



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.5016 of 2015

Orders reserved on 07.03.2018	Orders pronounced on 27.04.2018
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1. Joseph Joy
2. M.E. Padma
3. S. Govinda Rajan
4. John Sundar Lal Suresh
5. S. Madhava Ramanujam
6. T.P. Vadivelu
7. R. Sundariah
8. V.S. Kumaresan
9. D. Selvam
10. S. Sujatha

.. Petitioners

Vs.

1. State of Tamilnadu,
Rep., by Secretary to Govt.,
Finance (Pension) Department,
Fort St., George,
Chennai - 9.
2. State of Tamilnadu,
Rep., by Secretary to Govt.,
Home (Courts 1A), Department,
Fort St., George,
Chennai - 9.
3. The Registrar General,
Madras High Court,
Chennai.
4. The Principal Accountant General,
(Accounts and Entitlements),
No.261, Anna Salai,
Chennai.

.. Respondents



Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the Government Orders namely G.O.(Ms).No.259, Finance (Pension) Department, dated 06.08.2003, as well as its consequential notification gazetted vide G.O.(Ms).No.304, Finance Department, dated 27.05.2004, and the order in G.O.(Ms) No.430, Finance (Pension) Department, dated 06.08.2004, issued by the first respondent in so far as the petitioners are concerned and quash the same and consequently direct the respondents to apply the old pension scheme to all the petitioners by transferring their contributions which were already collected into their respective accounts as was done earlier while applying the old pension scheme.

For Petitioner : Mr.M.Gregory Retna Raj

For Respondents : Mr.V.R.Shanmuganathan, Spl.G.P
for R1 & R2

Mr.P.Gunasekaran for R4

Mr.P.Tamilmani for R3

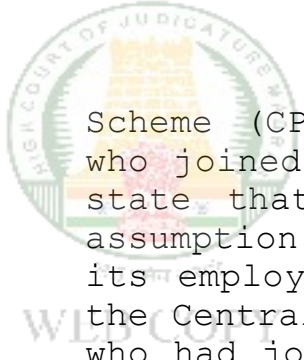
O R D E R

T . S . SIVAGNANAM, J

The petitioners, 10 in number, are Judicial Officers having been appointed to the post of Civil Judge in the Tamil Nadu State Judicial Service by direct recruitment in terms of G.O.(4D)No.46, Home (Courts1A) Department, Government of Tamil Nadu, dated 09.01.2003.

2. In this Writ Petition, the petitioners pray for issuance of a Writ of Certiorarified Mandamus, to quash the Government Orders in G.O.(Ms).No.259, Finance (Pension) Department, dated 06.08.2003, and the consequential notification in G.O.(Ms).No.304, Finance Department, dated 27.05.2004, and the Government Order in G.O.(Ms) No.430, Finance (Pension) Department, dated 06.08.2004, in so far as the petitioners are concerned and direct the respondents to apply the old pension scheme to all the petitioners by transferring their contribution which are already collected into their respective accounts.

3. The petitioners would state that the Government of Tamil Nadu issued G.O.(Ms).No.259, dated 06.08.2003, (impugned order), introducing new pension scheme known as Contributory Pension



Scheme (CPS), to its employees including the Judicial Officers, who joined service on or after 01.04.2003. The petitioner would state that the said Government Order was issued on the wrong assumption that the Government of India would implement the CPS to its employees, who had joined service after 01.10.2001, whereas, the Central Government implemented the CPS only for its employees, who had joined service on or after 01.01.2004. The Government of Tamil Nadu by G.O.(Ms).No.430, dated 06.08.2004, (impugned order), authorised recovery towards contribution for the new pension scheme with retrospective effect from its employees, who were recruited on or after 01.04.2003. It is further stated that the Government of Tamil Nadu, issued G.O.(Ms).No.304, dated 27.05.2004, (impugned order), with retrospective effect directing that the existing general provident fund scheme will not be applicable to the newly recruited employees, who are covered under CPS introduced w.e.f., 01.04.2003. It is submitted that as per new Pension Scheme, the Judicial Officers who had been appointed on or after 01.04.2003, are contributing 10% of their basic pay as well as dearness allowance to the CPS, which will be invested along with equal contribution by the Government. The contributions by the Judicial Officers is considerably high and not proportionate to the benefits on such contribution, which remains uncertain. The Judicial Officers in the State of Tamil Nadu, who are appointed prior to 01.04.2003, are still governed by the old pension scheme and CPS are not made applicable to them.

