



W.P.(MD)No.22614 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.22614 of 2023

and

WMP (MD) Nos.18853 and 18854 of 2023

S.Vasuki

... Petitioner

Vs.

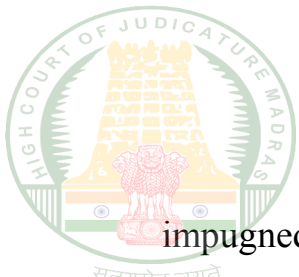
1. The Deputy Accountant General (Funds),
Office of the Principal Accountant General,
(Accounts and Entitlements),
No. 361, Anna Salai,
Teynampet,
Chennai.

2. The Registrar General,
High Court of Madras,
Chennai-104.

3. The Principal District and Sessions Judge,
Virudhunagar District
At Srivilliputhur.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a
Writ of Certiorarified Mandamus, calling for the records pertaining to the



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impugned proceedings of the 1st respondent in PAG(A and E)/FM.I/VI/Admission/2022-23/297/55964, dated 23.03.2023 and quash the same and consequently direct the respondents to allow the petitioner to continue her GPF account/contribution under old pension scheme.

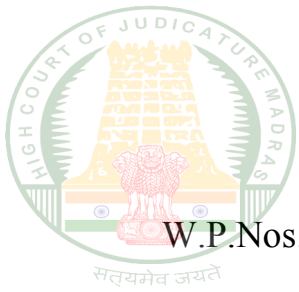
For Petitioner : Mr. RV.Rajkumar
For R1 : Ms.S.Mahalakshmi
For R2 & R3 : Mr.N.Tamil Mani
Special Government Pleader
For R4, 5, 7 & 8 : No appearance

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The writ petition has been instituted questioning the validity of the order dated 23.03.2023, rejecting the claim of the writ petitioner for extending the benefit of the Old Pension Scheme under the provisions of the Tamil Nadu Pension Rules, 1978.

2. When the matter was taken up for hearing, the learned counsel for the respondents submitted that the issue involved in the present writ petition has already been elaborately dealt with by this Court in its order dated 18.03.2024 in



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W.P.Nos.1661 of 2015, 19076 and 35462 of 2023 [*P.Jayakumari v. The*

Government of Tamil Nadu, Rep. by its Secretary to Government, Home (Courts

– II) Department]. The relevant portion of the order is extracted hereunder:

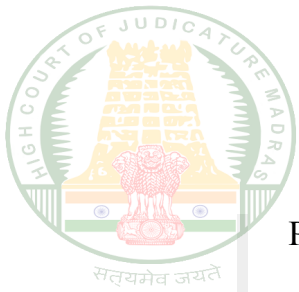
“10. Let us consider the reference made before the Full Bench in the case of R.Kaliyamoorthy reported in (2019) 6 CTC 705 cited supra. The reference reads as under:-

“1. This Full Bench was constituted by the Honourable The Chief Justice pursuant to the order dated 29.08.2018 passed by the Division Bench of this Court in W.A. No. 1218 of 2018 etc., batch to refer the below mentioned issue for an authoritative pronouncement:-

“In view of the provisions of the Tamil Nadu Pension Rules, as amended, if a government servant is regularised in service after 01.04.2003 whether such a person will be entitled to count 50% of the past service rendered prior to regularization for the purpose of computing his pension under the Old Pension Scheme.”

2. For the sake of clarity, we are paraphrasing the above reference as follows:-

“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



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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."

11. The reference has been answered by the Full Bench in Paragraph No. 45, which reads as under:-

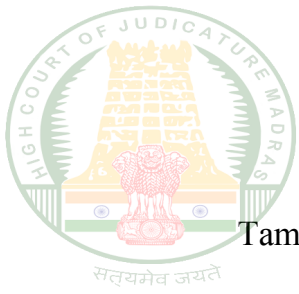
“ 45. In the light of the above, we answer the reference as follows:-

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 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



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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."

12. Therefore, the Full Bench Judgment is to be read in the context of the reference made and not beyond that. Accordingly, those who are freshly appointed on or after 01.04.2003 are not entitled to pension, in view of proviso Rule 2 of the Tamil Nadu Pension Rules, 1978.

13. Those Government Servants / employees appointed prior to the 01.04.2003 alone are entitled for the benefit of the Tamil Nadu Pension Rules, 1978.

14. "Appointed to a service" is defined under Section 3(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as under:-

“ **appointed to a service** means when a person appointed in accordance with this Act or in accordance with the rules applicable at the time, as the



case may be, discharges, for the first time the duties of the post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.”

