09.2008, is eligible only to be included in the Contributory Pension Scheme and cannot have any claim over the period, which he worked in the Agricultural Department and sought for interference of this Court by allowing the Writ Appeal.

11.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the first respondent argued that the probation of the first respondent in the Agricultural Department was not declared for want of Bhavanisagar training, which cannot be put against the employee, as it is for the Department to send the employees for training and more over, as per the Rule 11 of the Tamil Nadu Pension Rules, 1978, the services rendered, even if it is ultimately not confirmed, is eligible to be counted for pension. The learned Senior Counsel further contended that when any temporary, ad-hoc or officiating services are to be included for pension, which is also a qualified service, as defined in Rule 3-1(o) of the Tamil Nadu Pension Rules, 1978, the first respondent, admittedly, having been worked in the Agricultural Department for the period from 2002 to 2005, his services has to be taken into account for pensionary benefits.

12.The learned Senior Counsel further contended that the first respondent only on being selected in the Central Government service, had resigned the services of the State Government in the Agricultural Department, which was accepted and therefore, it can only be construed as technical resignation and in view of proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978, as the first respondent had joined in the Central Government service, the past service rendered does not stand to be forfeited. It is the further contention of the learned Senior Counsel that when the first respondent had joined in the service on 12.07.2002, the Old Pension Scheme was in force and even as per the Contributory Pension Scheme introduced, the employee, who joined in the service after the cut-off date on 01.04.2003, alone will not be eligible to claim under the Old Pension Scheme.

13.He further contended that as the service period of the first respondent from 2002 to 2005 is eligible to be calculated for the pensionable service and admittedly, the first respondent had joined in the service on 12.07.2002 and he has now joined in the State Government service under the Registration Department, the learned Judged has rightly taken note of all these aspects and after considering the Rule position, had come to the conclusion that this period has to be included for the pensionary benefits and had rightly interfered in the order of rejection and directed the appellants to fit the first respondent in the Old Pension Scheme, which needs no interference and sought for dismissal of the appeals.

14.Heard the learned Counsel on either side and perused the materials available on record.

15.In view of the facts of the case and the arguments advanced by the respective Counsels, the following point arises for consideration of this Court:

(a)Whether the past service period between 12.07.2002 and 06.04.2005 rendered by the first respondent stands forfeited in view of Rule 23 of the Tamil Nadu Pension Rules or is it technical resignation and saved in view of proviso to Rule 23?

16.The first respondent, admittedly, was selected by the Tamil Nadu Public Service Commission under direct recruitment for the post of Junior Assistant-cum-Typist in the Agricultural Department on 04.07.2002 and he had joined in the services on 12.07.2002. While in service, he had appeared for the competitive examination conducted by the Intelligence Bureau, Ministry of Home Affairs, New Delhi and was selected as Assistant Central Intelligence Officer Grade-II and he was directed to join in the office of the fourth respondent on 14.04.2005. In view of the selection obtained in the Central Government service, the first respondent had submitted his resignation on 06.04.2005, which was accepted on the same day. Even though the resignation letter submitted by the first respondent has not been produced by either of the parties, the perusal of the relieving order, dated 06.04.2005, from the Agricultural Department, reveals that the first respondent has resigned his job on 06.04.2005 afternoon citing the reason that he is joining in the Central Government services and therefore, his resignation letter is accepted and relieved. The relieving order, dated 06.04.2005, is extracted hereunder for easy reference:

PROCEEDINGS OF THE ASSISTANT DIRECTOR OF AGRICULTURE,
UTHAMAPLAYAM
PRESENT : SHRI K.PERIYAKARUPPAN, B.Sc., AGRI
No.A/1344/05 *Date : 06-04-2005*

Sir,

Sub: Tamil Nadu Ministerial Service – Mr.D.Ameer Raja, Junior Assistant – Resigning from the job- Passing orders on Relieving from his duties-Reg.
Ref.: Mr.D.Ameer Raja, Junior Assistant – Resignation Letter Dt.06-04-05.

Order:

It is hereby noted that Mr.D.Ameer Raja who served as a Junior Assistant in the office of the establishment of the Assistant Director of Agriculture, Uthamaplayam, has resigned his job on 06.04.2005 afternoon, citing the reason that he is joining in the Central Services of the Government of India.

His resignation letter has been accepted and he has been relieved from his duties on 06-04-2005 afternoon.

He handed over his charges without any omission to Shrimathi R.Thilagavathi, Typist.

Sd
6.4.05
Assistant Director of Agriculture (i/c)
Uthamaplayam."