4. With these facts, Mr.M.Gregory Retna Raj, learned counsel for the petitioners assailed the correctness of the impugned orders on the following grounds:-

(i) The Government of Tamil Nadu has no authority to implement CPS to its employees prior to the implementation of the scheme by the Government of India i.e., prior to 01.01.2004;

(ii) The Judicial Officers cannot be called upon to contribute for the CPS introduced by the Government of Tamil Nadu;

(iii) Implementation of CPS by the Central Government and State Government on different dates will be against the directions of the Hon'ble Supreme Court regarding parity in scale of pay/pension in respect of Judicial Officers throughout the country;

(iv) A Committee consisting of three Hon'ble Judges of the High Court of Karnataka, had recommended continuance of the old pension scheme to the Judicial Officers of the Karnataka, holding CPS is not applicable to the Judicial Officers of the Karnataka State;

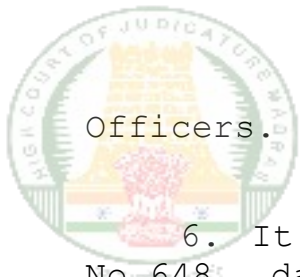
(v) Parity in status should be between political executives, legislature and the Judges and not between Judges and

Administrative Executives;

(vi) The Government of Tamil Nadu did not implement the CPS to officers of all India service w.e.f., 01.04.2003, but implemented the same only w.e.f., 01.01.2004, since they were governed by the pay scales applicable to Central Government Employees;

(vii) The Government of Tamil Nadu could not have exercised option to join the CPS for its employees, who had joined service on or after 01.04.2003, even before the introduction of the CPS by the Central Government.

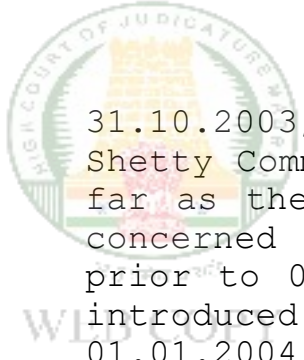
5. The learned counsel for the petitioner while elaborating his submissions on the aforementioned 7 points submitted that the CPS was introduced by the Government of India to its employees, who had joined service on or after 01.01.2004. Though, the Central Government Scheme states that the State Government were given option to join the CPS, many State Governments chose to join the scheme on different dates and except the State of Tamil Nadu, no other State has introduced the CPS prior to 01.01.2004. Thus, it is the submission of the learned counsel that when State Governments were given an option to adopt the CPS introduced by the Government of India, the Government of Tamil Nadu cannot introduce CPS prior to its introduction by the Government of India. Therefore, it is submitted that implementation of the CPS to the petitioners, who had been recruited on 31.10.2003, prior to 01.01.2004, (when the scheme was introduced by the Government of India) is unsustainable. The learned counsel further submitted that the Hon'ble Shetty Commission in its report has recommended that the pay scale in respect of Subordinate Judicial Officers should be revised proportionately, and as and when the pay scale in respect of the Judges of the Supreme Court and High Courts are revised. That CPS is not applicable to High Courts and Supreme Court Judges, it should not be made applicable to the members of the Subordinate Judiciary in the State of Tamil Nadu. It is further submitted that pursuant to the directions of the Hon'ble Supreme Court in *All India Judges Association and Ors., vs. UOI and Ors., [(1993) 4 SCC 288]*, the Government of India constituted a pay commission exclusively for Judicial Officers, after which the pay structure including the pension had been taken out from the purview of the Central pay commission and State Pay Commissions. Hence, determination of Pension of Judicial Officers of Subordinate Judiciary does not remain within the purview of State Government/Central Government. The Hon'ble Supreme Court constituted a Committee headed by Hon'ble Justice E.Padmanabhan, for making recommendations uniformly on revision of pay scales of Judicial Officers of Subordinate Judiciary of all States. The recommendations made, were implemented by the State Government. However, neither in the Hon'ble Shetty Commission's recommendation nor in the Hon'ble Justice E.Padmanabhan's, recommendation, there is any wishper about the recommendation for CPS to Judicial