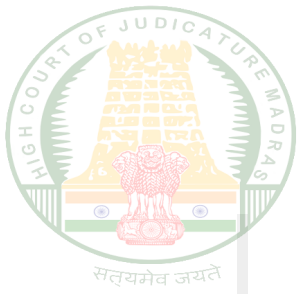
15. Section 2(1) of the erstwhile Tamil Nadu State and Subordinate Service Rules reads as under:

“**appointed to a service** means a person is said to be appointed to a service when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.”

16. Rule 10 speaks about temporary appointments and reads as under:-

“**10. Temporary appointments:**— a(i) (1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

#(Added Vide G.O.Ms.No.21, P&AR (S) Dept., 23-1-96 w.e.f. 23-1-96)



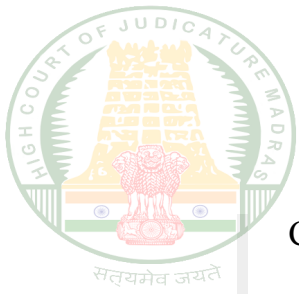
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Provided that no appointment @ by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts with in the purview of the Tamil Nadu Public Service Commission.

17. Corresponding Rule has been incorporated under Rule 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the said Rules 17 reads as under:-

“17. (1) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with the provisions of this Act and the special rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with this Act and the said rules: Provided that no appointment by direct recruitment under this section shall be made of any person other than the one sponsored by the Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Commission: Provided further that appointment by direct recruitment under this section in respect of posts within the purview of the



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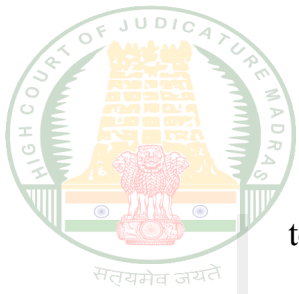
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Commission shall be made, only where new posts with new qualifications are created temporarily and where the Commission does not have a regular or reserve list of successful candidates for sponsoring.

18. Cogent reading of the provisions of the erstwhile Tamil Nadu State and Subordinate Services Rules and the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 would unambiguously stipulate that the temporary appointments are made only during administrative exigencies and cannot be construed as regular appointment.

19. Section 17(v) of the Act 2016, which is corresponding to Rule 10(a) (v) of the Erstwhile Tamil Nadu State and Subordinate Service Rules stipulates that “a person appointed under clause (i), (ii) or (iv) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category. The services of a person appointed under clause (i), (ii) or (iv) shall be liable to be terminated by the appointing authority at any time without notice and without any reason, being assigned”.

20. Therefore, these temporary employees are liable to be terminated and their services are not protected under the service conditions, as applicable



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to the regular employees. Therefore, the temporary employees are not extended with the service benefits, as applicable to the regular appointees, appointed in accordance with the Service Rules in force.

21. Temporary appointments are made on account of administrative exigencies and these temporary employees and their service are liable to be terminated at any time without assigning reason. They would not acquire any service right from and out of such temporary services except the benefits granted under the Rules.

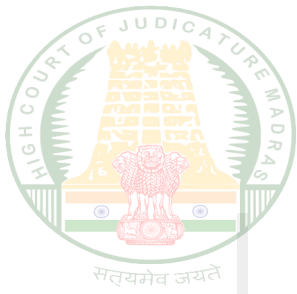
22. The Government order issued in G.O (Ms) No.259, Finance (Pension) Department dated 06.08.2003 as follows:-

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

NOTIFICATION

In the exercise of the powers conferred by the proviso to Article 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.



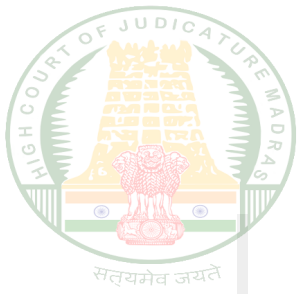
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AMENDMENT

In the said Rules, in Chapter I, the following proviso shall be added to Rule 2:-

“Provided that these rules shall not apply to Government Servants appointed on or after the 1 st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent”.”

23. Holistic reading of the Erstwhile Tamil Nadu State and Subordinate Service Rules and the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the definition of appointment into service would amplify that an employee regularly appointed in accordance with the Rules into a service before 01.04.2003 are alone entitled to avail the benefit of the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978. The temporary employees appointed prior to 01.04.2003 either under the Erstwhile Rule 10(a)(i) of the Tamil Nadu State and Subordinate Rules are not entitled to avail the benefit of the Old Pension Scheme under the provisions of the Tamil Nadu Pension Rules, 1978.

