



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.02.2019

Pronounced on : 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Rev.Applc(MD)No.209 of 2017

R.Arockiamary

... Petitioner

Vs.

1.The State of Tamil Nadu, Rep.by its Secretary,
Department of Finance (Pension),
Fort St.George, Chennai - 600 009.

2.The Commissioner, Government Data Centre,
Guindy, Chennai - 600 025.

3.The Director of Elementary Education,
College Road, Chennai - 600 006.

4.The District Elementary Educational Officer,
Trichy, Trichy District.

5.The Additional Assistant Elementary
Educational Officer, Vaiyampatty,
Trichy District.

6.The Headmistress,
Panchayat Union Primary School,
Sadayampatti, Vaiyampatti Union,
Trichy District.

7.The Correspondent,
RC Amalrackini Middle School,
Kulithalai, Karur District.

... Respondents

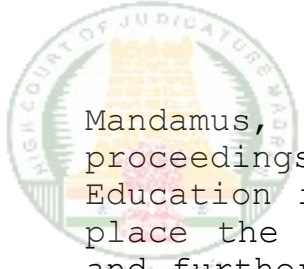
Prayer : This Review Application is filed under Order 47 Rule 1 and 2 and Section 114 of Civil Procedure Code, to review the order dated 08.08.2017 in Writ Appeal (MD)No.1035 of 2017.

Prayer in WA(MD). 1035/ 2017 :

Writ Appeal is filed under Clause 15 of the Letter Patent Act, against the Order dated 27/11/2015 in WP(MD)No.21107 of 2015, on the file of this Court.

[https://hccpr.courts.mv.WP\(MD\). 21107/ 2015 :](https://hccpr.courts.mv.WP(MD). 21107/ 2015 :)

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified



Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent Director of Elementary Education in Na.Ka.No. 011427/C2/2015 dated 09.09.2015 declining to place the petitioner under the Old Pension Scheme, Quash the same and further Direct the respondent to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Secondary Grade teacher on 21.11.2001 in the 6th respondent School namely, RC Amalrackini Middle School, Kulithalai, Karur District, including the Petitioner joining in Panchayat Union Primary School, A.Seethapatty, Vaimpatty Union, Trichy District on 06.12.2006 and subsequent entire service periods till here retirement.

For Petitioner : Mr.S.Xavier Rajini
 For Respondents : Mr.V.R.Shanmuganathan,
 Special Government Pleader for R1 & R2
 Mrs.S.Srimathy,
 Special Government Pleader for R3 to R5'
 No appearance for R7

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The review applicant herein worked in an aided school upto 01.12.2006. She joined in the Panchayat Union Primary School on 06.12.2006 at Sadayampatti, Vaiyampatti Union. As there was a break in service for four days, the applicant was placed under the Contributory Pension Scheme. The third respondents passed an order dated 09.09.2015 declining to allow the petitioner to continue to remain under the old pension scheme bearing TDF No.337143. Challenging the same, the applicant filed WP(MD)No.21107 of 2015. The same was allowed by order dated 27.11.2015. The authorities were directed to permit the petitioner to continue under the old pension scheme. This was challenged by the Government by filing WA (MD)No.1035 of 2017. By order dated 08.08.2017, the Division Bench allowed the writ appeal and set aside the order passed by the learned Single Judge. Seeking a review of the same, the review applicant is before us.

2.The learned counsel appearing for the review applicant pointed out that the petitioner joined RC Amalarackini Middle School, Kulithalai, Karur District as Secondary Grade Teacher on 21.11.2001 and that she was placed under the old pension scheme. Her GPF Account Number is TPF No.337143 and that she is entitled to continue under the same as she was relieved from the school only for the purpose of joining in another school. The review applicant would place reliance on Letter No.34911/Finance (PGC) Department/2009-1, Dated 30.12.2009. In the said letter, the Government had directed as follows :



"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. "

3.The learned counsel for the review applicant further contends that the applicant was selected and appointed in the Panchayat Union School based on the State wide employment exchange seniority alone and therefore, the question of obtaining prior permission from the competent authority does not arise. He would further contend that she was relieved from her earlier post on 01.12.2006 only for the purpose of joining as Secondary Grade Teacher in the Panchayat Union Primary School. The applicant has also highlighted the instance of one V.M.Loyola who was similarly placed, and who continued to remain under the old pension scheme. The learned counsel for the review applicant relied on an unreported decision of this Court made in WA(MD)No.1089 of 2016.

4.Per contra, the learned Special Government Pleader appearing for the respondents contended that the order passed by this Court does not suffer from any error apparent on the face of record and that therefore the review application is liable to be dismissed. The learned Special Government Pleader placed reliance on an unreported decision dated 02.08.2018 made in WA.No.1178 of 2014.

5.We carefully considered the rival contentions. We are of the view that the review applicant has raised a several substantial contentions which deserve to be considered. It is true that these contentions were not brought to our notice when the writ appeal filed by the Government was allowed. However, in the interest of justice, we are of the view that the writ appeal will have to be heard afresh. This is all the more so because the order under review is apparently at variance with the order passed by another Division Bench in WA(MD)No.1089 of 2016. In this view of the matter, the Judgment dated 08.08.2017 made in WA(MD)No.1035 of 2017 is set aside. The review application is allowed. The writ appeal will have to be decided afresh after hearing the matter on merits. Registry is directed to post WA(MD)No.1035 of 2017 before the regular Bench.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)



To

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5.The Additional Assistant Elementary
Educational Officer, Vaiyampatty,
Trichy District.

+1 CC to Mr.S.XAVIER RAJINI, Advocate SR-83066.

Rev.Aplc(MD) No.209 of 2017
22.08.2019

CS(16.09.2019) 4P 7C