

WP(MD) No.14968 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP(MD) No.14968 of 2019
&
WMP(MD) No.11487 of 2019

S.Rajendran

.. Petitioner

Vs.

- 1.The Secretary to Government
Municipal Administration & Water Supply Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of Municipal Administration,
Chepauk, Chennai – 600 005.
- 3.The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Campus,
Nandanam, Chennai – 600 035.
- 4.The Commissioner,
Karaikudi Municipality,
Karaikudi, Sivagangai District.

..Respondents



WP(MD) No.14968 of 2019

WEB COPY

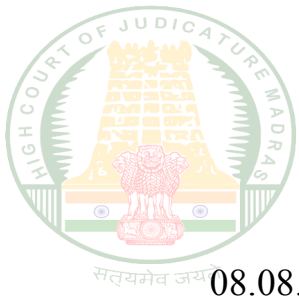
Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorarified mandamus to call for the records in pursuant to the impugned order issued by the 4th respondent in proceedings Na.Ka.No.3297/2018/C4 dated 06/08/2018 and quash the same & to consequently grant pension to the petitioner under the Tamil Nadu Pension Rules 1978 (old pension scheme) by counting 50% of the services rendered by him from 08.08.1986 to 11.08.2006 as NMR on daily wages along with his regular service from 11.08.2006 to 31.01.2018 (i.e., till his retirement) as qualifying service with all consequential service and monetary benefits.

For Petitioner : Mr.R.Prem Narayan
For RR1 to R3 : Mr.G.V.Vairam Santhosh
Additional Government Pleader
For R4 : Mr.E.P.Venkateshwar
Standing Counsel

ORDER

Under assail is the order dated 06.08.2018 passed by the Commissioner, Karaikudi.

2. The case of the writ petitioner is that he was wokring as Record Clerk in Karaikudi Municipality, he was originally appointed as NMR on daily wages from 08.08.1986 to 11.08.2006. His service was regularized from 11.08.2006. He attained the age of superannuation on 31.01.2018. He sent representation to the respondents to grant pension under Rule 11 'The Tamil Nadu Pension Rules, 1978 (Old Pension Scheme)' (herienafter referred as 'Rules') by counting 50% of the service rendered by him from



WP(MD) No.14968 of 2019

WEB COPY

08.08.1986 to 11.08.2006 as NMR on daily wages along with his regular service from 11.08.2006 to 31.01.2018 that is till his retirement. The fourth respondent passed the order impugned by stating that the writ petitioner was regularized after 31.01.2018 and therefore, he is not entitled for pension under the said Rules/Scheme. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is entitled by counting 50% of the service rendered by him as NMR on daily wages from 08.08.1986 to 11.08.2006, as per Rule 11 of The Tamil Nadu Pension Rules, 1978.

4. *Per-contra*, the learned Additional Government Pleader appearing for the respondents would submit that the writ petitioner was appointed and employed in the permanent post since 11.08.2006 only and he is entitled only to Contributory Pension Scheme under the provisions of the Rules and it shall not apply to the persons engaged on casual and daily rate employee. Rule 11 of The Tamil Nadu Pension Rules, 1978, does not apply to the provisions of Old Pension Scheme to the casual or daily rate employees. To strengthen his contentions, he has relied upon the judgment of the Hon'ble Full Bench of this Court



WP(MD) No.14968 of 2019

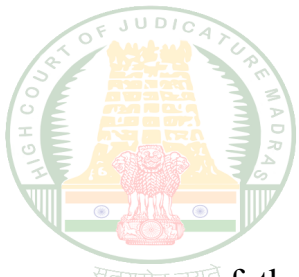
WEB COPY

reported in [(2019) 6 CTC 705] in the case of **The Government of Tamil Nadu represented by its Secretary to Government Public Works Department Secretariat Chennai and Ors. Vs. R. Kaliyamoorthy** to show that the Government Servants who were appointed in the temporary service before 01.04.2003 who were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past period of service for the purpose of determination of qualifying service for pension.

5. I have considered the submissions made on either side and perused all the available materials on record.

6. It is seen from records that the writ petitioner was working as NMR on daily wages with the fourth respondent from 08.08.1986 to 11.08.2006, he was regularized to the post of Record Clerk vide GO (Ms).No. 21 [Municipal Administration and Water Supply Department] dated 23.02.2006. He was regularized to service from 11.08.2006 as per the said GO.

7. It is pertinent to mention that the The Tamil Nadu Pension Rules, 1978 shall not apply to the Government Servants appointed on or after 1st of April 2003, to services and posts in connection with the affairs



WEB COPY

of the State which are borne on pensionable establishments. Whether temporary or permanent. The said Rule 2 is as follows:

“2. Application - Save as otherwise provided in these rules, these rules shall apply to all Government Servants appointed to services and posts in connection with the affairs of the State which are borne on pensionable establishments whether temporary or permanent, but shall not apply to -

(a) persons in casual and daily rated employment,

(b) persons paid from contingencies; /

(c) persons employed on contract except when the contract

provides otherwise;

(d) members of the All-India Services;

(e) persons entitled to the benefit of a Contributory Provident Fund;

(f) persons who are entitled to the benefits under the Factories Act, 1948 and the Employees' Provident Fund Act, 1952,

excluding those who are governed by Statutory Service Rules and belong to pensionable service.”

8. It is pertinent to mention that the Government has subsequently issued GO(Ms).No.408 Finace (Pension Department dated 25.08.2009), wherein also it has been indicated that under Rule 2 and Rule 11 of the Rules, the 50% of the past service of daily rated employee persons cannot be taken into consideration. The Hon'ble Full Bench judgment dated 03.12.2019 has observed in paragraph No.45, which reads as



under:
WEB COPY

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 W.A.No. 158 of 2016 etc., batch proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.*

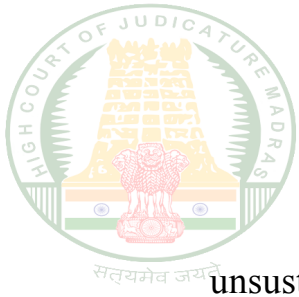
(ii) *Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.*

(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 W.A.No. 158 of 2016 etc., batch 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."*

9. By applying the ration laid down by the Hon'ble Full Bench, in the instant case on hand the writ petitioner was neither absorbed prior to 01.04.2003 nor appointed prior to 01.04.2003. Hence, his claim is



WP(MD) No.14968 of 2019

WEB COPY

unsustainable in law. There is no merit in these writ petition and the same is liable to be dismissed.

10. In the result, this writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.03.2025
(2/2)

NCC : Yes
Index : Yes
Internet : Yes
nst
To

- 1.The Secretary to Government
Municipal Administration & Water Supply Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of Municipal Administration,
Chepauk, Chennai – 600 005.
- 3.The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Campus,
Nandanam, Chennai – 600 035.
- 4.The Commissioner,
Karaikudi Municipality,
Karaikudi, Sivagangai District.



WEB COPY



WP(MD) No.14968 of 2019

M.JOTHIRAMAN, J.

nst

WP(MD) No.14968 of 2019
&
WMP(MD) No.11487 of 2019

Dated: 18.03.2025
(2/2)