BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.10.2024

Delivered On : **27.01.2025**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.22771 of 2021

V.Rajathi ... Petitioner

Vs.

1.The Secretary Government,
Government of Tamil Nadu,
Municipal Administration & Water Suply
(TP1) Department,
Fort St. George, Chennai - 600 009.

2.The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 108.

3.The Assistant Director of Town Panchayat,
Office of the Assistant Director of Town Panchayat,
Madurai.

4.The Executive Officer,
Thenkarai Town Panchayat,
Theni District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents herein to include the name of petitioner in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978, as per the order dated 01.04.2013, made in W.P.(MD)No.15823 of 2012, etc., regularizing the service of petitioner on completion of three years service from the date of joining on 09.08.2001.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.P.Veera Kathiravan
Additional Advocate General
Mr.C.Satheesh
Government Advocate

ORDER

This Writ Petition is filed, seeking to direct the respondents to include the name of the petitioner in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978, as per the order dated 01.04.2013, made in W.P.(MD)No.15823 of 2012, etc., regularizing the service of the petitioner on completion of three year service from the date of joining on 09.08.2021.

2.Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents and carefully perused the materials available on record.

3.The petitioner was initially appointed as Sweeper in the 4th respondent Town Panchayat, by proceedings of the 4th respondent in Na.Ka.No.392/2000, dated 09.08.2001, in a regular post in a vacancy, which had arisen due to the retirement of one Tmt.T.Kuppamal, on attaining superannuation. The 4th respondent appointed the petitioner as per G.O.Ms.No.129, Municipal Administration and Water Supply Department, dated 20.05.1998, as sponsored by the Employment Exchange, Theni, on

26.06.2001, on a consolidated pay of Rs.900/- per month. In view of the ban imposed by the State in the matter of appointment, the petitioner was not regularized on completion of 3 years of continuous service. Thereafter, she was absorbed into service by bringing her service into timescale of pay, by proceedings of the 4th respondent in Na.Ka.No.392/2000, dated 04.08.2006. Since the petitioner was not regularized from the date of completion of 3 years of continuous service from the date of her initial appointment, she filed a Writ Petition in W.P.(MD)No.15823 of 2012, challenging the regularization order, regularizing her with effect from 04.08.2006. This Court, by order dated 01.04.2013, in W.P.(MD)No.15823 of 2012 allowed the aforesaid Petition and the operative portion of the same is extracted as follows:-

> *"6................As per G.O.Ms.No.125, they should have been brought to scale of pay on completion of 3 years of service on consolidated pay. Before, they were brought to consolidated scale of pay, they rendered long years of service in Town Panchayat as NMRs on daily wage basis. Furthermore, when so many orders are passed by this Court, the State should have given benefit of those orders to all similarly situated persons, instead of forcing those persons to come to this Court and to seek relief in terms of those orders. These persons are sanitary workers belonging to the lower lowest strata of the Society.*
>
> *7. Taking into account these facts, I am not inclined to dismiss the Writ Petitions on the ground of latches. Hence, these Writ Petitions are allowed, in view of the earlier orders referred to above. The impugned orders are quashed and respondents are directed to*

regularize the service of the petitioners on completion of 3 years of service in consolidated pay and to pay the benefits accordingly. The respondents are directed to undertake the aforesaid exercise and to pay the benefits within a period of 12 weeks from the date of receipt of a copy of this order."

4.Pursuant to the aforesaid order, the respondents regularized the petitioner's service on completion of 3 years of service from the date of initial joining on 09.08.2001 and her name was entered for old pension under the Tamil Nadu Pension Rules, 1978. Thereafter, a new pension scheme 2003 was introduced. But the new incumbent in the office of the fourth respondent without any notice or valid reason, changed the petitioner's pension into the New Pension Scheme, 2003. Claiming that the petitioner is entitled for the benefit of old pension under the Tamil Nadu Pension Rules, 1978, which was enforced from 01.01.1979 to 31.03.2003, since she is appointed in a substantive post on 09.08.2001 itself, she made several requests to the respondents to include her name in the Old Pension Scheme. However, without heeding to her request, her name was shifted from the Old Pension Scheme into the new contributory pension scheme without notice or issuing any proceedings. Hence, this Writ Petition.

