

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.16477 of 2012

and

M.P.No.1 of 2012

L.Uma

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary,
School Education Department,
Fort St. George, Chennai - 600 009.
 - 2.The Joint Director of School Education,
College Road, Chennai - 6.
 - 3.The Chief Educational Officer,
Tiruvallur.
 - 4.The Accountant General,
O/o The Principal Accountant General,
No.361, Anna Salai,
Chennai - 18.
- .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to include the name of the petitioner in the list of Teachers to be brought under the General Provident Fund Scheme and to consequently, extend the pension scheme as had been made applicable to the recruits who came to be selected and appointment orders issued by the 2nd respondent on 26.3.2003, pursuant to the selection / written examination held on 21.4.2002 by the TRB and to extend all benefits of pension under the pension scheme.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mrs.K.Bhuvaneswari
Government Advocate
for respondents 1 to 3

: Ms.T.S.Selvarani
for 4th respondent

ORDER

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the the respondents to include the name of the petitioner in the list of Teachers to be brought under the General Provident Fund Scheme and to consequently extend the pension scheme, as has been made applicable to the recruits who came to be selected and appointed pursuant to orders issued by the 2nd respondent on 26.3.2003, subsequent to the selection/written examination held on 21.4.2002 by the TRB and to extend all benefits of pension under the pension scheme.

2. The case of the petitioner is that she was selected by the Teachers Recruitment Board (TRB) and by proceedings of the second respondent dated 26.3.2003, she was issued with an order of appointment for handling History classes. The petitioner was directed to join at Marungapuri, Trichy District and the order provided a week's time to join the post. Since the petitioner was in advanced stage of pregnancy, after consultation with the doctor, she joined on 1.4.2003.

3. It is alleged that the Government had issued orders in G.O.Ms.No.430, Finance (Pension) Department, dated 6.8.2004 on the basis of G.O.Ms.No.259, dated 6.8.2003 stating that all new employees who were recruited on or after 1.4.2003 would mandatorily be brought under the Contributory Pension Scheme (CPS) and for those individuals, the GPF contributions/collections need not be continued, and should be refunded and brought under CPS. The petitioner was extended with GPF benefits and her GPF account was continued to be collected based on the Government letter dated 13.4.2003. In the said letter, it was clarified that the petitioner was a recruit with reference to the examination held on 21.4.2002 and that the appointment order was issued well ahead the issuance of G.O. Thereafter, the fourth respondent directed benefits of GPF account to the petitioner, however, by the subsequent communication, she had been repaid the GPF deductions and has been brought under the CPS.

4. According to the petitioner, having treated the petitioner on par with candidates who were selected through the TRB held on 21.4.2002, the respondent authorities, all of a sudden, without affording any opportunity, brought her under the CPS.

5. Hence, the petitioner has filed the writ petition seeking directions on the respondents to include her name in the list of teachers to be brought under the GPF scheme and consequently, extend the pension scheme.

6. The third respondent filed counter stating that the Government had passed G.O.Ms.No.259, dated 6.8.2003 bringing a new CPS based on defined contributions to the newly recruited employees. This will apply to all employees, who were recruited on or after 1.4.2003. Accordingly, Tamil Nadu Pension Rules, 1978 was also suitably amended. The writ petition is not maintainable and prayed for dismissal of the same.

7. The fourth respondent filed counter stating that CPS came into effect with effect from 1.4.2003 and it is applicable to all the employees of the Government of TamilNadu who have joined the Government service in regular time scale of pay on or after 1.4.2003. The petitioner had joined on 1.4.2003 and therefore, CPS is applicable to her. It is stated that though initially, CPS was not foreseen, GPF account number was allotted to the individual, but on issuance of Government Order dated 6.8.2004, the petitioner was allotted CPS account number refunding the amount deducted under GPF with interest and thereafter, for the last 10 years, she was continuing under the CPS scheme.

8. It is stated in the counter that the Government in Letter No.47286/Allow/06-1 dated 7.9.2006 clarified that candidates who have been selected by TNPSC prior to 1.4.2003 and joined in service on or after 1.4.2003 should be brought under CPS only and cannot be allotted GPF account numbers. There is no provision to treat the date of examination as the criteria for bringing the petitioner under GPF. The petitioner was governed by CPS.

9. I heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner, Mrs.K.Bhuvaneswari, learned Government Advocate appearing for the respondents 1 to 3 and also M/s.T.Selvarani, learned counsel appearing for the 4th respondent. Perused the materials available on record.

