

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9208 of 2012

V.Janakiraman

... Petitioner

Vs

1. The Government of Tamil nadu,
Rep by the Secretary,
Finance Department, Secretariat,
Chennai 600 009.
 2. The Director of School Education,
DPI Complex, College Road,
Chennai 600 006.
 3. The Chief Educational Officer,
O/o.The Chief Educational Officer, Thiruvallur.
 4. The District Educational Officer,
Ponneri, Thiruvallur District.
- ... Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of G.O.No.259, Finance (Pension) Department, dated 06.08.2003, so far as the retrospective operation with effect from 01.04.2003 is concerned and the consequential order of 2nd respondent in Na.ka.No.13272/R1/E1/2010, dated 10.05.2010 and quash the same as arbitrary and unsustainable in law and consequently, direct the 2nd respondent to include the petitioner in the old pension scheme with GPF which was existing prior to the introduction of the contributory pension scheme vide G.O.No.259, Finance (Pension) Department, dated 06.08.2003, without reference to the same.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mr.S.V.Duraisolaimalai
Additional Government Pleader

O R D E R

Heard Mrs.Dakshayani Reddy, learned counsel for the petitioner and Mr.S.V.Duraisolaimalai, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records of G.O.No.259, Finance (Pension) Department, dated 06.08.2003, so far as the retrospective operation with effect from 01.04.2003 is concerned and the consequential order of 2nd respondent in Na.ka.No.13272/R1/E1/2010, dated 10.05.2010 and quash the same as arbitrary and unsustainable in law and consequently, direct the 2nd respondent to include the petitioner in the old pension scheme with GPF which was existing prior to the introduction of the contributory pension scheme vide G.O.No.259, Finance (Pension) Department, dated 06.08.2003, without reference to the same."

3. The facts which gave rise to the present writ petition are stated hereunder:-

The father of the petitioner was working in the Education Department as Secondary Grade Teacher and died while in service on 08.11.1995. The petitioner, on the death of his father, submitted an application for compassionate appointment on 06.02.1997 and along with his application, all the required documents have been also enclosed and submitted. Despite being eligible for consideration for appointment on compassionate ground, the same was not considered by the authorities for considerable time. However, after a lapse of more than 3 years by proceedings dated 04.09.2001, the Director of School Education, the second respondent herein had issued an order of allotment for appointment of the petitioner in the post of Junior Assistant and consequently, directed the Chief Educational Officer, Kanchipuram District, to issue order of appointment.

4. In spite of the direction from the second respondent, the Chief Educational Officer, Kanchipuram District, by proceedings dated 24.09.2001, had stated that there was no vacancy in the post of Junior Assistant in the District and the petitioner may be accommodated in any other District. Thereafter, the Chief Educational Officer, Thiruvallur, was directed to appoint the petitioner.

5. In the meanwhile, the Government took a policy decision in 2001, not to make any appointments vide G.O.No.212, dated 29.11.2001, the policy was held against the actual appointment of the petitioner from 2001. However, on verification through Right to Information application, the petitioner came to know that there were five vacancies in the post of Junior Assistant in Kanchipuram District. It appears thereafter, the petitioner had been making periodic representation to consider his case for appointment on compassionate ground as the allotment for appointment was issued by the second respondent, earlier to the policy decision taken by the Government vide G.O.No.212, dated 29.11.2001.

6. In response to the repeated representation of the petitioner, the Government issued G.O.(2D) No.2, School Education(M1) Department dated 07.01.2003, directing the second respondent, the Director of School Education, to issue appointment order to the petitioner. In turn, the second respondent vide proceedings dated 03.02.2003, directed the third respondent to issue order of appointment to the petitioner on satisfaction of all the necessary requirements for such appointment.

7. It was the case of the petitioner that originally when the compassionate appointment was sought, all necessary requirements were complied with and no discrepancies were pointed out at any point of time by the authorities over the years. The third respondent on his turn, vide proceedings dated 04.03.2003, directed the fourth respondent to issue appointment to the petitioner. The fourth respondent in turn, directed the District Elementary Educational Officer, Thiruvallur, to appoint the petitioner, though he was not the competent authority to issue appointment letter to the petitioner.

8. The appointment to the petitioner finally came on 10.04.2003, due to unnecessary correspondence exchanged between the authorities which protracted the actual appointment issued to the petitioner. On being finally appointed on 10.04.2003, the petitioner joined the duty on 16.04.2003. In the meanwhile, the new pension policy was retrospectively introduced with effect from 01.04.2003, by G.O.No.259, dated 06.08.2003. In view of the introduction of the new contributory pension scheme and the petitioner having joined the post of junior Assistant only on 16.04.2003, in pursuance of the appointment letter dated 10.04.2003, the petitioner was brought under the new contributory pension scheme, not under the old scheme which existed prior to 01.04.2003.

9. The petitioner having aggrieved by the fact that he was brought under the new pension scheme, despite he was originally

granted allotment of appointment as early as on 2001 and also the order of first respondent in G.O.(2D) No.2, School Education (M1) Department dated 07.01.2003, directing the appointment order to be issued. Thereafter, the second respondent directed the third respondent to issue order in March 2003 and the third respondent directed the fourth respondent to issue order. All these events had taken place prior to coming into force of the new pension scheme dated 01.04.2003. Unnecessarily, the officials have protracted the issue and caused undue delay in issuing the appointment letter to the petitioner on 10.04.2003, after coming into force of the new pension scheme.