Officers.

6. It is further submitted that the Government in G.O.(Ms). No.648, dated 19.07.2010, accorded sanction of pension to the Judicial Officers, who retired prior to 01.01.2006 and after 01.01.2006, in accordance with recommendations given by Hon'ble Justice E.Padmanabhan Commission. Thus, the Government having paid full pension to the Judicial Officers, who retired on or after 01.01.2006, such full pension cannot be subjected to any restriction such as contribution by the Judicial Officers towards pension scheme etc. It is further submitted that if the Government of India/States are allowed to implement CPS on different dates, the directions of the Hon'ble Supreme Court to implement uniform pay scale to Subordinate Judicial Officers throughout India cannot be complied with. The learned counsel referred to the recommendations of the Committee of three Hon'ble Judges of the High Court of Karnataka recommending continuance of the old Pension Scheme to the Judicial Officers of Karnataka State. It is submitted that though the recommendations of the Committee is not binding on this Court, it can be looked into for its persuasive effect, as the Government of Tamil Nadu accepted to fully implement the report of the Hon'ble Justice E.Padmanabhan Commission, without any modification, as could be seen from G.O. (Ms).No.56, dated 19.01.2007, thereby, the Government have accepted the continuance of the existing old pension scheme to the Judicial Officers.

7. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in *All India Judges Association and Ors., vs. UOI., (CDJ 1993 SC 386)* and submitted that the distinction between the Judicial service and other service has been lost sight of, as it has been held that the Judicial Service is not "service" in the sense of "employment"; Judges are not "employees" and as members of the Judiciary, they exercise sovereign Judicial power of the State. Therefore, it is submitted that this distinction between the Judges and the members of the other service has to be constantly kept in mind for yet another important reason, namely, 'judicial independence'. The learned counsel made elaborate reference to the observations made by the Hon'ble Supreme court in the case of *All India Judges Association* case, and submitted that the mere fact that Article 309 of the Constitution gives power to the executive and the legislature to prescribe the service conditions of the judiciary, does not mean that the Judiciary should have no say in the matter. It is further submitted that if the Government of Tamil Nadu had no jurisdiction to implement the CPS to the officers of All India Service w.e.f., 01.04.2003, as applicable to its other employees, as they are governed by pay scale recommended by Central Pay Commission, the same principle has to be applied to the petitioners herein, who joined service on



31.10.2003, and governed by the recommendations of Hon'ble Justice Shetty Commission and Hon'ble Justice E.Padmanabhan Commission, as far as the pay scales, pension and other service conditions, are concerned and they cannot be compelled to contribute to the CPS prior to 01.01.2004. It is further submitted that since CPS was introduced by the Central Government to its employees only on 01.01.2004 and the State Governments were merely given option to join the same, the Government of Tamil Nadu cannot exercise its option to join the CPS, which was not in existence on 01.04.2003 or 31.10.2003, when the petitioners were recruited, as the scheme was notified by the Government of India only on 22.12.2003. Reliance was placed on the decision of the Division Bench of the Bombay High Court in the case of *Vihar Durve vs. The State of Maharashtra & Ors.*, (CDJ 2017 BHC 848), wherein, it was held that even if the letters of appointment issued to the Judicial Officers appointed after 01.01.2005, contains a clause that pension will be governed by the impugned Government resolution, the same will not be binding on the Judicial Officers. With the above submissions, the learned counsel prayed for allowing the Writ Petition.

