



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.11.2018

CORAM:

THE HONOURABLE JUSTICE DR.G.JAYACHANDRAN

W.P.(MD).No.1308 of 2015

and

M.P.(MD)No.1 of 2015

Malavasantharani

...Petitioner

Vs.

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Educational Officer,
Karur District.
3. The Assistant Elementary Educational Officer,
Thogaimalai,
Karur District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to permit the petitioner to continue in the old pension scheme which is governed by the Tamil Nadu Pension Rules 1978 without bringing under the Contributory Pension Scheme, taking into consideration of the services rendered in the previous school by the petitioner from 14.06.2002.

For Petitioner : Mr.K.K.Ramakrishnan

For Respondents : Ms.S.Srimiathy,
Special Government Pleader

O R D E R

This Writ Petition has been filed seeking for a direction to direct the respondents to permit the petitioner to continue in the old pension scheme, which is governed by the Tamil Nadu Pension Rules 1978 without bringing under the Contributory Pension Scheme, taking into consideration of the services rendered in the previous school by the petitioner from 14.06.2002.

2.The petitioner herein was appointed as an Assistant Teacher at S.A.Middle School, Nambiyaradaippu, Kanyakumari District, vide order dated 11.06.2002. She has participated in the examination conducted by the Teacher Recruitment and got post as a Secondary Grade Teacher in Salvation Army School in Nambiyaradaippu, Kanyakumari District. She was appointed as a secondary grade teacher



in the Panchayat Union Middle School, Pommanayakanpatti , Karur District, vide order dated 15.07.2009. She joined the service on 16.07.2009, she has made a request to consider her past service in the private aided school for placing her under old pension scheme. After 01.04.2003, the pension scheme has been abolished and all the Government servants in the State has been entitled under the Contributed Pension Scheme. Her representation dated 19.01.2012, has not been accepted by the respondent. As per the terms found in the representation which has annexed to the typed set of papers.

3.In the counter affidavit filed by the second respondent herein, it is stated that as per prevailing norms if the teacher has been appointed prior to 01.04.2003 and regularized in the aided school post and if the said teacher has been subsequently recruited by the TRB and appointed in a aided or Government School without any break of service, then they would continue in the old pension scheme but if there is a break of service, then the above said teacher would be considered only under the Contributory Pension Scheme (CPS) but not under old pension scheme which is governed under Tamil Nadu Pension Rules, 1978.

4.From the records, this Court finds that the petitioner received appointment order dated 15.07.2009 to join the Panchayat Union Middle School, Pommanayakanpatti, Karur District, within 30 days from the receipt of notification. Further proceedings of the Assistant Elementary Educational Officer, dated 15.07.2009, indicates that the petitioner was relieved from the existing post and permitted to join the new post within 7 days. The petitioner has joined the new post on the next day of her relieving. Therefore, the respondent ought not to have considered this, as a break in service. But erroneously the respondent under the impression that there is a break in service, stated that the the petitioner cannot be considered under the old pension scheme. Since the respondents have not considered the representation of the petitioner, this Court constrained to allow the writ petition. The petitioner herein is directed to submit a fresh representation to the respondents within a period of 15 days on receipt of such representation, the respondent shall pass appropriate order within a period of three months from the date of receipt of the copy of such representation.

5.This Writ Petition is disposed of accordingly, No costs.

Sd/-

Assistant Registrar(RTI)

//True Copy//

Sub Assistant Registrar(CS-I)



To

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

2. The District Educational Officer,
Karur District.

3. The Assistant Elementary Educational Officer,
Thogaimalai, Karur District.

+1cc to SPL.Govt.Pleader, Sr.No.97099

+1cc to Mr.V.Muthu Kamatchi, Advocate Sr.No.96900

DAS

KM/SV/SAR1/27.12.2018/3P/6C

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and
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