

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 08.02.2017

CORAM :

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**THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN****W.P. (MD) .No.2356 of 2011****and****M.P (MD) No.1 of 2013**

A.Arulchander

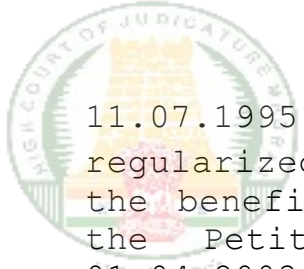
.. Petitioner

.Vs.

1. The Government of Tamilnadu,  
Rep. by its Secretary,  
Finance (PGC) Department,  
Fort St. George, Chennai-9.
2. The Government of Tamilnadu,  
Rep. by its Secretary,  
School Education Department,  
Fort St. George, Chennai-9.
3. The Director of Elementary Education,  
College Road, Chennai-6.
4. The District Elementary Education Officer,  
Tirunelveli District.
5. The Assistant Elementary Education Officer,  
Vasudevanallur Range,  
Tirunelveli District.
6. The Secretary,  
Swamy Elementary School,  
Dharugapuram,  
Vasudevanallur Range,  
Tirunelveli - District.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari and Mandamus, calling for the records relating to G.O.No.413 Finance (PGC) Department, Dated 04.11.2010 issued by the 1<sup>st</sup> Respondent and quash para 8 and 9 of the said G.O. as it is illegal, irrational and arbitrary, in so far as it confines the benefits of old Pension Scheme and General Provident Fund "only to persons who were appointed as Secondary Grade Teachers in the sanctioned regular posts in private aided schools during the period from



11.07.1995 to 19.05.1998 and whose services were later regularized" and consequently direct the 1<sup>st</sup> Respondent to extend the benefit of old Pension Scheme and General Provident Fund to the Petitioner who joined the service/appointed prior to 01.04.2003 and to count the past service rendered for the purpose of pensionary benefits.

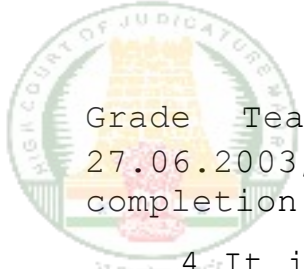
For Petitioner : Mr.V.Muthuvelan  
 For Respondents : Mr.K.Guru (for R1 to R5)  
 Additional Government Pleader  
 No Appearance (for R6)

### O R D E R

This writ petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records relating to G.O.No.413 Finance (PGC) Department, Dated 04.11.2010 issued by the 1<sup>st</sup> Respondent and quash para 8 and 9 of the said G.O. as it is illegal, irrational and arbitrary, in so far as it confines the benefits of old Pension Scheme and General Provident Fund "only to persons who were appointed as Secondary Grade Teachers in the sanctioned regular posts in private aided schools during the period from 11.07.1995 to 19.05.1998 and whose services were later regularized" and consequently direct the 1<sup>st</sup> Respondent to extend the benefit of old Pension Scheme and General Provident Fund to the Petitioner who joined the service/appointed prior to 01.04.2003 and to count the past service rendered for the purpose of pensionary benefits.

2.The case of the petitioner is that he is working as a Secondary Grade Teacher under the 6<sup>th</sup> respondent school. He was appointed on 03.03.2003 as a Secondary Grade Teacher in the light of G.O.No.301 of 1999 dated 15.10.1999 whereby due to the backlog vacancies arisen in respect of SC/ST category in the cadre of Secondary Grade Teacher in Government aided school, the eligibility for the SC/ST candidates for appointment was revised as a "Degree with B.Ed". By virtue of such relaxation, the petitioner belonging to Scheduled Caste community has been appointed by the 6<sup>th</sup> respondent's school. However, the petitioner's appointment was kept pending wanting for a clarification, as to whether a candidate possessing B.A. (Economics) with B.Ed. and B.Com. with B.Ed. fall under the purview of the above referred government order.

3.Whereupon the 1<sup>st</sup> respondent clarified vide G.O.No.109 dated 16.08.2004 holding that those candidate possessing B.A.(Economics) with B.Ed. and B.Com. with B.Ed. can be appointed in the Government Aided School, but held that the approval of such appointments will be effected only from the date of completion of child psychology training by the respective candidates. Accordingly for the candidates who were appointed as a Secondary



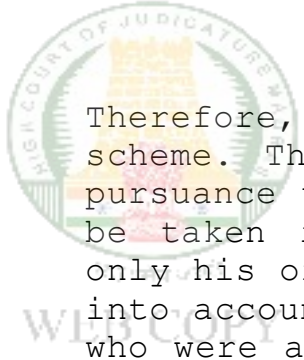
Grade Teacher on or before adopting the G.O.No.100 dated 27.06.2003, their post was approved by the 4<sup>th</sup> respondent on completion of child psychology training program.

4.It is the further case of the petitioner is that whereas his appointment was made before the implementation of the G.O.No.100, i.e., 03.03.2003, and hence his approval will be governed by G.O.No.109 dated 16.08.2004. In the meantime, as per the direction issued by the 4<sup>th</sup> respondent, the petitioner underwent child psychology training and he was also issued with the child psychology training certificate dated 24.12.2007. Only after such undergoing of child training, the petitioner's appointment was approved with effect from 22.12.2007 by the 4<sup>th</sup> respondent vide proceedings dated 01.02.2008.