5.As soon as the petitioner's service was regularized by the fourth respondent in Na.Ka.No.392/2000 dated 04.08.2006, she filed a Writ Petition in W.P.(MD)No.15823 of 2012, challenging the said proceedings of the fourth respondent, in so far as, it failed to regularize the service of the petitioner on completion of 3 years of service as per the conditions of appointment and consequently to direct the respondents to regularize the service of the petitioner from 08.08.2004 in the post of Sanitary Worker on completion of 3 years as per conditions of her appointment on par with other similarly placed employees and make necessary entries in her service register and pay all the monetary benefits accrued to her service on par with the persons similarly placed in G.O.Ms.No.570 dated 15.11.2010 and G.O.Ms.No.312 dated 09.08.2011 within a reasonable time. This Court by order dated 01.04.2013 allowed the aforesaid petition. The period of service rendered by the petitioner was tabulated in the aforesaid order and the same is extracted as follows:-

S. No.	Petitioner's name/Designation	Date of Appointment	Completion of three years	Impugned order of 4th respondent
1.	V.Rajathi Sanitary Worker	28.02.2001	08.08.2004	Na.Ka. 392/2000 Dt.04.08.2006

6.Though the petitioner was appointed on 28.02.2001, pursuant to the order passed by this Court in W.P.(MD)No.15823 of 2012, her service was regularized with effect from 09.08.2004, that is, precisely on the date of completion of 3 years of service from her date of appointment. Thereafter, the fourth respondent had changed the petitioner's pensionary benefit from the Old Pension Scheme into the New Pension Scheme 2003 without notice or issuing any proceedings in this regard. Thus, the question to be decided is as to whether the petitioner is entitled for pension under the Old Pension Scheme? In this regard the petitioner made a representation on 08.10.2021, to the fourth respondent Panchayat. The Tamil Nadu Pension Rules, 1978 came into force with effect from 1st January 1979. Rule 3(o) of the Tamil Nadu Pension Rules, 1978, defined "*qualifying service - means permanent or officiating service (including temporary service under emergency emergency provisions) rendered in a post included in a pensionable establishment*". No doubt, the petitioner was appointed in a vacancy which had arisen due to the retirement of one Kuppammal on 28.02.2001, as sponsored by the Employment Exchange, Theni, appreciating her registration No.W/2582/97 dated 29.07.1991 on the file of the District Employment Office, at Theni. Though she was appointed in a consolidated pay of Rs.900/- per month temporarily, the said appointment was made in a vacancy for a substantive post, which had arisen due to the voluntary retirement of the then incumbent one Kuppammal. It is needless to state that under Rule 3(o) qualifying service under the Tamil Nadu Pension Rules, 1978, for pension would also include temporary service under emergency provisions rendered in a post included in a pensionable establishment.

7.The Tamil Nadu Pension Rules, 1978, came into force on 1st January 1979. The proviso to Rule 2 of the aforesaid Rules provides that the aforesaid Rules shall not apply to the Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State, which are borne on pensionable establishment, whether temporary or permanent. Chapter 3 of the Tamil Nadu Pension Rules, 1978, deals with qualifying service. Rule 11 provides for commencement of qualifying services as follows:-

> *"11.Commencement of qualifying service - (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."*

8.Rule 11(2) of the Tamil Nadu Pension Rules, 1978, is extracted as follows:-

> *"[(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:-*
>
> *(i)Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.*
>
> *(ii)Service paid from contingencies shall be in a type of work or job or which regular posts could have been sanctioned, for examined Chowkidar.*
>
> *(iii)Services shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.*
>
> *(iv)Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.*

(v)Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authentic records of service may be available.

(vi)Pension or revised pension admissible as the case shall be paid from the 23rd June, 1988."

9.Rule 11(4) of the Tamil Nadu Pension Rules, 1978, is extracted as follows:-

"[(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted fro retirement benefits along with regular service, subject to the following conditions, namely :-

(I)Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment.

(ii)Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii)Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regulard service before 1st April 2003 without a break."