10. The learned counsel for the petitioner submitted that the petitioner was appointed on 26.3.2003 providing seven days time to join the post. He argued that as per Fundamental Rules, the criteria for consideration and that of consequential service flow shall be the date of last examination and in the case on hand, the examination having been held on 21.4.2002, the said date shall be the criteria. Therefore, the Contributory Pension Scheme can have no force or applicability to the case of the petitioner.

11. The learned counsel would submit that originally the petitioner was extended GPF benefits and subsequently, she was brought under the CPS. He further submitted that having initially treated the petitioner on par with candidates who were selected through the TRB held on 21.4.2002, the respondent authorities, all of a sudden, without any opportunity

whatsoever, had brought the petitioner under CPS. Therefore, the impugned order is liable to be set aside.

12. Per contra, the learned Government Advocate submitted that since the petitioner had joined duty on 1.4.2003, she is not entitled to be brought under GPF scheme.

13. The learned counsel for the fourth respondent submitted that the Government in their letter dated 7.9.2006 had clarified that candidates who have been selected by the TNPSC prior to 1.4.2003 and joined in service on or after 1.4.2003 should be brought under CPS and cannot be allotted GPF account numbers. She submitted that there is no provision whatsoever to treat the date of examination as the criteria for bringing the petitioner under the GPF scheme. She finally submitted that the contention to treat the petitioner on par with those who joined government service prior to 1.4.2003 is not tenable.

14. It appears that on being subjected to a selection by the TRB for recruitment to the post of B.T. Assistant, the petitioner partook in the written examination held on 21.4.2002 and on being successful in the examination, based on her merit, the second respondent had given appointment to the petitioner on 26.3.2003, wherein she was directed to join duty at Marungapuri, Trichy District. The appointment order provided a week's time to join the post.

15. It is the say of the petitioner that, since she was in the advanced stage of pregnancy, after consultation with the Doctor, she joined the duty on 1.4.2003. In the order of appointment, it has been stated as under:

"தேர்வாளர் இந்த நியமன ஆணை கிடைக்கப் பெற்ற ஒரு வாரத்திற்குள் தவறாது பணியில் சேர வேண்டும். இல்லையெனில் இப்பணியில் சேர ஆன்னாருக்கு விருப்பமில்லையெனக் கருதி முன்னறிவிப்பின்றி இவ்வாணை இரத்து செய்யப்பட்டதாகவே கருதப்படும்."

16. Thus, in the order of appointment, the petitioner was granted one week time to join the duty i.e., she should join duty on or before 1.4.2003. There is no dispute that the petitioner had joined duty on 1.4.2003 and she was allotted GPF Account number being EDN/165917 and contributions were made by her for quite some time. It appears that all those recruits of the same selection were brought under GPF scheme, as they joined either on 27th or 28th March 2003.

17. The petitioner having been assigned Serial No.67 as her rank and having been provided seven days joining time, her seniority and other service benefits shall be reckoned from the date on which her next junior in the TRB ranking joined the post.

18. As stated supra, the similarly recruited persons have all joined between 27th and 28th March 2003 and hence, the petitioner's placement and seniority should relate back not to the date of the order i.e., 26.3.2003, but at least the date on which her immediate junior in the TRB joined the services and therefore, the petitioner is entitled to pensionable services.

19. G.O.Ms.No.259, dated 6.8.2003, provides that new Contributory Pension Scheme will apply to all employees who were recruited on or after 1.4.2003. Like wise, G.O.Ms.No.430, dated 6.8.2004 provides that all the new employees, who were recruited on or after 1.4.2003, would become members of the CPS.

20. The Government Orders are silent as to whether the appointment order issued to a person prior to 1.4.2003, who joined on and after 1.4.2003 should also be brought under CPS. Though the petitioner joined the duty on 1.4.2003, she was recruited on 26.3.2003 by giving seven days joining time. When the petitioner was provided seven days joining time and when she had joined within seven days, even at the advanced stage of pregnancy on the basis of doctor's advice, how she could be brought under CPS by quoting that persons recruited on or after 1.4.2003 would be brought under CPS. In the absence of clarity in the Government Orders and the petitioner having been given appointment order before 1.4.2003, she should be extended benefit of GPF scheme.