17.From the relieving order extracted above, it is clear that only because the first respondent got an appointment order from the Central Government service, he had submitted his resignation letter citing the reasons and in fact, the relieving authority had specifically recorded the reasons that in view of joining in the Central Government service, the first respondent had resigned from the State Government service.

18.Even though in view of Rule 23 of the Tamil Nadu Pension Rules, 1978, if the employee resigns from the services, the past services rendered by him will stand forfeited, but however, if it is a technical resignation, then the same would be saved in view of the provision contained therein. For easy reference, Rule 23 of the Tamil Nadu Pension Rules, 1978, is extracted hereunder:

> "*23. Forfeiture of service on resignation.- (1) Resignation from a service or post entails forfeiture of past service:*
> *Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.*
>
> *(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant."*

19.Further, the effect of interruption of service and also the automatic condonation of the interruption in service is contained in Rules 24 and 25 of the Tamil Nadu Pension Rules, 1978, which are also extracted hereunder:

> "*24. Effect on interruption in service.- (1) The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in service shall not, however, count for pension.*
> *(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist."*
>
> "*25. Condonation of interruption in service.- (1) In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of Civil Service rendered by a Government servant shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.*
>
> *(2)Nothing in sub-rule (1-) shall apply to interruption caused by*

resignation, (or) removal from service or for participation in a strike.

(3)The period of interruption referred to in sub-rule (1) shall not count as qualifying service."

20.In the instant case, even though the learned Additional Advocate General contended that since the first respondent had not produced the resignation letter and the resignation letter in the file is also missing, which is only because the first respondent had resigned on personal reasons and further permission has not been obtained to join in the Central Government service and therefore, he cannot claim benefit under the proviso to Rule 23, we are not able to accept the argument for the simple reason that even in the very relieving order issued by the Agricultural Department, the reasons recorded therein clearly indicate that the resignation of the first respondent was accepted for the reason that he is joining in the Central Government services, which makes explicitly clear that the request for resignation has been made only for the reason of joining the Central Government services and in view of acceptance of resignation and relieving the first respondent, tantamount is the permission granted to join in the Central Government services, which viewed from any angle could only be considered as a technical resignation. Therefore, the resignation of the services of the first respondent for having joined in the services of the Central Government is saved by proviso to Rule 23 and the service period from 2002 to 2005 does not get forfeited for calculating the pensionary benefits.

21. It is the further contention that as the first respondent had been only a temporary employee and his probation has not been declared since he had not been sent for mandatory Bhavanisagar training and therefore this period cannot be taken into account for considering the pensionable service. The appellant had heavily relied on Rules 2(2), 2 (3), 2(10) and 2(12) of the Tamil Nadu State and Subordinate Service Rules, which are extracted hereunder for easy reference:

> *"2(2). "Approved candidate" means a candidate whose name appears in an authoritative list of candidates approved for appointment to any service, class or category."*
> *"2(3). "Approved Probationer" in a service, class or category means member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category."*
>
> *2(10). "Member of a service" means a person who has been appointed to that service and who has not retired or resigned, has been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service."*
>
> *Rule 2(12):*

“2(12). “Probationer” in a service means a member of that service who has not completed his probation.”

22.It is the contention of the appellants that in view of the above rules, the first respondent is only a probationer and to be member of a service, he should not have retired or resigned, also not removed or dismissed. In the instant case, since the first respondent was only a probationer and he has resigned from the services voluntarily even prior to declaration of probation, he is not a member of the service, as per Rule 2(10) and therefore, the services rendered cannot be taken into account for any purpose, much less as a pensionable service.

23.The above argument is liable to be rejected for the reason that even assuming that the probation has not been declared and the services of the first respondent was not made permanent prior to resignation, still the service period underwent by the first respondent can be included for considering pensionable service. In this context, it will be useful to refer Rule 3(1)(o) and Rule 11 of the Tamil Nadu Pension Rules, 1978, which are extracted for easy reference:

“Rule 3(1)(o):
“‘qualifying service' means permanent or officiating service (including temporary service under emergency provisions)

rendered in a post included in a pensionable establishment;"

Rule 11:

"11.Commencement of qualifying services - (1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the first October 1969, [***] temporary or officiating service in the pensionable post whether rendered in a regular capacity or not shall count in full as qualifying services even if it is not followed by confirmation."

24.The qualifying service, as defined under Rule 3(1)(o), includes any permanent or even temporary service and further, the commencement of qualifying service, as contained in Rule 11, is from the date, the employee takes charge of the post, in which he is first appointed. In fact, Rule 11 further makes it clear that the service rendered in a regular capacity or not shall be fully taken into account, as qualifying service, even in the case, if it is not followed by any confirmation. Therefore, even if the services are not confirmed, any temporary or ad-hoc service rendered by an employee will be taken into account from the date of joining service and therefore, when admittedly, the first respondent had joined in the service on 12.07.2002 and resigned on 06.04.2005, the period between 12.07.2002 and 06.04.2005, even if it is temporary or probationary service, which is not followed by any confirmation, is eligible to be included in the pensionary service.

