

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2015

CORAM:

THE HON'BLE MR.JUSTICE D. HARIPARANTHAMAN

W.P.No.13357 of 2015
& M.P.Nos.1 and 2 of 2015

K.VahithaRahman

.. Petitioner

vs.

1. The State of Tamilnadu
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Accountant General,
Office of the Accountant General,
261, Anna Salai, Chennai - 600 018.
3. The Commissioner,
Government Date Centre,
Anna University Campus,
Gandhi Mandapam Road,
Chennai - 600 025.
4. The District Elementary Educational Officer,
Tiruppur, Tiruppur District.
5. The Assistant Elementary Educational Officer,
Palladam, Tiruppur District.
6. The Headmistress,
Panchayat Union Elementary School,
Velayuthampalayam, Palladam,
Tiruppur District.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent Commissioner in Mu.Mu.No.774/A2/2010, dated 08.12.2010 and the consequential proceedings in O.Mu.Letter No.986/P1/2012, dated 12.03.2012 and the further proceedings passed in third respondent GDC/CPS/4048-1415/18.07.2014, dated Nil, quash the same, and further direct the respondents to allow the petitioner to continue to remain under the Teacher Provident Fund Scheme, i.e., Old Pension Scheme bearing Account No.334975.

For Petitioner : Mr.P.Godson Swaminathan

For Respondents : Mr.S.Gunasekaran,
1,3,4 & 5 Govt. Advocate

For R2 : Mr.V.Vijay Shankar

O R D E R

The petitioner was initially appointed as Secondary Grade Teacher on 18.09.2002 in a recognized aided minority school, namely, K.J. East Muslim Primary School, Paramakudi in Ramanathapuram District.

2. The District Elementary Educational Officer, Ramanathapuram, approved her appointment with effect from 18.09.2002 by his proceedings in Mu.Mu.No.5368/A4/2002, dated 22.10.2002. The petitioner was also assigned with Teachers Provident Fund Account No.334975. The Assistant Elementary Educational Officer, Paramakudi, also directed the school to deduct T.P.F. Hence, the petitioner was contributing towards her General Provident Fund and other pensionary benefits till 14.07.2009.

3. While so, pursuant to the selection made by the Teachers Recruitment Board, the Director of Elementary Education issued the proceedings in Na.Ka.No.020007/D1/2009, dated .07.2009 directing the petitioner to get appointment order from the District Elementary Educational Officer, Coimbatore Educational District, on 15.07.2009.

4. Based on the aforesaid order, the petitioner got relived from the School, in which, she was employed from 2002 on 14.07.2009. Thereafter, on 15.07.2009, the District Elementary Educational Officer, Coimbatore, issued the proceedings in Na.Ka.No.3522/A5/09, appointing the petitioner in the Primary School at Velayuthampalayam in Palladam Panchayat Union.

5. According to the petitioner, the District Elementary Educational Officer, issued the aforesaid appointment order dated 15.07.2009 only in the afternoon at 5.00 p.m. on 15.07.2009 and he immediately, met the Assistant Elementary Educational Officer at Palladam and he asked the petitioner to come on the next day, i.e., on 16.07.2009.

6. Accordingly, the petitioner went to the office of the Assistant Elementary Educational Officer - fifth respondent and the fifth respondent issued the proceedings dated 15.07.2009 in Na.Ka.No.519/A2/509 permitting the petitioner to join on 16.07.2009 in the forenoon. The petitioner joined duty in the forenoon on 16.07.2009.

7. The petitioner made a representation dated 04.06.2010 to the Assistant Elementary Educational Officer requesting to continue her under the Teacher Provident Fund Scheme, that is, Old Pension Scheme bearing Account No.334975.

8. The Assistant Elementary Educational Officer forwarded the application to the third respondent Commissioner along with his recommendations vide proceedings in Na.Ka.No.1365/A2/2010 dated 04.11.2010.

9. While so, the third respondent passed the impugned order dated 08.02.2010 stating that the petitioner is not eligible to continue under the Old Pension Scheme, as there was a break of one day in joining duty. It is stated that while she was relieved in the school where she was employed on 14.07.2009, she joined duty only on 16.07.2009 and hence, there was a break in service of one day.