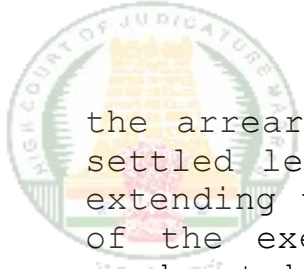
8. Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondent State submitted that the Government in G.O.(Ms).No.259, has introduced the CPS to its employees recruited on or after 01.04.2003 and accordingly, the Tamil Nadu Pension Rules, 1978, has been amended. In terms of the Amended Rule, the Tamil Nadu Pension Rules, 1978, shall not apply to the Government servants appointed on or after 01.04.2003 to the services and posts in connection with the affairs of the State, which are borne on pensionable establishment, whether temporary or permanent. It is further submitted that the policy decision for implementation of CPS by the State Government is in consonance with the decision of the Central Government and the scheme is applicable to the petitioners as all of them joined duty after 01.04.2003. It is further submitted that nowhere in the Hon'ble Justice E.Padmanabhan Commission recommendation, there is an exception for Judicial Officers from the new pension scheme, (CPS), and the direction issued by the Hon'ble Supreme Court was to implement the recommendations. Therefore, the implementation of CPS to all Government Employees including the petitioners, is not against the decision of the Hon'ble Supreme Court. The decision of the Hon'ble Supreme Court would not be relevant for the instant case, as it directs implementation of recommendations of Hon'ble Justice E.Padmanabhan Commission w.e.f., 01.01.2006, to the Judicial Officers and it does not issue any exemption to the Judicial Officers from CPS. It is submitted that following the decision of the Government of India, the State Government had announced in the budget speech of 2003-04, the introduction of CPS based on defined contribution to the employees of the State recruited on or after 01.04.2003. Further, the petitioners cannot challenge the cut-off date fixed by the State Government for



implementation of the CPS and it cannot be stated to be in violation of Article 14 of the Constitution of India. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *D.S.Nakara & Ors., vs. UOI* (AIR 1983 SC 130) and the decision in W.P.(MD).No.4445 of 2010, dated 16.12.2013 and the judgment in W.A.(MD).No.217 of 2011 etc., batch, dated 19.06.2014. Thus, it is submitted that the decision of the State Government to fix cut-off date as 01.04.2003, for taking the contingency in services, is justifiable. Further, it is submitted that the State Government need not wait till the Government of India implements the scheme and the source of power is not traceable to the Government of India and the policy decision taken by the State Government being fair and reasonable, cannot be interfered. Further, it is submitted that when the petitioners joined services, the amendment is in force and this has been challenged after 12 years and the petitioners having accepted and contributed towards CPS, are estopped from questioning the same after a period of 12 years. Further, the impugned Government Orders have been upheld by this Court both by the Division Bench and the Single Bench.

9. Mr.P.Tamilmani, learned counsel appearing for the third respondent, Registrar General, High Court of Madras, the third respondent, adopted the submissions of the learned Special Government Pleader.

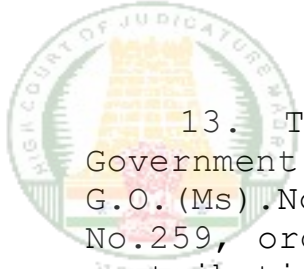
10. Mr.P.Gunasekaran, learned counsel appearing for the Principal Accountant General, the fourth respondent, submitted that the Government of Tamil Nadu, took a policy decision to implement the new Pension Scheme called 'CPS' to all its employees, who joined Government service on or after 01.04.2003. The petitioners joined as Judicial Officers, after 01.04.2003 and having accepted the terms and conditions of appointment, are estopped from challenging G.O.(Ms).No.259, and G.O.(Ms).No.430. Further, it is submitted that the petitioners have approached this Court after a lapse of 12 years and the Writ Petition is liable to be dismissed on the ground of delay and laches. Further, the petitions filed for a similar relief, were dismissed by this Court by a well reasoned order and therefore, the contentions raised having been settled by this Court, the same cannot be re-agitated by the petitioners. It is further submitted that neither the Hon'ble Justice Shetty Commission's recommendations nor Hon'ble Justice E.Padmanabhan's Committee recommendations speak about implementation of the CPS to Judicial Officers. On the contrary, the two recommendations were for revision of scale of pay of Judicial Officers both retired and in service and the recommendations of the Hon'ble Justice E.Padmanabhan, Committee, was accepted by the Government and pay scales of revision were revised in the year 2009 itself and all the petitioners received



