

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2018

Coram

The Hon'ble Mr.Justice Satrughana Pujahari

Writ Petition No.17008 of 2018

and

W.M.P.No.20256 of 2018

Smt. G.Meera

...Petitioner

Vs.

1. The Principal Secretary to Government,
Social Welfare and Nutritious
Meal Programme Department
Secretariat, Chennai - 600 009.
2. The Director of Social Welfare,
Chennai - 600 032.
3. The Commissioner,
Mannargudi Panchayat Union,
Mannargudi Taluk, Tiruvarur District.
4. The Accountant General (A & E)
Tamil Nadu, Chennai - 600 018.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the impugned admission of the petitioner in to the CPS with account No.7077027/GA by the Accountant General (A& E) Tamil Nadu, Chennai - 600 018, and to quash the same and consequently, to direct the respondents herein to accept the pension proposals by taking into account / considering 50% of the 27 years of service rendered in the category of Child Welfare Organiser as qualifying service with further period of 10 years of service in the regular post of Extension Officer and to grant superannuation pension to the petitioner under the old pension rules considering the date of her retirement on 31.07.2017 AN in the post of Extension Officer (Social Welfare) Mannargudi Panchayt Union, Mannargudi along with consequential benefits accrued thereon.

For Petitioner : Mr.R.S.Anandan
for M/s.SP Patel

For Respondents : Mr.V.Kadhirvelu
Special Government Pleader

O R D E R

Heard Mr.R.S.Anandan, the learned counsel appearing for the petitioner and Mr.V.Kadhirvelu, the learned Special

Government Pleader appearing on behalf of the respondents.

2. The grievance of the petitioner, in this Writ Petition is that, initially, she was in the temporary service of the respondent Department as Child Welfare Organizer, thereafter, served as Extension Officer for a decade, and while she was working as Extension Officer, her service was brought to regular establishment as Rural Welfare Officer, vide order, dated 19.04.2007. The petitioner, therefore, was not a new entrant to service, as she was already in service since 28.01.1980, though she came to be appointed in the regular establishment with effect from 19.04.2007. The same is moreso, in view of the fact that the service rendered by her is a pensionable one by taking into consideration 50% of the earlier service rendered as Child Welfare Organiser and Extension Officer before her regular establishment. However, after her retirement, to her shock and surprise, she came to know that she has not been brought under regular pension scheme, but under contributory pension scheme (CPS) by the impugned proceedings. Aggrieved over the same, she has come to this Court seeking a writ of certiorari to quash such proceedings of the respondents, whereby, she has been inducted into the CPS Scheme and with a consequential prayer to direct the respondents to grant pension under Old Pension Scheme by taking into consideration of 50% of the earlier services.

3. The learned counsel appearing for the petitioner, while reiterating the averments set out in the supporting affidavit of this Writ Petition would submit that the impugned proceedings of inducting the petitioner under the CPS is contrary to law. No doubt, the Government has come out with a Scheme stating that the employees, who entered into service w.e.f. 01.01.2003 are not eligible for regular pension, but covered under CPS. However, the petitioner having entered into service wayback in the year 1980 and rendered service for 37 years before being brought to regular establishment, she is entitled to receive pension under Old Pension Scheme. The learned counsel further submits that, the case of the similarly situated persons who were appointed in the regular service after introduction of CPS with effect from 1.04.2003 i.e. after the crucial date, have been considered for calculation of pension under the Old Pension Scheme on the direction of this Court given in the case Mr.P.Chinnian Vs. State of Tamil Nadu, rep by its Secretary in W.P.No.12656 of 2013, dated 18.06.2014. It is his further submission that setting out all these aspects, though the petitioner has made a representation to the first respondent with a copy marked to other respondents, the same evoked no response. Therefore, she has filed this Writ Petition seeking appropriate direction to the respondents to consider such representation and to grant pension to her under the Old Pension Scheme in accordance with law within a stipulated period.

4. Though no counter affidavit has been filed, the learned Special Government Pleader appearing for the respondents justified the act of the respondents by making submission that as per the cut-off date fixed by the Government, the petitioner is a new entrant, and hence, she is not entitled to receive pension under the Old Pension Scheme.

