



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P (MD) No.5800 of 2015

and

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

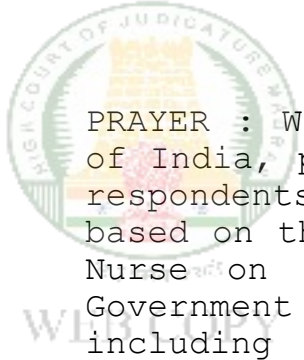
S.Fancy Janet
Staff Nurse
The Kanyakumari Government
Medical College, Asaripallam
Kanyakumari District.

... Petitioner

Vs.

- 1.The Accountant General
Office of the Accountant General
Chennai, Tamil Nadu,
261, Annasalai, Chennai-600018
- 2.The State of Tamil Nadu,
rep., by its Secretary
Department of Finance (Pension)
Fort St.George, Chennai-600 009.
- 3.The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.
- 4.The Additional Director of Medical Education
Directorate of Medical Education
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.
- 5.The Dean
The Government Mohan Kumaramangalam,
Medical College and Hospital, Salem
Salem District.
- 6.The Dean
The Kanyakumari Government
Medical College, Asaripallam,
Kanyakumari District.

... Respondents



PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on contract basis on 27.11.2001 in the fifth respondent Government Mohan Kumaramangalam Medical College and Hospital, Salem including the petitioner's subsequent joining in the Madras Government General Hospital, Chennai on 11.06.2004 and subsequent entire service periods till her retirement.

For Petitioner: Mr.S.Xavier Rajini

For R1 : Mr.P.Gunasekaran

For R2 to R6 : Mr.Gunaseelan Muthiah

Additional Government Pleader

ORDER

The petitioner seeks Writ of Mandamus directing the respondents to place her under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on contract basis on 27.11.2001 in the Government Mohan Kumaramangalam Medical Hospital/fifth respondent herein, Salem.

2. The petitioner was appointed as Staff Nurse on contract basis on 25.09.2001 and she was absorbed on regular vacancy on 01.06.2004. The petitioner had made several representations to the respondents to place her under Old Pension Scheme. Since her request was not considered by the respondents, the petitioner has come up with the above Writ Petition.

3. The respondents would resist the Writ Petition contending that the petitioner was appointed as a permanent Staff Nurse only on 01.06.2004 and therefore, she would not entitle to the benefits of the Old Pension Scheme. Only the New Pension Scheme, which was introduced as per G.O.Ms.No.259 dated 06.08.2003, would be applicable to her, since her permanent appointment was after the cut off date, namely, 01.04.2003.

4. Heard Mr.S.Xavier Rajini, learned counsel appearing for the petitioner, Mr.P.Gunasekaran, learned counsel appearing for the first respondent and Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents 2 to 6.

5. The case of the petitioner that she was appointed as a Staff Nurse on a contract basis and by following the communal rotation on 25.09.2001 is not in dispute. The only ground, on which the petitioner was denied Old Pension Scheme is that cut off date is prescribed in G.O.Ms.No.259 dated 06.08.2013, by which the New Pension Scheme was introduced. The question regarding which of the two Pension Schemes should apply to the persons like that of the petitioner is no longer *res integra* in view of the decision of the Hon'ble Division Bench of this Court in *Union of India Vs., K.Punniyakoti* reported in 2014(2) CTC 777. While considering the similar provisions of the Central Pension Rules had held as



follows:-

"17.The word "new entrant" has got a definite meaning, "a person, who enters recently". A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004, cannot be termed as "new entrant" into service. The New Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004."

6. The Hon'ble Division Bench also referred to the earlier Division Bench Judgment in W.P.Nos.26933 and 26934 of 2007 dated 23.04.2008, wherein the Hon'ble Division Bench has considered the very Government Order dated 06.08.2004 introducing the New Pension Scheme with effect from 01.04.2003. The similar question was also considered by Hon'ble Mr.Justice. N.Paul Vasanthakumar in W.P(MD). No.14369 of 2010, wherein, the contention of the State that since the petitioner was absorbed into regular service only after cut off date namely 01.04.2003, he will not be entitled to the Old Pension Scheme, was rejected.

7. In view of the above decisions, the Writ Petition has to succeed and the Writ Petition is therefore allowed. The respondents are directed to include the petitioner in the Old Pension Scheme and calculate the Pension as per the said Scheme by applying the Rule 11 (2) of the Tamil Nadu Pension Rules. No costs. Consequently, connected M.P(MD).No.1 of 2015 is closed.

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-I)

To

- 1.The Secretary,
State of Tamil Nadu,
Department of Finance(Pension)
Fort St.George, Chennai-600 009.
- 2.The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.
- 3.The Additional Director of Medical Education
Directorate of Medical Education
162, Poonamalle High Road,
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4.The Dean

The Government Mohan Kumaramangalam,
Medical College and Hospital, Salem
Salem District.

5.The Dean

The Kanyakumari Government
Medical College, Asaripallam,
Kanyakumari District.

+1cc to Mr.S.XAVIER RANI, Advocate, SR.No.99674
+1cc to Mr.P.GUNASEKARAN, Advocate, SR.No.99952
+1cc to M/s.Special Government Pleader,SR.No. 99873

W.P (MD) No.5800 of 2015
10.12.2018

RMK
KK/SV/SAR-1/24.12.2018/4P-9C