



W.A.(MD)No.2140 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.08.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.2140 of 2021
and
C.M.P.(MD)No.10017 of 2021**

- 1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai - 9.
- 2.The Principal Chief Conservator of Forest,
Pangal Building, Saidapet, Chennai - 15.
- 3.The District Forest Officer,
Kodaikanal Forestry Division,
Dindigul District.

... Appellants

Vs.

- 1.S.Pandiammal
- 2.The Principal Accountant General of Tamil Nadu,
Teynampet, Chennai - 18.

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.5533 of 2019 dated 12.03.2019 on the file of this Court.



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For Appellants : Mr.N.Satheeshkumar,
Addl. Government Pleader.

For Respondents : Mr.Kanna Patel for R1
Mr.M.Gunasekaran for R2

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The Government of Tamil Nadu has filed this writ appeal challenging the order dated 12.03.2019 made in W.P.(MD)No.5533 of 2019 filed by the first respondent herein.

2.The first respondent's husband joined the Forest Department as Plot Watcher on daily wage basis on 01.04.1983. He was regularized with effect from 05.06.2008 and brought under special time scale of pay. He passed away on 12.08.2012. Thereafter, the writ petitioner sent a representation to the third appellant for including 50% of the service put in by her husband prior to regularization along with regular service for computing his pension. His request was not considered. Hence, W.P. (MD)No.5533 of 2019 came to be filed. The learned Single Judge disposed of the writ petition in the following terms:-



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*“5.However, a Division Bench of this Court has considered a similar question in **the Government of Tamil Nadu & Others Vs. K.Sakthivel & Another (W.A.No.51 of 2018 and etc., batch cases)**, wherein, the Division Bench of this Court has held that similarly placed person like the present petitioner, would be entitled to addition of 50% of the services rendered as a Plot Watcher on daily wage basis and had opined that the fixation of cut off date has no rationale.*

6.In view of the said judgment of the Hon'ble Division Bench of this Court, the respondents are directed to count 50% of the service of the petitioner's husband rendered as Plot Watcher on temporary basis from 01.04.1983 to 04.06.2008 and calculate the pension and pay the same within a period of 12 weeks from the date of receipt of a copy of this order.”

Questioning the same, this writ appeal has been filed.

3.The question that calls for consideration in this writ appeal is whether the order of the learned Single Judge deserve to be sustained.

4.As rightly contended by the learned Additional Government Pleader, the order of the learned Single Judge rests entirely on the decision rendered in W.A.No.51 of 2018 and etc batch cases



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(Government of Tamil Nadu Vs. K.Sakthivel). This issue was specifically dealt with by the Hon'ble Division Bench in the decision reported in 2019 (6) CTC 705 (***The Government Of Tamil Nadu vs R. Kaliyamoorthy***). The issue referred for consideration has been formulated in the following terms:-

“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, 1978 in the light of the amendments to the aforesaid rules vide G.O. Ms. No.259, Finance (Pension) Department dated 06.08.2003 and G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010.”

5.The reference was answered as follows:-

“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*



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(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.”



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6. Admittedly, the writ petitioner herein was appointed only on daily wage basis. He was absorbed to regular service only after the cut off date ie., 01.04.2003. The Hon'ble Full Bench had held that in that event, he will not be entitled to count half of his past service for the purpose of determination of qualifying service for pension.

7. This decision was subsequently followed by a coordinate Division Bench in W.A.(MD)No.963 of 2018 dated 05.08.2024 (State of Tamil Nadu Vs. M.Sakthi). It was also a case of Plot Watcher. Paragraph Nos.7 and 8 of the order dated 05.08.2024 in W.A.(MD)No.963 of 2018 read as follows:-

“7.This judgment of the Full Bench has been taken up further in appeal before the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.15406 of 2021. The Hon'ble Supreme Court had observed as follows:

“While disposing of Writ Appeals which orders are presently under challenge, the Division Bench of the High Court relied upon the law laid down by full bench of the High Court in Govt. of Tamil Nadu and Others versus R.Kaliyamoorthy [reported in 2019 Vol.VI, CTC 705].



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Paragraphs 40 to 42 of the decision of the Full Bench were as under:

“40. For example, if a person is appointed prior to 01.04.2003 in a non-provincialised service or on consolidated pay or on honorarium or daily wage basis and later to a cadre post on temporary basis under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and such service is regularized after 01.04.2003, such Government employee is eligible for Government Pension under the Tamil Nadu Pension Rules but at the same time would not be eligible to include half of services rendered in such capacity viz. I) Nonprovincialised services ii) Consolidated pay, iii) honorarium; or iv) daily wage basis to his regular service.

41. Thus, a government servant who may have been appointed before the cut-off dated of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularization is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10(a) (i) alone will be entitled to get pension.

42. 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



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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, in our opinion, it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service.”

In so far as the instant matters are concerned, the Division Bench observed as under:

“22. Therefore, in view of the law laid down as aforesaid, we have no hesitation in holding that the appeals filed by the State are liable to be allowed. There is no more difficulty we may face. This is, with respect to catena of decisions available without taking note of the relevant provisions. Even this issue has been answered by the Full Bench of this Court referred to above, by holding that an issue which is not considered consciously leading to a decision may not be a binding precedent. Thus, illegality cannot be allowed to perpetuate.”

We have heard Mr. S. Nagamuthu, learned Senior Advocate in support of the petitions and Mr. Jaideep Gupta, learned Senior Advocate for the respondents.

Mr. Nagamuthu attempted to distinguish the instant matters, submitting inter alia that the services of the



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petitioners were regularized before 01.04.2003 and as such the decision of the Full Bench would not govern the fact situation before this Court. He could not however, point out any document nor was any such assertion made at any juncture in any of the pleadings.

We therefore, see no reason to entertain these petitions which are accordingly dismissed.

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.”
(Emphasis Supplied)

8. In view of the direct pronouncement rendered by the Full Bench which had been affirmed by the Hon'ble Supreme Court, we hold that the learned Single Judge had erred in directing the appellants herein to consider one half of the service of the writ petitioner before his absorption on 07.08.2009 along with regular service as the period of service for calculating pension and other benefits.”

8.The learned counsel for the writ petitioner contended that since the learned Single Judge had allowed the writ petitions before the pronouncement of the decision by the Hon'ble Full Bench, the decision of



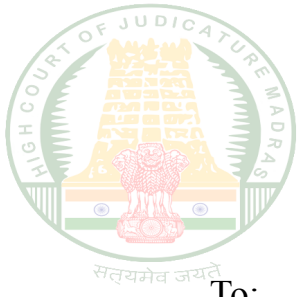
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the Hon'ble Full Bench will not apply to his case. This contention is without any substance. It is well settled that while legislation is prospective unless it is specifically declared to be retrospective, a judgment would operate retrospectively.

9.In this view of the matter, the order of the learned Single Judge is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (K.R.S. J.,)
14.08.2025

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