10.A careful reading of Rule 11(2) and Rule 11(4) would make it clear that the aforesaid Rules are contradictory to each other. While Rule 11(2) provides half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to certain conditions, Rule 11(4) of the aforesaid Rules, 1978, provides that half of the service rendered under the State Government in non-provincialized service, consolidated pay, honororium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service subject to certain conditions. Rule 11(2) do not prescribe any cut off date as prescribed in Rule 11(4), that is, 1st April 2003 for counting half of the service rendered under the State Government for retirement benefits along with regular service. The Hon'ble Division Bench of this Court in W.A.(MD)No.181 of 2019 in the case of the ***Principal Secretary to Government School Education Department and Others versus P.Sasikala Devi and another***, in which, I (LVGJ) was one of the party, by judgment dated 10.06.2024, has dealt with a case of determining qualifying service of a Librarian, relied upon the order passed by this Court, by a learned Single Judge in W.P.No.24236 of 2013 dated 18.06.2014, in which it has been held that, Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant in view of Rule 11(2) of the Tamil Nadu Pension Rules and the relevant portion of the same is extracted as follows:-

> *"12.The next limb of argument raised by the appellants is that the first respondent herein is not entitled to the benefit of counting half of her service rendered in consolidated pay for the reason that she was absorbed into regular time scale of pay after 01.04.2003.*

However, the same is no more res integra. The learned Single Judge proceeded to rely upon the order passed by this Court in W.P.No. 24236 of 2013 dated 18.06.2014, in which the learned Single Judge of this Court has dealt with a similar matter, wherein the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption was quashed as arbitrary and violative of Article 14 of the Constitution. The relevant portion of the said order is extracted as follows :-

"23. I am of the considered view that the action of the Departments in denying to count half of the long service rendered by the persons before the absorption into regular service, who are not fresh recruits, but absorbed into regular service after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, has no rationale basis.

24. The State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the employees like the petitioner, who had rendered more than three decades of service before absorption. The petitioner or the persons situated like him cannot be blamed for non-absorption before 01.04.2003, though they rendered 2 to 3 decades of service before 01.04.2003.

25. It is a different matter if a person joined the service after 01.04.2003 on daily wages basis and he was absorbed thereafter. But in my view, the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption has no rationale basis and the same is arbitrary and violative of Article 14 of the Constitution. In fact Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant, in view of Rule 11(2) of the Tamil Nadu Pension Rules. Rule 11(2) does not prescribe any cut off date *as to absorption into regular service. The benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4). Thus, the cut off date of absorption as 01.04.2003 prescribed in Rule 11(4) shall be ignored. Otherwise, it will lead to grave injustice.*

26. The Government cannot deny the pensionary benefit to the petitioner by fixing the cut off date as 01.04.2003 for absorption thereby refusing to take into account half the service rendered before absorption for the purpose of pension."

13.That apart the learned Single Judge has also recorded that the learned Additional Government Pleader fairly conceded that the State has not preferred any Appeal as against the said judgment in W.P.No.24236 of 2013 dated 18.06.2014 extracted supra. Only in the light of the same, the learned Single Judge proceeded to allow the Writ Petition and we are of the considered view that there is no infirmity in the same."

11.Obviously, Rule 11(2) does not prescribe any cut off date as to absorption into regular service and hence the benefit given under Rule 11(2) cannot be taken away by Rule 11(4) as the same would amount to arbitrariness. In the instant *lis* in hand, the petitioner was appointed as Sweeper in the fourth respondent town panchayat temporarily on a consolidated pay of Rs.900/- per month in a regular vacancy which had arisen due to the voluntary retirement of the then incumbent one Kuppammal, which had arisen on 28.02.2001. The petitioner was appointed as Sweeper in the said vacancy on 09.08.2001. The term "qualifying service" is defined in Rule 3(o) of the Tamil Nadu Pension Rules, 1978, as that one which also includes temporary service under emergency provisions rendered in a post included in a pensionable establishment. It is needless to state that the post of Sweeper in a town panchayat/local body would fall under the category of pensionable establishment. However, the definition for qualifying service as provided under Rule 3(o) of the Tamil Nadu Pension Rules, 1978, makes it clear that the temporary service should be one appointed under emergency provisions. But as far as the post of the petitioner is concerned the same falls under the various categories of the basic services. The Tamil Nadu Basic Services are provided under the Special Rules for Tamil Nadu Basic Service in Section 19 - Service Manual - Volume – III, 1970, vide G.O.Ms.No.1962, Public (Services -G) dated 25th June 1971. Under Section 19 of the Tamil Nadu Basic Service, several classes and categories of Government servants were constituted as basic services. The post of Sweeper would fall under Class 4 Category 11 of Section 19 of the Tamil Nadu Basic Service. Section 19(4) of the Tamil Nadu Basic Service provides for selection of direct recruits and the same is extracted as follows:-