the arrears of pay also. Further, it is submitted that it is a settled legal position that the power for fixing the cut-off for extending the particular benefit or scheme falls within the domain of the executive and the recommendations of the pay commission need not be accepted by the State and the State can make its own Rule contrary to the recommendations. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Andhar Pradesh & Ors., vs. N.Subbarayudu & Ors.*, [(2008) 14 SCC 702]. *M.P.Rural Agriculture Extension Officers Association vs. State of M.P., and Anr.*, [(2004) 4 SCC 646] and *State of Punjab and Ors vs. Amar Nath Goyar & Ors.*, in Civil Appeal No.129 of 2003, dated 11.08.2005. Reliance was also placed on the decision in the case of *V.Jeeva vs. State of Tamil Nadu & Ors.*, in W.P.No.24045 of 2009, dated 31.10.2011, which was confirmed by the Division Bench in W.A.No.856 of 2014, dated 10.07.2014 and the decision in the case of *R.Vijayakumar & Ors., vs. The Government of Tamil Nadu & Ors.*, in W.P.No.2470 of 2013, dated 16.02.2013. With regard to the other aspects, the learned counsel adopted the averments set out in the counter affidavit filed by the State Government.

11. Mr.M.Gregory Retna Raj, learned counsel for the petitioner while replying to the submissions made by the learned counsel for the respondents, submitted that rejecting the Writ Petition on the ground of delay and laches does not arise, since the petitioners became aware of the decision of the Hon'ble Supreme Court challenging the implementation of CPS to Karnataka Judicial Officers only in May 2014, when they came across an order passed by the Hon'ble Supreme Court in Interlocutory Applications giving relief to those petitioners to seek relief before the High Court on the Judicial side. Thereafter, the petitioners started collecting materials from different sources and sought permission of the High Court in the year 2014 and filed this Writ Petition in the year 2015. In support of his contentions, learned counsel referred to the decision in the case of *S.Valluvan vs.TNCSC & Anr.*, [(2013) 6 MLJ 753]. It is further submitted that the decision of this Court both Single Bench and the Division Bench relied on by the respondent cannot be applied to the petitioners, who belong the Judicial service and the petitioners in those cases, were not Judicial Officers. It is further submitted that the petitioners stand in a better footing, since the Government of Maharashtra has introduced CPS to its employees only w.e.f., 01.11.2005, after the scheme was introduced by the Central Government on 01.01.2004, and not before the implementation of the scheme by the Central Government, as done in the State of Tamil Nadu.

12. Heard the learned counsels appearing for the parties and carefully perused the materials placed on record.



13. The petitioners have challenged the impugned (three) Government Orders namely, G.O.(Ms).No.259, G.O.(Ms).No.304, and G.O.(Ms).No.430. The Government of Tamil Nadu vide G.O.(Ms).No.259, ordered a new Contributory Pension Scheme based on defined contribution will be introduced to the newly recruited employees and this will apply to all employees, who are recruited on or after 01.04.2003. Further it was ordered that the employees contribution and the Government contribution, if any, towards the scheme shall be spelt out separately. Further, after issue of detailed orders from Government of India introducing new scheme to their employees, the State Government will, if necessary, modify the orders and issue rules and regulations for CPS for Government Employees recruited on or after 01.04.2003. Based on the said Government Order, a notification was published in the Government Gazette in exercise of the powers conferred under Article 309 of the Constitution, the Government of Tamil Nadu made an amendment to the Tamil Nadu Pension Rules, 1978, inserting a proviso after Rule 2, which provided that the Pension Rule shall not apply to the Government servants appointed on or after 01.04.2003, services and posts in connection with affairs of the State which are borne, on pensionable establishment, whether temporary or permanent.