10. Based on the said order of the Commissioner, a consequential order dated 12.03.2012 was passed stating that she is not eligible to continue under Old Pension Scheme as she had not received salary for 15.07.2009 and there was a break in service for a day.

11. The third respondent passed an order dated 18.07.2014 assigning Contributory Pension Scheme Account number to the petitioner.

12. The petitioner has now filed this writ petition to quash the orders dated 08.12.2010, 12.03.2012 and 18.07.2014.

13. A counter-affidavit is filed by the fourth respondent on his behalf and on behalf of the other respondents. The respondents sought to dismiss the writ petition on the ground that there was a break in service for a day.

14. Heard both sides.

15. The facts narrated above are not seriously disputed. The petitioner has categorically averred as follows in paragraphs 7 and 8 of the affidavit filed in support of the writ petition :

"7. I state that the DEEO issued the order of appointment only in the evening at 5 p.m. on 15.07.2009. At once, I reported for duty before the 5th respondent AEEO and requested him to accept the joining report. He refused saying that the school working hour had already closed and asked me to come on the next day, i.e., on 16.07.2009.

8. Accordingly, on the next day, I went before him and the fifth respondent AEEO issued me the order vide proceedings in Na.Ka.No.519/A2/2009 dated 15.07.2009 (signed on 16.07.2009) permitting me to join duty on the same day, i.e., 16.07.2009 FN."

16. While so, there is no specific denial of the aforesaid contention of the petitioner made, particularly, in paragraph 7. Paragraphs 4 and 6 of the counter-affidavit are relevant for the purpose of this case and the same are extracted hereunder:

"4. It is submitted that the AEEO 5th respondent herein issued the order vide proceedings in Na.Ka.No.510/A2/2009 dated 15/07/2009 permitting the petitioner to join the duty on the same day. But the petitioner was joined the duty on 16/07/2009 forenoon. Hence there was a break of one day in service, i.e., on 15/07/2009. The third respondent herein issued the impugned proceedings vide Mu.Mu.No.7794/A2/2010 dated 08/12/2010 stating that the petitioner was not eligible to continue under the Old Pension Scheme because of the petitioner was relieved from service on 14/07/2009 and joined service on 16/07/2009, there was break of one day service on 15/07/2009. The above said impugned order issued as per the Government Letter No.43459/Finance (Pension) Department, dated 31/07/2008.

6. It is submitted that the amendment brought into the Tamil Nadu Pension Rules, 1978 vide G.O.Ms.No.259 (Finance - Pension) Department, dated 06/08/2003 introducing a proviso to Rule 2 thereof to the effect the old Pension Rules would not apply to the employees appointed on or after 01/04/2003. The petitioner joined on 16/07/2009. Hence, the old pension Scheme would not apply for the petitioner."

17. In the entire counter-affidavit, there is no whisper about the proceedings of the District Elementary Educational Officer dated 15.09.2009 appointing the petitioner in the Primary School at Velayuthampalayam in Palladam Panchayat Union. The petitioner categorically stated in paragraph 7 that the District Elementary Educational Officer issued the order only at 5.00 p.m. on 15.07.2009. In any event, the petitioner joined the post in the forenoon on 16.07.2009. At this juncture, it is relevant to extract Rules 24 and 25 of the Tamil Nadu Pension Rules (hereinafter referred to as "the Rules") :

"24. Effect on interruption in service.-- (1)
The interruptions in service shall not entail forfeiture of past service except when a person was removed and re-employed. The actual interruptions in

service shall not, however, count for pension.

(2) The services rendered in temporary or permanent department or in substantive office shall also count for pension even if any interruptions exist.

25. Condonation of interruption in service.--

(1) In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of Civil Service rendered by a Government Servant shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(2) Nothing in sub-rule (1) shall apply to interruption caused by resignation (or) removal from service or for participation in strike.

(3) The period of interruption referred to sub-rule (1) shall not count as qualifying service."

18. As per Rule 24 of the Rules, the past service cannot be forfeited except when a person is removed or re-employed. Admittedly, Rule 25(1) comes to the benefit of a Government servant for automatic condonation of break in service. I am of the view that the conjoint reading of Rules 24 and 25 of the Rules would make it clear that the petitioner is entitled to the benefit of condonation of one day break in service.