5. Heard, the learned counsel appearing for both the parties and perused the materials placed on record. It appears that the petitioner was already in service with effect from 28.01.1980 as Child Welfare Organizer and subsequently as Extension Officer from 29.11.2013, and thereafter brought to regular establishment on 19.04.2007. Thus, it is seen that the petitioner has rendered service for more three decades before being brought to regular establishment. Her such earlier service of 50% also counts for pension. This Court also in the case Mr.P.Chinniyan (cited supra) held the aforesaid principle. In the position, stated supra, she cannot be treated as a new entrant, and as such, covered under CPS Scheme. In such premises, this Court is of the view that the petitioner appears to have made out a case in her favour.

6. Thus, considering the aforesaid facts, this Court directs the first respondent, notwithstanding the impugned order, to review the impugned order, insofar as the petitioner is concerned and take an informed and considered decision on the representation of the petitioner, dated 22.01.2018, in accordance with law, taking into consideration of the law laid down by this Court in the decision cited supra within a period of eight weeks from the date of receipt of a copy of this order and release necessary benefits in favour of the petitioner, if she is covered by the said decision. However, it is made clear that, this order is passed taking into consideration the peculiar facts and situation of the case and the same shall not be treated as a precedent for the employees who entered service on the crucial cut-off date i.e. 01.01.2003 for grant of pension under Old Pension Schemes.

7. With the aforesaid order and the observation, as stated, the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

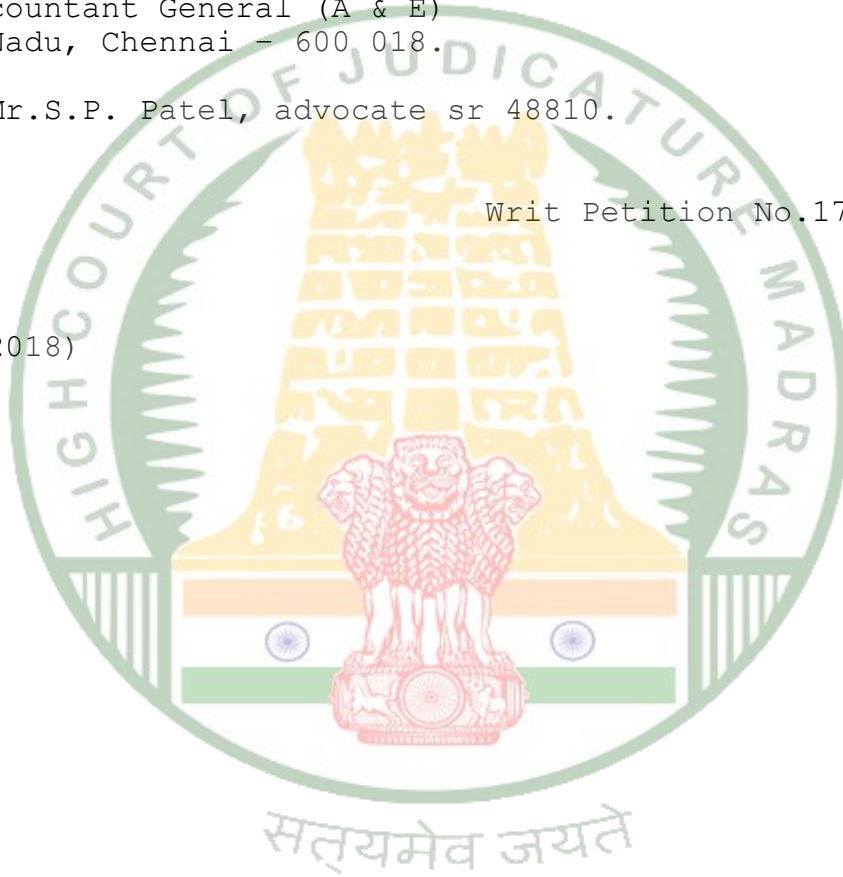
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To

1. The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme Department
Secretariat, Chennai - 600 009.
 2. The Director of Social Welfare,
Chennai - 600 032.
 3. The Commissioner,
Mannargudi Panchayat Union,
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 4. The Accountant General (A & E)
Tamil Nadu, Chennai - 600 018.
- +1 CC to Mr.S.P. Patel, advocate sr 48810.

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SP(04/09/2018)



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