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W.A.No.2310 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>08.09.2025</i>
<i>Pronounced on</i>	<i>28.10.2025</i>

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

W.A.No.2310 of 2022
and C.M.P.No.17650 of 2022

S.Kumar

... Appellant

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary,
Animal Husbandry, Dairying and Fisheries Department,
Fort St.George, Chennai – 600 009.

2.The Director of Fisheries,
Office of Director of Fisheries,
Teynampet, Chennai – 600 006.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 21.07.2022 passed in W.P.No.1869 of 2015 on the file of this Court and allow the Writ Petition by allowing this Writ Appeal.

For Appellant : Mr.S.Swaminathan

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader

JUDGMENT



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M.S.RAMESH, J.

The appellant was originally working in the Fish Farmers Development Agencies (hereinafter referred to as FFDA). Through G.O.(3D).No.2, Animal Husbandry and Fisheries (FS.II) Department, dated 20.11.1990 and G.O.(3D) No.4, Animal Husbandry & Fisheries Department, dated 28.08.1992, the temporary employees of FFDA, employed in the post which do not come under the purview of Tamil Nadu Public Service Commission, was ordered to be absorbed into Government Service with effect from 20.11.1990 with pay protection. Their services were provincialised by relaxation of the relevant rules and orders were passed for regularisation of their services also.

2. Through a Government Order in G.O.(Ms).No.96, Animal Husbandry, Dairying and Fisheries (FS-2) Department, dated 07.07.2008, the services of a Junior Engineer namely P.Jebakumar Ranjan under FFDA was regularised after condoning the break-in-service and he was allowed for pay protection, seniority, pensionary benefits etc., on par with his juniors.

3. Since the services of P.Jebakumar Ranjan under FFDA was



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calculated for all service benefits, the appellant herein had made a similar request. Since his representation was not considered in time, he had filed a Writ Petition in WP.No.9346 of 2011 seeking for regularisation of his services from the date of his appointment i.e. from 04.04.1977 and for consequential revision of pensionary benefits. The Writ Petition came to be disposed of on 12.04.2011 by this Court, with a direction to the first respondent herein to consider his representation on its own merits, within a period of four months. Claiming disobedience of the order, the appellant had filed a Contempt Petition, pending which, the first respondent had rejected the petitioner's representation on 22.12.2014. This rejection order was challenged by him in WP.No.1869 of 2015, wherein, he predominantly relied upon the case of P.Jebakumar Ranjan whose services under FFDA was counted as pensionable service. He also placed reliance for extension of such service benefits, on similar orders passed by the Madurai Bench of this Court dated 26.10.2016 in W.P.MD.No.20756 of 2016. The learned Single Judge had dismissed the Writ Petition through an order dated 21.07.2022 passed in W.P.No.1869 of 2015, with the following directions:-

..... “11. Regularisation or permanent absorption can never be claimed as a matter of right. Regularisation is to be granted strictly in accordance with the Rules in force.



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All appointments are to be made in consonance with the recruitment Rules in force. Equal opportunities in public appointment is a Constitutional mandate. The equality clause enunciated must be scrupulously followed while undertaking the process of selection for appointment to the public services. Thus, the temporary services rendered cannot be a ground to regularise the services with retrospective effect. That apart, the petitioner was appointed in an agency which is not a Government Department. Thus, the Government by way of concession absorbed these agency employees in the Fisheries Department through G.O.(3D)No.4, dated 28.08.1992. A perusal of the Government Order reveals that the Service Rules concerned, were relaxed for the benefit of the employees who worked in the agencies. When the relevant Service Rules were relaxed and the benefit of regularisation and absorption was granted, the petitioner cannot seek any further concession by filing a Writ Petition before the Court. Thus, the benefit of permanent absorption granted to the petitioner itself was a concession, which was granted by relaxing the relevant Rules in exercise of the powers conferred on the Government under Rule 48 of the General Rules. Thus, the Court cannot extend further concession by granting retrospective regularisation. Principles of equality cannot



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be complied in respect of an illegality. When the initial appointment were not made in accordance with Recruitment Rules, then there cannot be any equality in respect of grant of regularisation. Therefore, by citing an illegality or grant of relaxation as a special case, the High Court cannot extend the relief which is otherwise not in accordance with law in force.....