10. The action of the respondents in placing the petitioner under new pension scheme is under challenge before this Court. In addition, the petitioner, also challenged G.O.No.259, Finance (Pension) Department, dated 06.08.2003, which introduced the new contributory pension scheme retrospectively on 01.04.2003.

11. When the matter was taken up for disposal, the learned counsel for the petitioner, at the outset, said that as regards the challenge to validity of G.O.No.259, Finance (Pension) Department, dated 06.08.2003, she is not pressing the prayer and the same is given up.

12. Therefore, this Court is not called upon to decide the correctness or otherwise of the said G.O. dated 06.08.2003. As regards the other contention raised by the learned counsel for the petitioner that the petitioner being granted allotment of appointment as early as in 2001 by the second respondent on 04.09.2001 and thereafter, a much persuasion of the petitioner, the Government itself has issued an order of appointment to the petitioner on 07.01.2003. It should be deemed that the petitioner was appointed much prior to coming into force of the new pension scheme on 01.04.2003. According to the learned counsel for the petitioner, it is not the fault of the petitioner for the protracted correspondence unnecessarily exchanged between the officials concerned, which ultimately placed the petitioner in disadvantageous position in regard to the applicability of the pension scheme.

13. The learned counsel for the petitioner would rely on the decision passed by this Court in W.P(MD).No.10033 of 2010, dated 26.07.2011, wherein, this Court in similar circumstances has held that the date of recruitment is a date reckoned for the purpose of applicability of pension scheme. In similar circumstances, the Hon'ble Supreme Court of India in Civil Appeal No.3078 of 2015, has held in its order dated 20.03.2015, holding that the delayed posting order issued to the employee therein, cannot be held against him, since it was not his fault

for having given any posting order belatedly, after coming into force of the new pension scheme. The Hon'ble Supreme Court of India has held in that situation that the employees cannot be penalized for the action of the administration for placing them in less advantageous pension scheme.

14. Upon notice, the learned Additional Government Pleader appearing for the respondents entered appearance and made his submissions. According to the learned counsel for the respondents, the date of joining should be taken into consideration for the purpose of applicability of old or new pension scheme. In this case, admittedly, the petitioner was issued with the appointment letter only on 10.04.2003 and he joined the post only on 16.04.2003 and therefore, the new pension scheme which was introduced with effect from 01.04.2003 alone is applicable to the petitioner.

15. This Court after considering the arguments advanced by the learned counsel for the parties, is in full agreement with the submission made on behalf of the learned counsel for the petitioner. The delay in issuing the posting order cannot result in negation of valuable rights of the petitioner to receive better pensionary benefits under old pension scheme. The decision relied on by the learned counsel for the petitioner, passed by this Court and also by the Hon'ble Supreme Court of India, squarely applicable to the facts and circumstances of the present case.

16. It is needless to mention that the petitioner having been allotted appointment as early as in the year 2001, by proceedings of the second respondent dated 04.09.2001 and thereafter unnecessarily the matter was dragged for no valid reasons, even after the Government had issued orders on 07.01.2003, directing the authorities concerned to issue appointment order. The issue was unnecessarily and unduly delayed. Such action on the part of the officials cannot place the petitioner in a disadvantageous position. It is an admitted fact that the petitioner had been running from pillar to post in order to secure his appointment order as early as from the year 2001. In spite of availability of the vacancies and the eligibility of the petitioner for appointment, the appointment did not come through at the appropriate time.

17. Therefore, in the above circumstances, the petitioner is entitled to be covered under the old pension scheme reckoning his date of appointment from 07.01.2003, where the Government had granted him the benefit vide G.O.(2D) No.2, School Education (M1) Department. The other orders passed by the second and fourth respondent herein, merely a consequential orders and therefore, in all fairness, the date of appointment of the

petitioner ought to be taken as 07.01.2003, i.e., prior to coming into force of the new pension scheme with effect from 01.04.2003. The rejection letter dated 10.05.2010, rejecting the claim of the petitioner is only on the ground that the petitioner joined the post only on 16.04.2003 and hence, within the mischief of the new pension scheme cannot stand the test of judicial scrutiny.

18. In view of the above conclusion, the said rejection letter in Na.ka.No.13272/R1/E1/2010, dated 10.05.2010, cannot be sustained in law. Therefore, the same is set aside and the writ petition is allowed. There shall be a consequential direction to the respondents that the petitioner ought to be treated as an employee covered under the old pension scheme for the purpose of pensionary benefits.

19. With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Government of Tamil nadu,
Finance Department, Secretariat,
Chennai 600 009.
2. The Director of School Education,
DPI Complex, College Road,
Chennai 600 006.
3. The Chief Educational Officer,
O/o.The Chief Educational Officer, Thiruvallur.
4. The District Educational Officer,
Ponneri, Thiruvallur District.

+1cc to Mrs.Dakshayani Reddy, Advocate, S.R.No.82921
+1cc to the Government Pleader, S.R.No.82913

W.P.No.9208 of 2012

GP(CO)
CS/17/01/18