21. Citing the Government Letter dated 7.9.2006 that candidates who have been selected by the TNPSC prior to 1.4.2003 and had joined in service on or after 1.4.2003 should be brought under CPS, the respondent authorities cannot contend that the petitioner was rightly brought under CPS. The petitioner having been initially allotted GPF number and contributed for quite some time and also without giving an opportunity, the respondent authorities have no right in bringing the petitioner under CPS.

22. The petitioner having been given seven days time to join the duty and accordingly, she had joined duty on 1.4.2003 that too when she was pregnant in the advanced stage, she should not be denied of bringing her to GPF scheme as all those recruits of the same selection were brought under GPF scheme. Initially, the fourth respondent was right in bringing the petitioner under GPF scheme and its subsequent letter dated 15.2.2012 cancelling the GPF number and bringing the petitioner under CPS is erroneous. Therefore, the petitioner has to be continued under GPF with consequential pension and other pensionary benefits and the order impugned in this writ petition is liable to be set aside.

23. In the result:

(a) the writ petition is allowed.

(b) the respondent authorities are directed to include the petitioner's name in the list of the teachers to be brought under the General Provident Fund scheme and to extend the pension scheme as had been made applicable to the recruits who came to be selected and appointment orders were issued by the second respondent on 26.3.2003 and to extend all benefits of pension under the pension scheme to the petitioner.

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

(d) this order is being passed in the peculiar facts and circumstances of the present case, particularly taking note of the fact that the petitioner was in the advanced stage of pregnancy at the time of joining duty and that she joined duty only based on doctor's advice.

(e) No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

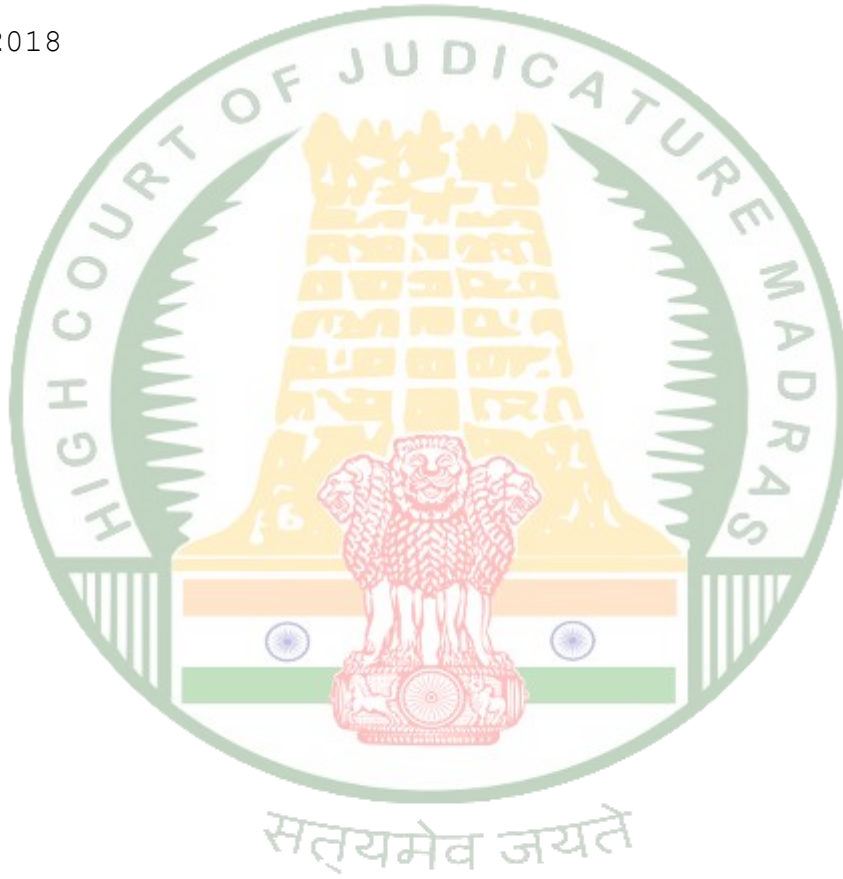
- 1.The Secretary,
School Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Joint Director of School Education,
College Road, Chennai - 6.
- 3.The Chief Educational Officer,
Tiruvallur.

4.The Accountant General,
O/o The Principal Accountant General,
No.361, Anna Salai,
Chennai - 18.

+1cc to Mr.L.Chandrakumar, Advocate sr.no.89554

W.P.No.16477 of 2012
and
M.P.No.1 of 2012

sj(co)
nr 03/07/2018



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