25.In such circumstances, we hold that the services of the first respondent rendered in the post of Junior Assistant-cum-Typist for the period from 12.07.2002 to 06.04.2005 is to be considered for pensionary benefits and the resignation submitted by the first respondent to join in the Central Government service since having been accepted, is a technical resignation and covered under the proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978, and thereby, the past service rendered by him does not get forfeited.

(b)Whether the first respondent is entitled to be included under the Old Pension Scheme?

26.The first respondent, even though had been appointed as Junior Assistant-cum-Typist in the State Government Service of Agricultural Department on 12.07.2002 and the Old Pension Scheme was available, still the first respondent had never opted and joined in the Old Pension Scheme and thereby, no GPF number was allotted. Even after the new Contributory Pension Scheme was introduced by the State Government and the cut-off date was fixed on 01.04.2003 and the employees, who joined in the services on or after 01.04.2003, were only eligible to be included in the Contributory Pension Scheme, the first respondent did not make any claim or take any steps to get himself included under the Old Pension Scheme.

27.The first respondent, knowing fully well that the Old Pension Scheme is no longer in existence and a new Contributory Pension Scheme has been implemented, had resigned the State Government service under the Agricultural Department on 06.04.2005 and had joined in the Central Government service on 10.05.2005. The memorandum issued by the fourth respondent, dated 25.03.2005, for appointing the first respondent in the temporary post of Assistant Central Intelligence Officer Grade-II, makes it clear that the first respondent will be covered under the New Pension Scheme (NPS) introduced by the Government of India with effect from 01.01.2004. Clauses-VIII and XI of the memorandum, dated 25.03.2005, are extracted hereunder for easy reference:

> *"...8. His appointment would be covered under the new Pension Scheme introduced by the Government of India with effect from 01-01-2004. For Ex-Servicemen, after joining he (in case of Military pensioners) may be required to give an option for counting of past military service as qualifying service under Rule 19 of CCS (Pension) Rules, 1972 within a period of one year from the date of joining service in IB...*

…11. If Shri/Ms.AMEER RAJA D accepts the offer on the terms and conditions mentioned above, he/she should report to the Assistant Director, DRTC, Madhav Vilas Palace, Shivpuri-473 551 (MP) on 14.04.2005. If he/she fails to report for duty by the prescribed date, the offer will be treated as cancelled. He/she should inform the undersigned immediately by telegram within 7 days from the date of issue of this offer whether he is willing to join the Bureau on this post otherwise it will be treated that he/she is not willing to join."

28.A perusal of the above clauses make it explicitly clear that the appointment of the first respondent under the Central Government service was only under the New Pension Scheme and the first respondent has consciously accepted the same and had not made any claim that since the resignation from the State Government service is a technical resignation, he shall be covered under the Old Pension Scheme and the same has to be continued in the Central Government service. The first respondent, having been appointed in the Central Government service and continued for nearly three years, further participated in the selection conducted by the Tamil Nadu Public Service Commission and again got selected in the State Government services under the Registration Department and had thereafter resigned the Central Government service on 29.08.2008.

29.As the first respondent resigned from the Central Government service to join in the service of the State Government, the resignation was accepted as a technical resignation and the order, dated 29.08.2008, as contained in the service register of the first respondent, is extracted hereunder:

> "*Office Order No.526/2008 dated 29.08.2008*
>
> *The technical resignation tendered by Shri.D.Ameer Raja (PIS No.128004) ACIO-II/G, is accepted w.e.f. 29.08.2008/AN subject to the condition that the IG Registration, 100, Santhome High Road, Pattinapakkam, Chennai-600 028 should take from him a bond for Rs.60,000/- (Rupees Sixty Thousand Only) binding him to serve them for the balance of the original bond period executed by him with this department (i.e.,03 years-05 months and 16 days from the date of his joining in the new department) and in case he fails to serve the new department or leaves it before completion of the original bond, for a job, where exemption from bond obligation is not available, the proportionate bond money should be realised from Shri.Ameer Raja and refunded to this department.*
>
> *Accordingly, his name stands struck off from the pay rolls of SIB Chennai with effect from 29.08.2008/AN.*
>
> *Sd/-*
>
> *Section Officer*
>
> *SIB Chennai"*

30.A perusal of the above two proceedings makes it clear that the first respondent having been appointed and served under the Central

Government service by opting and getting included under the New Pension Scheme, had technically resigned and had joined the services of the State Government with the Registration Department. Even after joining in the services of the State Government Department, as Sub-Registrar Grade-II, on 01.09.2008, the first respondent had not made any claim for including his name in the Old Pension Scheme, but however, only in the year 2016, for the first time, had come up with a claim that since he initially joined in service on 04.07.2002 in the Agricultural Department, he is entitled to be included in the Old Pension Scheme.