19. In fact, in N.Baskar V. Director of Elementary Education, reported in 2014 (8) MLJ 341, this Court, based on the aforesaid Rules 24 and 25 of the Tamil Nadu Pension Rules, condoned the delay of 13 days in similar circumstances. It is relevant to extract paragraphs 7 and 9 of the said judgment as hereunder :

"7. From the facts narrated above, it is found that there is no fault on the part of the petitioner who got break-in-service. It is only due to the administrative act on the part of the second respondent, the orders have not been issued as informed to the petitioner by the second respondent. The Government by a letter No.34911/Finance (PGC) Department/2009-1 dated 30.12.2009, in paragraph 2 of its order, has stated that intervening period as follows:-

"2. The Government after careful examination directs that in all cases where an employee working under pensionable service on relief joins a new post on a day after the

intervening Government/Public Holidays, need not be considered as a break, since the intervening period shall automatically be condoned as per Rule 25 of Tamil Nadu Pension Rules, 1978."

9. Taking note of the submissions on both parties, I feel much force in the contention of the petitioner and the writ petition is liable to be allowed and the intervening period has got to be treated as continuity of service and not as break-in-service and the petitioner is entitled to all other benefits."

20. Taking into account the facts of the case as well as the judgment referred to above, the impugned orders are quashed and the writ petition is allowed and a direction is issued to the respondents to continue the petitioner under the Old Pension Scheme.

21. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Secretary,
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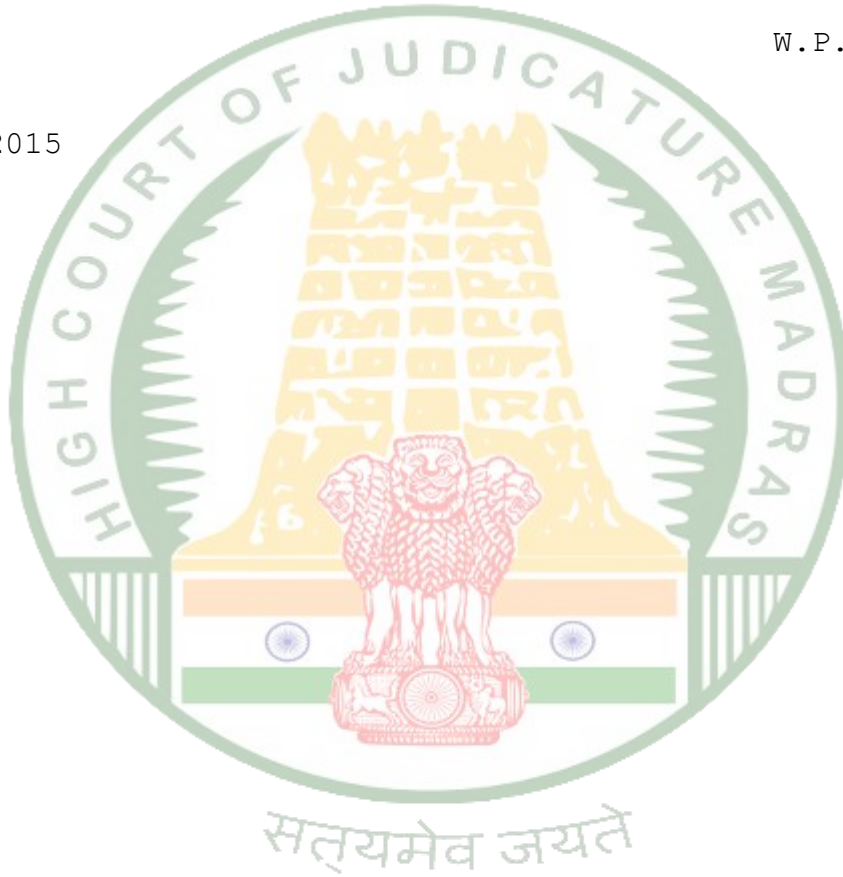
5. The Assistant Elementary Educational Officer,
Palladam, Tiruppur District.

6. The Headmistress,
Panchayat Union Elementary School,
Velayuthampalayam, Palladam,
Tiruppur District.

1 cc to Mr. V.Vijay Shankar, Advocate Sr.No.31914/15
1 cc to M/s.Isaac Mohanalal , Advocate Sr.No.31783/15
1 cc to Government Pleader.Sr.No.31813

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