

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.584 of 2018 and
C.M.P.No.5613 of 2018

O.M.Anbazhagan

... Appellant

-vs-

- 1.The State of Tamil Nadu
rep.by its Principal Secretary to Government,
Finance Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The State of Tamil Nadu,
rep.by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
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,
A.N.M.Middle School,
Ammayarkuppam-631 301,
Pallipet Taluk, Thiruvallur District.
- 7.The Commissioner,
Government Data Centre,
Guindy,
Chennai-600 032.

... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.15108 of 2014 dated 03.11.2017.

W.P.No.15108 of 2014:

Writ Petition filed under Article 226 of the constitution of India for issuance of a Writ of Mandamus to forbear the respondent 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 Appellant :: Mr.G.Sankaran

For Respondents:: Mr.C.Munusamy,
Spl.GP (Education)

JUDGMENT

(Made by HULUVADI G.RAMESH, J.)

The appellant was appointed as Secondary Grade Assistant in the sixth respondent School in a regular sanctioned post by proceedings dated 11.04.2003, and on the same day, he joined the said post. It is a Government Aided School receiving grant from the State Government.

2.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."

3.Since the appellant 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.

4.The appellant filed a writ petition in W.P.No.15108 of 2014 praying for a direction forbearing the respondents from implementing the Contributory Pension Scheme against him based on the proceedings of the first respondent in Letter No.73734/FS/T/PGL/2013 dated 23.05.2014 and to consequently allow him to continue to have the benefit of Teacher Provident

Fund and other benefits under the Tamil Nadu Pension Rules, 1978 based on the Account Number assigned as per the proceedings of the seventh respondent in Letter No.9320/2004/J dated 01.10.2004.

5.The contention raised by the learned counsel for the appellant before the writ Court was 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 is bad in law.

6.The above contention of the learned counsel for the appellant was rejected by the learned single Judge on the ground that the Government has taken a policy decision making retrospective amendment to the Tamil Nadu Pension Rules, 1978 and thus the employees appointed on or after 01.04.2003 will be brought under the Contributory Pension Scheme; that the Government has got the prerogative power in respect of taking policy decisions and normally the Courts cannot interfere with the same. It was further observed that when the fact remains that the appellant was appointed on 11.04.2003, the question of considering his prayer will not arise at all.

7.Challenging the order passed in the writ petition, the present writ appeal has been filed.

8.The learned counsel for the appellant has submitted that the contention of the appellant before the writ Court was that the rules in force as on the date of his appointment resulting in condition of appointment, cannot be altered or amended based on subsequent amendment to the Rules giving retrospective effect, but the learned single Judge has proceeded to pass orders in the writ petition on the premise that the appellant has challenged the retrospective effect given in the amendment made to the Tamil Nadu Pension Rules, 1978. Stating so, the learned counsel submitted that the impugned order passed by the learned single Judge has to be set aside and a direction has to be given to the authorities to grant the appellant the benefits of Teacher Provident Fund and other benefits under the Tamil Nadu Pension Rules, 1978, which were existing before 01.04.2003.

9.Per contra, the learned Special Government Pleader appearing for the respondents has submitted that only based on the policy decision of the Government, the Tamil Nadu Pension Rules, 1978 was amended adding a proviso to Rule 2 of the Pension Rules, which cannot be interfered with by the Courts. Reiterating the stand taken by the learned single Judge, the learned Special Government Pleader has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order, which does not require any interference.

10.Heard the learned counsel on either side and perused the materials available on record.

11.As rightly held by the learned single Judge, the retrospective effect made by the Government to the amendment made in the Tamil Nadu Pension Rules, is a policy decision and the same cannot be interfered by the Courts. Further, the question of considering the prayer sought for by the appellant in the writ petition does not arise at all, since the fact remains that he was appointed on 11.04.2003. Now, it is submitted by the learned counsel for the appellant that rules in force as on the date of appointment resulting in condition of appointment, cannot be altered or amended based on subsequent amendment to the Rules giving retrospective effect.

12.When a Government has taken a policy decision to amend the Rules with retrospective effect, it cannot be interfered with. The appellant was appointed on 11.04.2003 and it falls only after 31.03.2003. If it is stated that the persons who are recruited on or after 01.04.2003 are not entitled for the benefits under the Tamil Nadu Pension Rules, as per the amendment made to the Rules retrospectively as a policy decision, the amended Rule will come into play from 01.04.2003. In such circumstances, we are not inclined to interfere with the impugned order passed by the learned single Judge and accordingly, the writ appeal stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

KM

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Finance Department, Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Fort St.George,
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.

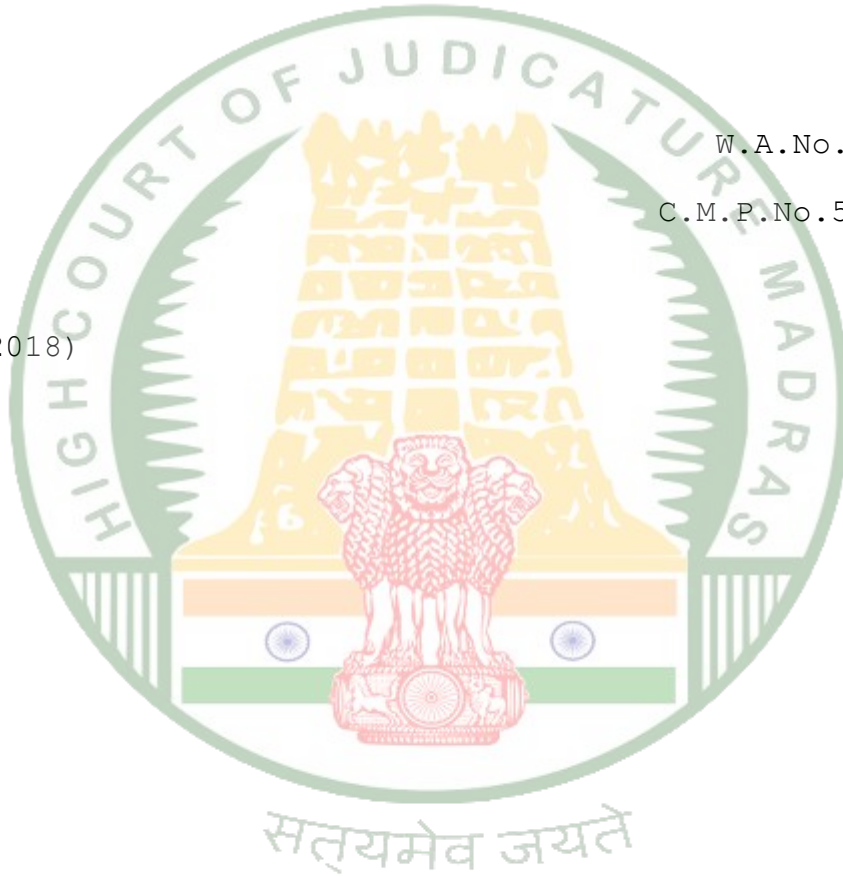
5.The Assistant Elementary Educational Officer,
R.K.Pettai 631 303,
Thiruvallur District.

+1 CC to Govt. Pleader sr 31264.

+1 CC to Mr.G. Sankaran, Advocate sr 30539.

W.A.No.584 of 2018
and
C.M.P.No.5613 of 2018

KAN (CO)
SP (22/05/2018)



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