

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15108 of 2014 &
M.P.No.1 of 2014 & WMP Nos.13353 & 13354 of 2017

O.M.ANBAZHAGAN

[PETITIONER]

Vs

- 1 THE PRINCIPAL SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT
FORT ST.GEORGE, SECRETARIAT
CHENNAI 600 009
- 2 THE PRINCIPAL SECRETARY TO GOVERNMENT
SCHOOL EDUCATION DEPARTMENT
FORT ST.GEORGE, SECRETARIAT
CHENNAI 600 009
- 3 THE DIRECTOR OF ELEMENTARY EDUCATION
DPI CAMPUS, COLLEGE ROAD
CHENNAI 600 006.
- 4 THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER
THIRUVALLUR DISTRICT
THIRUVALLUR
- 5 THE ASSISTANT ELEMENTARY EDUCATIONAL OFFICER
R.K.PETTAI 631 303
THIRUVALLUR DISTRICT
- 6 THE CORRESPONDENT
ANM MIDDLE SCHOOL
AMMAYARKUPPAM 631 301
PALLIPET TALUK, TIRUVALLUR DISTRICT
- 7 THE COMMISSIONER
GOVERNMENT DATA CENTRE
GUINDY, CHENNAI 600 025

[RESPONDENTS]

Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of mandamus to forbear the respondents from implementing contributory pension scheme against the petitioner based on the proceedings of 1st respondent in letter No.63734/FS/T/PGL/2013 dated 23.05.2014 and consequently allow the petitioner to continue to have the benefit of Teacher Provident Fund and other benefits under Tamilnadu Pension Rules 1978 based on the Account Number assigned as per the proceedings of 7th respondent in letter No.9320/2004/J dated 01.10.2004.

For Petitioner :Mr.G.Sankaran

For Respondents :Mr.R.Vijayakumar-R1 to R5
Addl.Government Pleader

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ORDER

The relief sought for in this Writ Petition is to forbear the respondents from implementing contributory pension scheme against the petitioner based on the proceedings of 1st respondent in letter No.63734/FS/T/PGL/2013 dated 23.05.2014 and consequently allow the petitioner to continue to have the benefit of Teacher Provident Fund and other benefits under Tamilnadu Pension Rules 1978 based on the Account Number assigned as per the proceedings of 7th respondent in letter No.9320/2004/J dated 01.10.2004.

2.The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was appointed as Secondary Grade

Assistant in the 6th respondent School in a regular sanctioned post by proceedings dated 11.04.2003, and he has joined the said post on the same date itself. The 6th respondent School is a Government Aided School receiving grant from the State Government. Based on the proposal submitted by the 6th respondent-School Management, the third respondent issued proceedings dated 16.08.2004, for approving the appointment of the writ petitioner to the post of Secondary Grade Assistant with effect from the date of his initial appointment on 11.04.2003. In view of the fact that the writ petitioner was appointed on 11.04.2003, he was directed to be included under the Contributory Pension Scheme [CPS] to Tamil Nadu State Government Employees with effect from 01.04.2003.

3. Due to the change of Policy in respect of the Pension Scheme, the Tamil Nadu Pension Rules came to be amended by adding a proviso to Rule 2 of the Pension Rules, which reads as follows:

“Rule 2: Provided that these Rules shall not apply to Government Servant appointed on or after 1st April 2003, to service and posts in connection with affairs of the State which are borne on pension establishments, whether temporary or permanent.”

4.The only contention raised the learned counsel for the writ petitioner is that the amendment was issued only on 06.08.2003, with retrospective effect from 01.04.2003 and therefore the retrospective effect provided in that regard was bad in law.

5.Though the learned counsel has taken a stand by stating that the Rules cannot be amended retrospectively, no substantial reasons were submitted in that regard. This Court is of the opinion that the cut-off date being 01.04.2003, by changing the Pension Scheme by the State Government as well as by the Government of India and that the decision taken was a Policy decision, the Government has got the prerogative power in respect of taking Policy decision. Normally, the Courts cannot interfere with the Policy decisions of the Government, unless and until, if the Policy decisions taken by the Government are against the Constitutional provisions or under any law or against the statutory provisions. In the case on hand, the cut-off date fixed was 01.04.2003. Thus, the employees appointed after 01.04.2003, will be brought under the Contributory Pension Scheme. When the Government has decided to change the Scheme itself and the fact remains that the writ petitioner was appointed on 11.04.2003, the question of considering the prayer as such sought for in this writ

petition will not arise at all. The Policy decision of the Government cannot be quashed on the grounds raised in this Writ Petition. Thus, no further adjudication is required on merits and on the grounds raised in this Writ Petition.

6. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Rpa
To

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S.M.SUBRAMANIAM, J.,

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