15. As far as the present Writ Petition is concerned, one of the orders shown by the petitioner reveals that there was no adjudication of similarity and the law would prevail for grant of the benefit of the regularisation and permanent absorption with reference to the principles laid down by the Constitutional Bench of the Hon'ble Supreme Court of India. Such orders passed which all are rendering counter to the judgment of the Constitutional Bench, have deluded to lose their status as preceded. Such judgments which all are rendering counter cannot be followed at all. The Supreme Court has in unequivocal terms held the said principles in para 54 of the Constitutional Bench judgement in Umadevi's case. Therefore, it is not as if the respective learned counsels appearing can cite one judgement where there is no adjudication of law and get orders after orders granting benefit which will result in unjust gains to the litigants



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and further create financial loss to the State Exchequer and result in unconstitutionality, and which will effect the interest of the tax payers of our great nation.

16. Considering the facts and circumstances, this Court is of the opinion that the writ petitioner was appointed in an agency and he retired in the year 2010. First time, he filed a writ petition in 2011 and the Government passed an order of rejection and now he seeks regularisation from the year 1977 regarding the appointment made by the agency. He was regularised pursuant to the Government Order issued in the year 1992 in the Government Department and such a regularisation and permanent absorption was a concession extended by the Government by relaxing the relevant Service Rules which was in force and therefore, this Court is not inclined to extend any further benefits which would be otherwise inconsistent with the Service Rules in force.”

Challenging this order, the present Writ Appeal has been filed.

4. Mr.S.Swaminathan, learned counsel appearing for the appellant would submit that apart from the case of P.Jebakumar Ranjan, there are several orders passed in favour of the Government employees, wherein their



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services under FFDA was counted as qualified service and therefore, the appellant herein would also be entitled for similar benefits. In the case of one similarly placed employee namely Tmt.S.Rani, who had the benefit of an order of the Madurai Bench of this Court dated 26.10.2016 in W.P.MD.No.20756 of 2016, by which, the respondents had extended her the benefit of inclusion of her service in FFDA as a qualifying service for pensionary benefits through G.O.Ms.No.130, Animal Husbandry, Dairying and Fisheries (FS2) Department, dated 28.06.2017. He also placed reliance on the judgment of the Full Bench of this Court in '**Government of Tamil Nadu Vs. R.Kaliyamoorthy**', reported in **2019 (6) CTC 705**, wherein it was held that the services rendered by a Government employee in non-provincialised service which were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits. According to him, since the respondents have not denied the grant of similar relief to the petitioner in W.P.MD.No.20756 of 2016, they cannot discriminate the claim of the appellant herein.

5. Per contra, the learned Special Government Pleader appearing for the respondents would submit that the order passed in W.P.MD.No.20756 of 2016 was not in accordance with Rule 11 of the Tamil Nadu Pension Rules,



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1978 and therefore, it would not be appropriate to rely on this precedent and extend wrong benefits to the others also. According to him, there is no provision to count the services rendered under the statutory body or other State Government Organisation like FFDA.

6. In *R.Kaliyamoorthy's case (supra)*, the point of reference before the Hon'ble Full Bench was as to 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. After a detailed discussion and by analysing the provisions of the Tamil Nadu Pension Rules, the Hon'ble Full Bench had summarised its findings in paragraph 45 of its order as hereunder:-

.... “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



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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.”.....

7. The services rendered by the appellant under FFDA is a non-



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provincialised service. However, by various Government orders, the services of the FFDA employees were provincialised and also regularised prior to 01.04.2003 itself. In the light of the decision in ***R.Kaliyamoorthy's case***, the services of the respondents herein under FFDA, which were regularised before 01.04.2003, requires to be counted for the purpose of conferment of pensionary benefits.

8. This apart, the respondents have not denied that similar benefits were given to the writ petitioner in W.P.MD.No.20756 of 2016, wherein they had reckoned the service rendered by the petitioner in FFDA, as qualifying service for the pensionary benefits, through orders in G.O.Ms.No.130, Animal Husbandry, Dairying and Fisheries (FS2) Department, dated 28.06.2017. The only objection appears to be that the order was not in conformity with the pension rules. We do not endorse the objection since the respondents have not chosen to challenge this order of the Madurai Bench, but rather had given credit to the service rendered by the petitioner therein under FFDA.