14. The Government vide G.O.(Ms).No.304, Finance Department, dated 07.05.2004, ordered that the General Provident Fund (Tamil Nadu Rules) will not be applicable to those, who are recruited on or after 01.04.2003, necessary amendment was issued in exercise of powers under Article 309 of the Constitution. The third impugned Government Order being G.O.(Ms).No.430, which is in furtherance to G.O.(Ms).No.259, by the said Government Order, further, orders were issued as to how the CPS would operate. Admittedly, the petitioners have all joined Judicial Services after the cut-off date fixed in G.O.(Ms).No.259, i.e., 01.04.2003, as they had joined service on 31.10.2003.

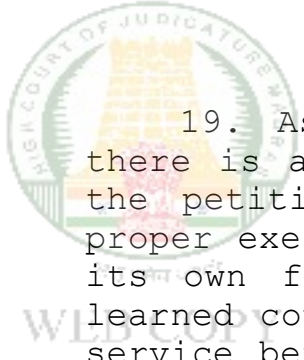
15. The first objection raised by the State Government and the Principal Accountant General is on the ground that the Writ Petition is barred by delay and laches.

16. The undisputed facts being that on the date when the petitioners joined service, they were fully aware that no pension will be paid to them and they will have to become members of Contributory Pension Scheme. For 12 long years all the petitioners have effected contribution and were members of the scheme and for the first time, in the year 2015, they have come forward with this Writ Petition challenging the Government Orders, which were issued in the year 2003-04.



17. As pointed out by the Hon'ble Supreme Court in the case of *Sankar Co-operative Housing Society Limited and Ors., vs M.Prabhakar & Ors.*, (2011) 5 SCC 607, there is no inviolable Rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition, as it is the Rule of practice based on sound and proper exercise of discretion and each case must be dealt with on its own case. It was further held that unless there is a reasonable explanation for the delay, the rights of other parties, which had accrued should not be disturbed. It was pointed out that one satisfactory way of explaining delay in filing a petition under Article 226 of the Constitution is for petitioner to show that he had been seeking relief elsewhere in a manner provided by law. It was further pointed out that if the petitioner runs after a remedy not provided in the statute or statutory rules, it is not desirable for the High Court to condone the delay, as it is immaterial what the petitioner chooses to principle in the regard for remedy. Further, it was held that no hard and fast Rule can be laid down and every case shall have to be decided on its own facts and merely submitting representations, would not be adequate explanation to take care of the delay.

18. It is the submission of the learned counsel for the petitioners that the petitioners were not aware about the challenge made by the Karnataka Judicial Officers before the Hon'ble Supreme Court and only in May 2014, they came to know that the Hon'ble Supreme Court has given liberty to the Karnataka Judicial Officers to approach the High Court on the judicial side for necessary relief. The petitioners admit that it is only after they came to know of the order in May 2014, they collected material, sought permission of the High Court in 2014 and filed the Writ Petition in the year 2015. Thus, it has to be seen as to whether the explanation offered, is a satisfactory explanation for filing a petition under Article 226 of the Constitution, after a period of 12 years, after the issuance of the impugned Government Orders. It has to be borne in mind, that the petitioners are Judicial Officers and legally trained minds. Therefore, for them to state that they were not aware of things, which were happening elsewhere in the country at the instance of similarly placed Judicial Officers, is a plea, which is hard to accept. What is important to note is that when the petitioners were appointed and joined duty on 31.10.2003, all of them were aware of the fact that in terms of G.O.(Ms)No.259, all employees recruited on or after 01.04.2003, will be under the CPS. Admittedly, the petitioners have not submitted any representation prior to 2014 and the first representation given to the Registrar General, was during June/July 2014.



