

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2708 of 2018  
and CMP No.22200 of 2018

1. The Government of Tamil Nadu,  
Represented by the Secretary,  
Finance Department,  
Chennai - 9

2. The Director of School Education,  
DPI Complex,  
College Road,  
Chennai - 600 006.

3. The Chief Education Officer,  
O/o. The Chief Education Officer,  
Thiruvallur.

4. The District Educational Officer,  
Ponneri,  
Thiruvallur District.

... Appellants

V.Janakiraman

... Respondent

सत्यमेव जयते

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 21.11.2017 made in W.P.No.9208 of 2012.

Prayer in W.P.No.9208 of 2012:Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of G.O.No.259 Finance (Pension) Department dated 6.8.2003 so far as the retrospective operation with effect from 1.4.2003 is concerned and the consequential order of 2nd respondent in Na.Ka.No.13272/R1/E1/2010 dated 10.5.2010 and quash the same as arbitrary and unsustainable in law and consequently direct the 2nd respondent to include the petitioner in the old pension scheme with GPF

which was existing prior to the introduction of the contributory pension scheme vide G.O.No.259 Finance (Pension) Department dated 6.8.2003 without reference to the same.

For Appellants : Mr.C.Munusamy  
Spl. Govt. Pleader (Education)

For Respondent : Ms.Dakshayini Reddy

## J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

Aggrieved by an order dated 21.11.2017 passed in WP No.9208 of 2012 directing the appellants herein to include the name of the respondent/writ petitioner, in the old pension scheme with GPF, which was existing prior to the introduction of the Contributory Pension Scheme, vide G.O.Ms.No.259 Finance (Pension) dated 06.08.2003, the Government of Tamil Nadu, represented by the Secretary, Finance Department, Secretariat, Chennai and three others have filed the instant writ petition.

2. The facts in brief of the writ petitioner are as under:

(a) The father of the respondent/writ petitioner was working in the Education Department as Secondary Grade Teacher. He died in harness on 08.11.1995. The respondent/writ petitioner on the death of his father, submitted an application for appointment on compassionate ground on 06.02.1997 alongwith all the requisite documents. The petition has not been considered by the authorities for a considerable period. After a lapse of more than three years by proceedings dated 04.09.2001, the Director of School Education, issued an order for appointment of the petitioner in the post of Junior Assistant. The Director of School Education, directed the Chief Educational Officer, Kancheepuram District to issue the order of appointment.

(b) In spite of the aforementioned direction issued by the Director of School Education, the Chief Educational Officer, Kancheepuram District, by his proceedings dated 24.09.2001, has stated that there was no vacancy in the post of Junior Assistant in the District and opined that the respondent/writ petitioner may be accommodated in any other District.

(c) In the meanwhile, Government took a policy decision not to make any appointments vide G.O.No.212 dated 29.11.2001. The respondent/writ petitioner by way of an application moved under Right to Information Act, came to know that there were five vacancies in the post of Junior Assistant in Kancheepuram District and therefore, made a representation stating that the

ban order would not affect him in as much as his claim is for vacancies which existed prior to G.O.No.212 dated 29.11.2001.

(d) The School Education Department by order in G.O.(2D) No.2, School Education (M1) Department dated 07.01.2003, directed the Director of School Education, Chennai, to issue appointment order to the respondent/writ petitioner. The Director of School Education, inturn directed the District Educational Officer, Ponneri, Thiruvallur District, to issue an appointment order on 04.03.2003. The respondent/writ petitioner was finally appointed only on 10.04.2003, which is after a month. The above mentioned facts would be clear that the delay in appointing the respondent/writ petitioner is only due to the unnecessary procrastination and red tapism in the government.

(e) The Government issued G.O. No.259 dated 06.08.2003, introducing a new pension policy with effect from 01.04.2003. Under the new policy, the pension scheme, which was existing was replaced by a Contributory Pension Scheme. Since the respondent/writ petitioner joined the post only on 10.04.2003, the respondent/writ petitioner was brought under the Contributory Pension Scheme and not under the old scheme, which existed prior to 01.04.2003. The decision of the School Education Director, Chennai, rejecting the plea of the petitioner to give the pensionary benefits under the old pension scheme, vide proceedings No.Na.Ka.No.13272/R1/E1/2010 dated 10.05.2010, has been challenged in the instant writ petition.

(f) The Government in its counter affidavit, took up a stand that since the respondent/writ petitioner joined the department after 01.04.2003, he cannot be covered under the old pension scheme.

(g) Learned Single Judge, rejected the contention of the Government and allowed the writ petition. The Government has challenged this order in the instant writ appeal.

3. The facts narrated above would show that the respondent/writ petitioner's father passed away on 08.11.1995. The respondent/writ petitioner moved for appointment on compassionate grounds within two years i.e. on 06.02.1997. For no reason whatsoever, the respondent/writ petitioner's application was not considered. After a lapse of more than three years by proceedings dated 04.09.2001, Director of School Education, Chennai, issued an order of allotment for appointment of respondent/writ petitioner in the post of Junior Assistant.

4. Other than exchange of letters, there is no reason as to why the respondent/writ petitioner was not appointed before 10.04.2003 i.e after about 2 1/2 years, after the issue was

taken up. The respondent/writ petitioner was made to unnecessarily wait for over six years before the appellants herein finally gave him the job. The respondent/writ petitioner cannot be blamed for the delay on the part of the appellants.

5. The appellants neither in the writ appeal nor in the counter to the writ petition, have not given any reason whatsoever as to why there was inordinate delay of five years, before a job is given to the writ petitioner. After delaying for five years, the respondent/writ petitioner cannot be denied of the benefit of the old pension scheme. The respondent/writ petitioner was allotted appointment as early as on 04.09.2001, which is after three years after the application for compassionate appointment was made on 06.02.1997 and from 2001, there was no reason why his appointment was delayed by another two years and the appointment order was issued only on 10.04.2003. The stand of the appellants / Government is completely unreasonable and cannot be accepted. The order of the learned Single Judge made in W.P.No.9208 of 2012 dated 21.11.2017, does not require any interference. Hence, the instant Writ Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.Dakshayani Reddy, Advocate Sr.85735  
+1cc to the Government Pleader Sr.86221

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srg 30/01/2019



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