9. In service jurisprudence, the normal rule is that when a particular



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set of employees are given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so, would amount to discrimination and would be in violation of Article 14 of the Constitution of India. This legal principle has been reiterated by the Hon'ble Supreme Court in several of its decisions. In '*State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others*' reported in **2015 (1) SCC 347**, the Hon'ble Supreme Court had reiterated this position of law and held that this principle needs to be applied in service matters, more emphatically as the service jurisprudence evolved by the Hon'ble Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. The decision further goes to state that the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

10. In the light of the aforesaid decision of the Hon'ble Supreme Court, this defence of the respondents for denying to extend the benefits of a similarly placed employee to the appellant herein also, cannot be sustained.

11. The Writ Court while passing final orders on 21.07.2022, had held



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that regularisation or permanent absorption can never be claimed as a matter of right and the principles of equality cannot be complied in respect of an illegality. Reliance was also placed on the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of '*State of Karnataka Vs. Umadevi & others*' reported in (2006) 4 SCC 1 and held that the similar cases were considered and the orders were obtained from the High Courts and that the benefits were extended indiscriminately following a rule of law and the principles settled in *Umadevi's case (supra)* and accordingly, dismissed the Writ Petition.

12. This is not a case where the appellant seeks for regularisation of his services under FFDA. It is also not the defence of the respondents herein that the appellant's services under FFDA, cannot be treated as pensionable service, in view of their alleged irregular appointment. As a matter of fact, the respondents themselves have recognised the services of FFDA employees to be regular and had provincialised it by relaxation of the relevant rules and had also regularised his services. Even before the learned Single Judge, such objections were not raised, questioning the regularisation of FFDA services or claiming such services to be irregular or illegal.



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13. The principles enunciated in *Umadevi's case (supra)* was with regard to the claim of the temporary, part-time, daily wage employees for regularisation of their services and the Hon'ble Supreme Court had laid down the principles under which the regularisation can be denied. Neither the grievance of the appellant nor the defence of the respondents herein touches upon the past regularisation of the services of FFDA employees, but relates to counting of the appellant's past services under FFDA. Hence, the reliance placed on *Umadevi's case (supra)*, will have no application at all to the facts of this case.

14. The learned Single Judge had also referred to the employment of the appellant under FFDA to be illegal. We do not approve this finding. The services of the appellant along with other FFDA employees was duly regularised through Government Orders and thereafter, their services were also absorbed under the Fisheries Department. The orders for regularisation was done, after due relaxation of the rules, which is legally permissible. We do not approve of the observation of the learned Single Judge that the High Court's orders granting reliefs to the similarly placed employees are contrary



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to the judgment in *Umadevi's case (supra)* and therefore, had lost their status as a precedent. We have already held the inapplicability of the legal ratio in *Umadevi's case* to the facts of the present case.

15. The orders passed by the Writ Courts to similarly placed persons have not been challenged, but on the other hand, the respondents themselves have complied with the directions and extended the benefits of counting of the past FFDA services of those employees. When the issue before the learned Single Judge, was not with regard to the sanctity of regularisation of those employees, holding such orders to be *per incuriam*, without any other findings, will have no legal sanctity. Thus, we do not approve of all the findings rendered by the Writ Court in the order impugned before us.

16. For all the foregoing reasons, the impugned order dated 21.07.2022 passed in W.P.No.1869 of 2015 by this Court, is hereby set aside and the Writ Appeal stands allowed. Consequently, there shall be a direction to the respondents herein, to forthwith pass orders, reckoning the service rendered by the appellant in FFDA, as a qualifying service for his pensionary benefits. Such orders shall be passed, atleast within a period of



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four (4) weeks from the date of receipt of a copy of this judgment. No costs. Connected miscellaneous petition is closed.

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[M.S.R, J.]

[R.S.V, J.]

28.10.2025

Index: Yes
Speaking order
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Neutral Citation: Yes

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and
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judgment made in
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