31. The argument of the learned Senior Counsel that the option of the first respondent was never called for to opt under the Old Pension Scheme and in such circumstances, as the first respondent has joined the services as early as on 12.07.2002 must be allowed to be included in the Old Pension Scheme is liable to be rejected for the simple reason that even though the first respondent had joined in service on 12.07.2002, till the new Contributory Pension Scheme was introduced with effect from 01.04.2003 and further, even till the date of resignation on 06.04.2005, he has not take any steps to get himself included in the Old Pension Scheme and thereafter, had consciously opted and accepted the New Pension Scheme (NPS) in the

Central Government service.

32.Further the first respondent had not been allotted with any GPF number and the first respondent having remained silent, even after implementation of the new Contributory Pension Scheme and he was never included in the Old Pension Scheme even till his resignation in the year 2008, the conduct of the petitioner in availing the Central Government service by opting and accepting the new Contributory Pension Scheme would overwhelmingly make it clear that the first respondent can only be covered under the new Contributory Pension Scheme. When the first respondent never joined in the Old Pension Scheme till the same was scraped due to the introduction of new Contributory Pension Scheme, after a period of 14 years, the first respondent is not justified in making a claim to be included under the Old Pension Scheme, which is, admittedly, no longer in force. In such circumstances, we have no hesitation to hold that the first respondent is not entitled to be included under the Old Pension Scheme simply because he had joined in the services under the Agricultural Department on 12.07.2002.

(c)***Whether the period served by the first respondent in the***

Agricultural Department from 2002 to 2005 can be considered for the Contributory Pension Scheme?

33. In view of the findings rendered above, the period from 12.07.2002 to 06.04.2005, during which the first respondent had worked as Junior Assistant-cum-Typist in the Agricultural Department of the State Government, can be included in the Contributory Pension Scheme. However out of this period, since the CPS was introduced only on 01.04.2003, the period of past service from 01.04.2003 till 06.04.2005, alone can be included under the Contributory Pension Scheme.

34. In so far as the Contributory Pension Scheme is concerned, first the employee has to contribute his share towards pension and the employer will proportionately contribute their share towards the account of the employee under the contributory pension scheme. In the instant case, since the first respondent had not contributed his share towards the contributory pension, the State Government also had not contributed their share and in fact the first respondent does not even have a Contributory Pension Scheme account. However, in the interest of justice, it would only be appropriate for

the Accountant General to forthwith allot Contributory Pension Scheme account number to the first respondent and allow the first respondent to contribute his share towards the Contributory Pension Scheme for the period from 01.04.2003 to 06.04.2005 and from 01.09.2008 to till date and thereafter, the appellant Agricultural Department and/or the Registration Department can contribute their proportionate share towards the Contributory Pension Scheme account of the first respondent.

35.The learned Single Judge in the impugned order, even though by relying on the rule position had come to a conclusion that the period served by the first respondent under the Agricultural Department from 2002 to 2005 can be considered for the pensionary benefits, but, however, allowed the Writ Petition by directing the appellants to include the name of the first respondent under the Old Pension Scheme. In so far as allowing the Writ Petition to the extent of including the first respondent in the Old Pension Scheme, it may not be justified and therefore it is liable to the interfered with.

36.In view of the above reasons, the impugned order passed by the Writ Court is set aside and the concerned authorities shall forthwith open

Contributory Pension Scheme (CPS) account for the first respondent and allow the first respondent to contribute his share towards Contributory Pension Scheme for the period from 01.04.2003 to 06.04.2005 and from 01.09.2008 to till date and thereafter the Departments concerned shall contribute their respective shares towards the Contributory Pension Scheme account of the first respondent within a period of four weeks from the date of contribution to be made by the first respondent.

37.With these directions, the Writ Appeals stand allowed to the extent indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J] & [G.A.M., J]

01.08.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

cmr

To

1.The Inspector General of Registration,
Registration Office,
100, Santhome High Road,
Chennai.

2.The Joint Director of Agriculture,
Collectorate Office, Theni.

3.The Assistant Director of Agriculture,
Uthamapalayam, Theni.

4.The Inspector of General Registration,
Registration Office,
100, Santhome High Road,
Chennai.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Judgment made in
W.A(MD)Nos.2172 of 2023 and 1040 of 2024

01.08.2024