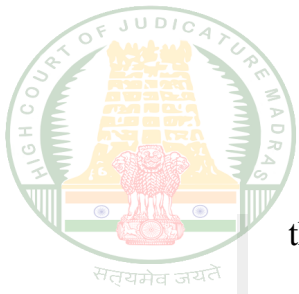


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24. Mr.Manoharan would drew the attention of this Court with reference to the High Court Circular issued in ROC.No.588-A/2006/C3 dated 29.03.2006, wherein a direction was issued to the appointing authorities to incorporate specifically in the appointment order that the appointment is subject to the conditions that their appointment to the post in the first appointment in Tamil Nadu Judicial Ministerial Services and any temporary service rendered by them in any post including the post of Steno Typist / Steno-Typist / Junior Assistant will not be considered for the purpose of service benefits with pay protection, increment, seniority and promotion (except pensionary benefits). Such common circular issued in the absence of any interpretation regarding the applicability of Old Pension Scheme and New Pension Scheme cannot be relied upon for the purpose of seeking the benefit under the Old Pension Scheme, i.e., Tamil Nadu Pension Rules, 1978.

25. Mr.Vijay Shankar relied on the Judgment of the Hon'ble Division Bench of this Court in the case of “***K.Mythili -vs- State, represented by the Secretary to Government***” in W.P.No.37448 of 2016 dated 13.03.2018, wherein the Hon'ble Division Bench of this Court considered the very same circular issued by the High Court and interpreted that merely stating that



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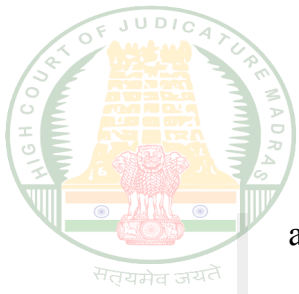


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the temporary employees are not entitled for other service benefits except for pensionary benefits would not confer any right on them to claim the benefits of Tamil Nadu Pension Rules, 1978. The said interpretation offered by the Hon'ble Division Bench of this Court was further adopted by another Division Bench of this Court in the case of “*M.Thangam -vs- the State of Tamil Nadu, Secretary to Government*” in W.P.No.27765 of 2019 dated 09.01.2020.

26.We would further state that the phrase “except pensionary benefits” does not mean that these temporary employees, who were regularly appointed into service after 01.04.2003 is eligible to avail the benefits under the Old Pension Scheme i.e., Tamil Nadu Pension Rules, 1978. However, these employees were appointed after 01.04.2003 would be eligible to get the pensionary benefit under the Contributory Pension Scheme. Therefore, the term used in the Circular is to be read in the context of Contributory Pension Scheme and not with reference to the provisions of Tamil Nadu Pension Rules, 1978.

27. In view of the fact that all the writ petitioners were admittedly appointed into regular services after the cut-off date of 01.04.2003, they



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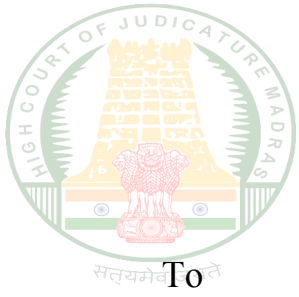
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are eligible to get the benefits under the New Pension Scheme, i.e., Contributory Pension Scheme and their claim for the benefits under the Old Pension Scheme is untenable. Since the Old Pension Scheme is not applicable to these petitioners, they are not entitled to seek counting of 50% of the services under Rule 11(4) of the Tamil Nadu Pension Rules, 1978. However, the writ petitioners are entitled to claim all the benefits under the Contributory Pension Scheme. The respondents are directed to suitably adjust the erroneous contributions, if any collected from the employees, if necessary, by obtaining instructions from the Accountant General of Tamil Nadu.”

3. In view of the above factual and legal position, we are inclined to confirm the order impugned. Consequently, the writ petition is dismissed. No costs. The connected miscellaneous petitions are closed.

(S.M.S., J.) & (A.D.M.C., J.)
28.07.2025

NCC : Yes / No
Index : Yes / No
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1. The Deputy Accountant General (Funds),
Office of the Principal Accountant General,
(Accounts and Entitlements),
No. 361, Anna Salai,
Teynampet,
Chennai.

2. The Registrar General,
High Court of Madras,
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3. The Principal District and Sessions Judge,
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S.M.SUBRAMANIAM, J.

AND

DR.A.D.MARIA CLETE, J.

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