> *"4.Selection of direct recruits:-*
>
> *a)Section of candidates to any of the categories by direct recruitment shall be made in the manner indicated below:-*
>
> *The appointing authority shall call for a panel of names from the Employment Exchange concerned, informing that office of the anticipated vacancies of the posts and the qualifications prescribed for such posts. A selection shall be made only from out of the candidates included in the panel sent by the Employment Exchange*

concerned. If the appointing authority finds that none of the candidates in the panel sent by the Employment Exchange is suitable for appointment, he shall send the requisition to the Employment Exchange for forwarding a second list or necessary further lists of candidates and make his selection from out of such list or lists. Appointment of persons not nominated by the Employment Exchange concerned may be made only when the Employment Exchange concerned is unable to sponsor qualified candidates, and in such cases of appointment both the Employment Exchange concerned and the immediate superior officer of the appointing authority should be informed of the appointment and the circumstances in which such appointments had to be made."

12.Now coming to the definition of qualifying service, as far as the inclusion of temporary service under emergency provisions as provided under rule 3(o) of the Tamil Nadu Pension Rules, 1978, is concerned, the same has been dealt with by the Hon'ble Full Bench of this Court in the case of ***M.Sivappa versus State of Tamil Nadu and others*** are dated 26.02.2024 and the relevant portion of the same is extracted as follows:-

"27. One of us (Hon'ble Mr. Justice C.Saravanan) had an occasion to consider the question of regularisation in the light of the relevant Government Orders issued. After referring to the judgment of the Hon'ble Supreme Court in Sheo Narain Nagar and others vs. State of Uttar Pradesh and others, and the judgment in Delhi Jal Board vs. National Campaign for Dignity and rights of Sewerage and Allied Workers and others reported in MANU/SC/0794/2011: 2011:INSC:486 2011 (8) SCC 568, invoked the Directive Principles of State Policy enshrined in Articles 38, 39, 41, 42 and 43 of the

Constitution of India, to conclude that a welfare State cannot indulge in exploitation of its own citizens by employing them on a temporary basis. We cannot also loose sight of the fact that the Government as a welfare State comes up with various welfare schemes, which are by their very nature temporary and appointing permanent employees for the work relating to those schemes would prove to be a huge burden on the exchequer. In such cases, it will definitely be open to the Government to employ part-time or temporary employees on daily wages or on consolidated salary. However, we find that such temporary or part-time employees are engaged even where the posts are covered by the Special Rules for Tamil Nadu Basic Service.

28. The Special Rules for Tamil Nadu Basic Service were framed vide G.O.MS. No.1962 Public (Services-G) dated 25.06.1971. The said service called the Tamil Nadu Basic Service consists of atleast 86 categories of employees, who constitute the said service. Method of appointment of those 86 categories of the employees is also prescribed in the said Rules. The fact that a particular cadre of employees is created by a Special Rules would definitely lead to the inference that those posts are permanent in nature and thre is a perennial requirement of such jobs. Employment of persons on part-time or a temporary basis to such posts which form part of the Tamil Nadu Basic Service would, in our considered opinion, definitely be an act of exploitation by the State. A welfare State is required to be a model employer and not an exploiter which indulges in slavery of its own citizens.

29. The Chief Secretary in his affidavit filed on 12.01.2024, pursuant to the directions issued by us, has taken care to point out that deployment of persons in various Government schemes on a temporary basis, cannot be avoided. While we agree with the said claim of the Government, what we are unable to digest is employment of persons on a temporary basis or on a part-time basis *even in posts which are permanent and are covered by the Special Rules for Tamil Nadu Basic service. The practice of employing persons on a temporary basis to permanent posts also is not a healthy practice. We must point out at this juncture that there is a provision for temporary appointment under the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, Section 17 of the sald Enactment provides for making of temporary appointments in public interest in case of emergencies. The said enactment would apply only to the State and Subordinate Services and not to the basic service.*

30. Even the Tamil Nadu State and Subordinate Service Rules provides for temporary appointment under Rule 10(a)(i). Such enabling provision is conspicuously absent in the Special Rules relating to Tamil Nadu Basic Service. Such absence by itself would show that these posts which are covered by the Special Rules for Tamil Nadu Basic Service are permanent in nature and since the recruitment does not involve a complicated procedure as is done for the higher post, temporary appointments due to exigencies was not contemplated.................................