19. As pointed out by the Hon'ble Supreme Court, whenever there is a delay, the Court must necessarily refuse to entertain the petition and it is a Rule of practice based on sound and proper exercise of discretion and each case must be dealt with on its own facts. The decisions, which were referred to by the learned counsel for the petitioner, pertain to seniority or other service benefits, which in certain cases have been held to give a continuous cause of action.

20. It is not the case of the petitioners that the scheme came into vogue after they joined services and cut-off date has been fixed which has taken away their vested rights. As pointed out that the CPS was in vogue much prior to petitioners joining service and having accepted the terms and conditions of appointment, it is too late for the petitioners now maintained a challenge to G.O(Ms).No.259. This finding would be sufficient for us to dismiss the Writ Petition.

21. Nevertheless as we heard Mr.M.Gregory Retna Raj, elaborately we propose to deal with the other points urged by the learned counsel for the petitioner. The sheet anchor of the submission of the learned counsel is that Judicial Officers, cannot be equated to the other administrative staff of the Government. Judgeship is not an employment in that sense. In this regard, the learned counsel referred to the observations of the Hon'ble Supreme Court in *All India Judges Association* case and the recommendations of the Hon'ble Justice Shetty Commission and Hon'ble Justice E.Padmanabhan Commission to impress upon us that the Judicial Officers have been treated as a separate category and they cannot be put in par with the other Government servants. Further, it is submitted that when the Hon'ble Supreme Court directed implementation of the revision of pay scales as recommended by the One Man Commission, the Government of Tamil Nadu, implemented it fully and having done so, cannot impose the CPS on the petitioners.

22. We have seen the recommendations of the One Man Commission and we find that the recommendations are with regard to revision of pay scales and there is nothing contained in those recommendations about the pension scheme. It is an admitted fact that the petitioners have received the benefit of the recommendations of the commission, which was accepted by the Government unconditionally and their pay scales stood revised and they also received the arrears in full during 2009. Even at that point of time, the petitioners did not raise even a faint plea that they should not be put under CPS, but should be given the benefit of the old pension scheme. Therefore, the challenge to the impugned orders on the ground that the recommendations of the



One Man Commission was accepted, they should be given the old pension scheme, is an argument, which is stated to be rejected.

23. It was argued that the Government of Tamil Nadu introduced the scheme much prior to the same being implemented by the Central Government, when the Central Government had only called for options from the various State Governments. The decision to implement CPS is a policy decision taken by the State, there is no statutory prohibition or any other constitutional bar for the State Government to implement the CPS prior to the Central Government having implemented the scheme. It is no doubt true that the Central Government in the budget for 2001-02, announced the new pension scheme based on the defined contribution to be introduced in various Central Government services. Taking a clue from the same, the State Government had introduced the scheme implementable to all Government Employees, who were recruited on or after 01.04.2003. There is nothing on record to show that the State Government is prohibited from taking an independent decision and should definitely implement the scheme only on or after the Central Government implements the scheme. The relevant amendments pursuant to G.O.(Ms).No.259, have been done in exercise of power under Article 309 of the Constitution. Thus, the policy decision having not been shown to be either arbitrary and unreasonable, cannot be assailed by the petitioner on the grounds raised by them.