5.Meanwhile the new pension rules came to be enacted on 01.04.2003 whereby as per the new pension scheme, the persons appointed on or after 01.04.2003 shall not be eligible for pension of gratuity and they will be allowed under contributory pension scheme as envisaged in G.O.Ms.No.430 Finance(Pension) dated 06.08.2004. The said G.O. came to be challenged in a number of writ petitions before this Court by Secondary Grade Teachers who were appointed before 01.04.2003, whose approval of appointment was made after the completion of child psychology training i.e., after the implementation of the new pension scheme (after 01.04.2003). This Court in a batch of writ petitions in W.P.Nos.10447 and 5174 of 2008, 4537 of 2009, 1375 of 2010, W.P.Nos.12280 to 12282 of 2010 has passed order extending the benefit of old pension scheme and General Provident Fund Scheme with regard to person who were appointed during the period 11.07.1995 to 19.05.1998, despite of their completion of child psychology course at a later point of time. Being so, the impugned G.O. came to be passed such that conferring the benefits in respect of the Secondary Grade Teachers appointed during the period of 11.07.1995 to 19.05.1998, whereas not extending such benefits to the similarly placed teachers who were appointed after 19.05.1998. Thus the impugned G.O. is liable to be quashed on the ground of discrimination.

6.I heard Mr.V.Muthuvelan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 to 5 and there is no representation on behalf of the 6<sup>th</sup> respondent and perused all the records.

7.The learned counsel for the petitioner submitted that the impugned G.O.No.413 dated 04.11.2010 is in gross violation of Article 14 and 21 of the Constitution of India, such that discriminating the petitioner from that of the similarly qualified teachers appointed between 11.07.1995 to 19.05.1998. The petitioner has been appointed on 03.03.2003 much prior to the date of introduction of new pension scheme viz. on 01.04.2003.



Therefore, the petitioner is to be governed by the old pension scheme. The date of approval of the petitioner's appointment in pursuance to the completion of child psychological training cannot be taken into account while fixing the pension scheme, whereas only his original date of appointment on 03.03.2003 is to be taken into account. The respondents ought to have held that the teachers who were appointed earlier to the enactment of new pension scheme and having completed their child psychology training at the later point of time will be covered by the old pension scheme.

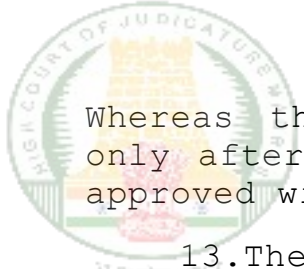
8. Furthermore, a similar issue was dealt by this Court in a batch of writ petitions in W.P.Nos.10447 and 5174 of 2008, 4537 of 2009, 1375 of 2010, W.P.Nos.12280 to 12282 of 2010, whereby this Court has ordered for implementation of old pension scheme in respect of Secondary Grade Teachers appointed between 11.07.1995 to 19.05.1998.

9. Per contra, the learned counsel for the respondents submitted that the case of the petitioner is required to be considered only as per G.O.Ms.No.301, School Education, dated 15.10.1999. The petitioner was not appointed during the period from 11.07.1995 to 19.05.1998 and hence he is not covered by G.O.Ms.No.155 School Education dated 03.10.2002.

10. The petitioner's claim for extension of old pension scheme is untenable, since his service was an unqualified one from 03.03.2003 to 21.12.2007, whereas his appointment came to be approved only on 21.12.2007 on completion of child psychological training. The qualified service of the petitioner is only from the date of possession of all qualification for the said post.

11. The petitioner failed to fulfill the pre requisite qualification of undergoing one month child psychology training as stipulated in G.O.Ms.No.301, School Education, dated 15.10.1999, for appointment of B.Ed., teachers in Secondary Grade Teacher vacancies reserved for SC/ST.

12. On perusal of the typed set of papers it is found that the contention of the petitioner that the issue is covered by the earlier order of this Court is incorrect, for the reason that the petitioners therein in the writ petitions in W.P.Nos.10447 and 5174 of 2008, 4537 of 2009, 1375 of 2010, W.P.Nos.12280 to 12282 of 2010, are being appointed between 11.07.1995 to 19.05.1998, whereas the petitioner is being appointed only on 03.03.2003 i.e a month before the enactment of new pension scheme. It is noticed that the appointment of petitioner is made subsequent to issuance of G.O.Ms.No.301, School Education, dated 15.10.1999, whereby the pre-requisite qualification of undergoing one month child psychology training has been stipulated for being eligible for appointment as a Secondary Grade Teacher as against the vacancies reserved for SC/ST category. But admittedly the petitioner on the eve of his appointment has not possessed the qualification stipulated as per G.O.Ms.No.301 School Education dated 15.10.1999.



Whereas the petitioner underwent child psychology training and only after such undergoing of child training his appointment was approved with effect from 22.12.2007.

13. Therefore, this Court is of the view that the service of the petitioner was an unqualified one from 03.03.2003 to 21.12.2007 and his appointment came to be approved only on 21.12.2007 on completion of child psychological training. The qualified service of the petitioner commenced only from the date of possession of all qualification for the said post i.e. from 21.12.2007, but not from the date of his appointment. Hence this court finds no merits in the writ petition.

14. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

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Government of Tamilnadu,  
Finance (PGC) Department,  
Fort St. George, Chennai-9.
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Pre-Delivery order made in  
W.P. (MD). No. 2356 of 2011  
and  
M.P (MD) No. 1 of 2013  
08.02.2017