37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the Tamil Nadu Basic Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years of service as on 28.02.2006 would be entitled to regularisation dehors the nomenclature that is given to the appointment."

13.Though the aforesaid judgment was with respect to testing the constitutionality of G.O.Ms.No.74 dated 27.06.2013 which restricts the operation of G.O.Ms.No.22 dated 28.02.2006 only to full-time employees, the aforesaid judgment has had made it clear that, in the absence of any enabling provision providing for temporary appointment in the Special Rules relating to Tamil Nadu Basic Service, all the posts covered by the Special Rules for Tamil Nadu Basic Service are permanent in nature, as the recruitment do not involve a complicated procedure as done for higher post, temporary appointments due to emergency exigencies. Hence, it has become clear that in case of appointment of basic service post temporarily, the same need not be under emergency exigencies as all the posts relating to Tamil Nadu Basic Service could be only permanent in nature and cannot be temporary, even if they are appointed temporarily.

14.In the instant case, the petitioner was appointed through the sponsorship of the Employment Exchange, Theni District, in a vacancy to the post of Sweeper, which had arisen due to the voluntary retirement of the erstwhile incumbent. No doubt, since the appointment of the petitioner to the post of Sweeper was made to the post fourth respondent Town Panchayat, the service of Sweeper would be paid from contingencies. Pursuant to the order passed by this Court in W.P.(MD)No.15823 of 2012, the petitioner's service was regularized with effect from 09.08.2004, that is, on completion of three years from the date of appointment that is 09.08.2001. Since the date of regularization of the petitioner fell after 01.04.2003, the fourth respondent without any notice, valid reason or proceedings changed the petitioner's pension into the New Contributory Pension Scheme, 2001, which was earlier included in the Old Pension Scheme at the time of her appointment. The New Contributory Pension Scheme to the Tamil Nadu State Government employees with effect from 01.04.2003 was introduced by G.O.No.259 dated 6th August 2003, Finance (Pension) Department. The aforesaid Government order makes it clear that the New Contributory Pension Scheme will be introduced to the newly recruited employees and the same would apply to all the employees who are recruited on or after 01.04.2003. For better clarity, the same is extracted as follows:-

®
GOVERNMENT OF TAMIL NADU
2003

MANUSCRIPT SERIES

FINANCE (PENSION) DEPARTMENT

G.O. No.259, DATED 6th August, 2003

(Subhanu, Aadi-21 , Thiruvalluvar Aandu 2034)

Pension – Pension Scheme – Introduction of Contributory Pension Scheme to Tamil Nadu State Government employees with effect from 1.4.2003 – Amendment to Tamil Nadu Pension Rules, 1978 – Issued.

ORDER :

In the Budget for 2001-2002, the Government of India have announced that a new Pension Scheme based on defined contributions will be introduced to those who enter Central Government service (Defence, Railways, Posts, Telecom, Autonomous Bodies and Scientific Organisations) after 1.10.2001. The Government of India had constituted a Committee with Thiru B.K. Bhattacharya, former Chief Secretary, Government of Karnataka as Chairman to go into pension reform with the specific reference of recommending a contribution scheme.

2. The Government of Tamil Nadu had announced in the Budget Speech 2003-2004 to introduce a new Pension Scheme based on defined contributions for the employees of this State, who are newly recruited after 1.4.2003. Under the new Contributory Pension Scheme, each employee has to contribute a certain amount and Government may contribute a certain amount.

3. Accordingly, the following orders are issued :-

i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003.

ii) The employee's contribution and the Government contribution, if any, towards the scheme shall be spelt out separately.

iii) After issue of detailed orders from Government of India, introducing new scheme to their employees, the State Government will, if necessary, modify these orders and issue rules and regulations for the Contributory Pension Scheme for State Government employees recruited on or after 1.4.2003.