24. As pointed out by the learned counsel for the petitioners, the recommendations of the Committee of the Hon'ble Judges of the High Court of Karnataka cannot have any binding effect on this Court and it is submitted that it should have persuasive effect. We are not persuaded with the said argument on account of the factual matrix in the instant case, as the petitioners having accepted their terms of appointment unconditionally and having been part of the CPS, for over 12 years. Therefore, such contention raised by the petitioners also does not merit consideration. The observations made by the Hon'ble Supreme Court in *All India Judges Association* case, deals with the distinction between the Judges and the members of other services bearing in mind the important concept of Judicial independence. Precisely for this reason, One Man Commission was constituted to recommend pay scales for Judicial Officers, which recommendations was implemented by the State Government. The recommendations do not touch upon the pensionary benefits either under the old pension scheme or under CPS. Therefore, the observations contained in *All India Judges Association* case could at best be referred to and relied on with regard to the principles governing the pay structure of the Subordinate Judiciary and not for the purpose as projected by the petitioners.



25. In *V.Sahadevan Vs. State of Tamil Nadu & Ors., in W.A. (MD).No.217/2011 etc batch, dated 19.06.2014*, the appellants who had applied for selection to various posts such as Assistant Public Prosecutor, Junior Assistant, Assistant Medical Officer, challenged the applicability of G.O.(Ms).No.259 and all the Appellants and Writ Petitioners were issued appointment orders only after 01.04.2003 and they had not challenged the proviso to Rule 2 of the Tamil Nadu Pension Rules. The Appellants and Writ Petitioners contended that they were all actually recruited before the cut-off date, namely, 01.04.2003, though they were appointed after 01.04.2003 and the amendment in G.O.(Ms).No.259, cannot be made applicable to their cases. The Court was required to interpret two important words "recruitment" and "appointment". After elaborately considering the said issue and after referring to various decisions of the Hon'ble Supreme court, it was held that the Appellants and Writ Petitioners, who were recruited or enlisted or selected for appointment, cannot claim a right on par with those who were actually appointed to the service. The other contentions namely, the Amended Rule 2 of the Tamil Nadu Pension Rules, cannot be made applicable to their cases in view of the second proviso to Rule 3 of the General Rules of the Tamil Nadu State and Subordinate Service and the contention that the delay in joining the duty, cannot be a penalty to the petitioners were negatived by the Division Bench. Thus, all the Appeals and Writ Petitions were dismissed and the Division Bench quoted with approval that G.O.(Ms).No.259, was upheld in the case of *R.Vijayakumar vs. State of Tamil Nadu in W.P.No.2470 of 2013*.

26. Further in the case of *V.Jeeva, (supra)*, the learned Single Bench upheld the order passed by the Director of School Education, informing the petitioner that the new pension scheme will apply to him and he is not covered under the old pension scheme. This decision was upheld by the Division Bench by judgment dated 10.07.2014. Thus, the findings rendered by the Single Bench in the case of *R.Vijayakumar (supra)*, which was quoted in the approval by the Hon'ble Division Bench in the case of *V.Sahadevan, (supra)* and the decision in the case of *V.Jeeva, (supra)* which was confirmed by the Division Bench, are straight answers to the contentions raised by the petitioner, challenging the impugned Government Orders. Therefore, the Writ Petitions have to necessarily fail and no relief as sought for can be granted. The decision by the High Court of Bombay in the case of *Vihar Durve (supra)* does not bind this Court, as the Division Benches of our Court have upheld the provisions and held that it would apply to all employees, who were recruited on or after 01.04.2003.

27. Thus, for the above reasons, the relief sought for by the



petitioners cannot be granted and the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar(CO)

WEB COPY/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Finance (Pension) Department,
Fort St., George,
Chennai - 9.

2.The Secretary to Government,
State of Tamil Nadu,
Home (Courts 1A), Department,
Fort St., George,
Chennai - 9.

3.The Registrar General,
Madras High Court,
Chennai.

4.The Principal Accountant General,
(Accounts and Entitlements),
No.261, Anna Salai,
Chennai.

+1cc to M/s.Special Government Pleader,SR.No. 64772

+1cc to Mr.R.ANAND, Advocate, SR.No.64881

+1cc to Mr.P.GUNASEKARAN, Advocate, SR.No.64448

W.P. (MD) No.5016 of 2015
27.04.2018

PBN

KK/SV MMS/10.05.2018/SAR-1/14P-8C