4. The following notification will be published in the Tamil Nadu Government Gazette :-

NOTIFICATION

In exercise of the powers conferred by the proviso to Articles 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

2. The amendment hereby made shall be deemed to have come into force on the 1st April of 2003.

AMENDMENT

In the said Rules, in Chapter I, the following proviso shall be added ...

15.It is needless to state that the New Contributory Pension Scheme is applicable only to the newly recruited employees who were recruited on or after 01.04.2003. The same would not be applicable to the petitioner who was appointed as early as on 09.08.2001 in a basic service post of the fourth respondent panchayat. Even the proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978, has provided that the Tamil Nadu Pension Rules, 1978, shall not apply to the Government servants who are appointed on or after 1st April 2003. I have already categorically held that the cut off date, that is, 1st April 2003, provided in Rule 11(4) of Tamil Nadu Pension Rules, 1978, for the purpose of calculation of half of service rendered under the State Government in non-provincialized service, consolidated pay honorarium or daily wage basis for counting for retirement benefits is a redundant and illegal. As such, cut off date would amount to dividing a homogeneous class of employees who were appointed before 1st April 2003 and regularized after 1st April 2003 by making them ineligible for the liberalized pension scheme provided under the Tamil Nadu Pension Rules, 1978. Such a classification cannot be based on any discernible rational principle when the Tamil Nadu Pension Rules, 1978, has made it clear that the contributory pension scheme would be given effect by the State of Tamil Nadu to its employees only with effect from 01.04.2003. The respondents in the counter affidavit filed has averred that though the petitioner was appointed on 09.08.2001, her service came to be regularized only with effect from 16.08.2004, that is, after the date of 01.04.2003, the date on which the

New Contributory Pension Scheme came into force and hence, she is entitled only to be enrolled in the New Contributory Pension Scheme. This aspect has already been dealt with by this Court in W.P.Nos.20154 of 2022, batch dated 19.02.2024 and the portion of the aforesaid order relevant to the facts and circumstances of this case is extracted as follows:-

> *"10. Accordingly, this Court held with regard to issue arises as to whether new pension scheme which came into effect from 01.01.2004, is applicable to the person who were already employed either on daily wages or as temporary employee and whether they are entitled to get pension under old pension scheme on being absorbed in permanent establishment after 01.01.2004. Therefore, merely because the petitioners were absorbed permanently after 01.01.2004 in the service, they cannot be denied their statutory right. That apart, already their 50% of service rendered as causal labourers prior to 01.01.2004, has counted for the purpose of grant of pension."*

16.As far as the cut-off date is concerned, the Hon'ble Full Bench of this Court in the case of in Writ Appeal Nos.158 of 2016, batch in ***Kaliyamorthy's*** case dated 25.07.2019 has observed as follows:-

> *"41. Thus, a government servant who may have been appointed before the cut-off date 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 regularisation 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 perse 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 regularised 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."*

17.However, the Hon'ble Full Bench of this Court had in the aforesaid case had dealt with those temporary appointments made in accordance with Rule 10(a)(1) under the Tamil Nadu State and Subordinate Service Rules. It is pertinent to mention here that in yet another case of ***M.Sivappa in*** W.P.No.23823 of 2023 dated 26.02.2024, another Full Bench of this Court has made it clear the question of temporary appointment will not arise in the case of basic services in view of the Tamil Nadu Basic Service Rules, 1970. Fully fortified by those two judgments, I have no hesitation to hold that, as far as the appointment of basic service is concerned, the appointees who are appointed before 01.04.2003, even if they are appointed temporarily in a vacancy which had arisen due to retirement of erstwhile incumbent and regularized after 01.04.2003, will be entitled for grant of pension under the Old Pension Scheme.

18.Accordingly, the Writ Petition is allowed, directing the respondents to include the name of the petitioner in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978. There shall be no order as to costs.

27.01.2025

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

To

1.The Secretary Government,
Government of Tamil Nadu,
Municipal Administration & Water Suply
(TP1) Department,
Fort St. George, Chennai - 600 009.

2.The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 108.

3.The Assistant Director of Town Panchayat,
Office of the Assistant Director of Town Panchayat,
Madurai.

4.The Executive Officer,
Thenkarai Town Panchayat,
Theni District.

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.22771 of 2021

27.01.2025