



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.11.2018

CORAM:

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.(MD) No.901 of 2015
and
M.P(MD) No.2 of 2015

V.Vasanthi

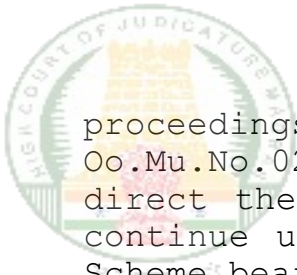
... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Finance (Pension),
Fort St. George, Chennai-600 009.
2. The State of Tamil Nadu
Rep by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
3. The Accountant General,
Office of the Accountant General,
261, Annasalai, Chennai-600 018.
4. The Director of Elementary Education,
College Road, Chennai-600 006.
5. The District Elementary Educational Officer,
Ramanathapuram, Ramanathapuram District.
6. The Assistant Elementary Education Officer,
Ramanathapuram, Ramanathapuram District.
7. The Additional Assistant Elementary
Educational Officer,
Ramanathapuram, Ramanathapuram District.
8. The Secretary,
D.D.Vinayagar Primary School,
Velipattinam, Ramanathapuram,
Ramanathapuram District-623 504.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 7th respondent AAEO in Na.Ka.No.429/A1/2014 dated 30.05.2014 and the



proceedings issued by the 5th respondent DEEO in Oo.Mu.No.02876/A2/2014 dated 15.07.2014, quash the same and further direct the respondents herein to allow forthwith the petitioner to continue under her Teacher Provident Fund Scheme i.e., Old Pension Scheme bearing Account No.339306.

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For Petitioner : Mr.T.Cibi Chakraborty
for Mr.Isaac Mohanlal
For Respondents No.
1, 2, 4 to 7 : Mr.S.Srimathy,
Special Government Pleader.
For R-3 : Mr.P.Gunasekaran
For R-8 : No appearance

ORDER

The petitioner seeks a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the seventh respondent, to quash the same and to direct the respondents herein to continue her service under the Old Pension Scheme.

2.The case of the writ petitioner herein is that she was appointed as Secondary Grade Teacher in the eighth respondent school as against the vacancy on 29.07.2002, though she has possessed higher education qualification namely B.A.(Economics) and B.Ed (Economics) degree. Due to shortage of qualified Secondary Grade Teacher from the Schedule Caste and Schedule Tribes, the Government of Tamil Nadu thought fit to permit the Aided Private Schools to appoint the Graduate Teachers for the post of Secondary Grade. As a consequence, the Government has also issued G.O(Ms)No.301, School Education (B1) Department, dated 15.10.1999. Based on the said Government Order, the writ petitioner was selected for the post of Secondary Grade Teacher in the eighth respondent's school and her appointment was also forwarded to the authorities for approval.

3.The petitioner would further contend that the fifth respondent herein vide order dated 16.05.2003 had taken note of the appointment of the writ petitioner and recommended her to undergo one month Child Psychology course. The writ petitioner herein completed her one month Child Psychology course on 27.10.2004. Thereafter, she was appointed in the time scale of pay of Rs.4500-125-7000/- as per the order passed by the District Elementary Education Officer vide proceedings dated 20.12.2004.

4.The contention of the learned counsel appearing for the writ petitioner is that she was appointed as Secondary Grade Teacher by virtue of G.O(Ms) No.301 (School Education (B1) Department) dated 15.10.1999 and pursuant to the conditions imposed under G.O(Ms) No.301, she has undergone Child Psychology course provided by the DIET. The delay in taking up this six months Child Psychology course is not due to her, but admittedly, it is a School Education



Authority who has to forward her name in the said training and her turn to get the training is only in the year 2004.

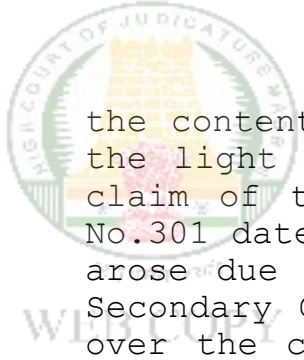
5.The learned counsel for the petitioner would also contend that earlier there was ban on recruitment. Hence, the petitioner and similarly placed teachers were given only a consolidated pay after lifting of ban and the Government though fit that they should be placed under time scale. In any event, the appointment of the petitioner is prior to the implementation of new contributory pension scheme, which came into force from 01.04.2003. The scheme is for the Government servants who have been appointed on or after 01.04.2003. Whereas the petitioner herein was appointed on 24.09.2002. Only approval and regularizing her service in a time scale were took place after 01.04.2003. Therefore, her service should fall under Old Pension Scheme and not under new Contributory Pension Scheme. It is also contended by the learned counsel for the petitioner that the petitioner herein has already been assigned the enrolment number under the provident fund, which falls under the Old Pension Scheme. While so, the impugned order which has put the petitioner herein under the New Pension Scheme is ultra vires and liable to be quashed.

6.The learned Special Government Pleader appearing for the respondents 1,2, 4 to 7 has filed her counter, wherein it is contended that the initial appointment of the petitioner pursuant to the G.O(Ms) No.301 dated 15.10.1999 is a conditional appointment and her appointment was subject to completion of Child Psychology course and approval by the Department. As far as the petitioner herein is concerned, soon-after her completion of Child Psychology Course her appointment has been approved and she has been put in the time scale of pay. Her appointment shall be approved and she will be paid the scales of pay admissible to Secondary Grade Teacher and she cannot seek any other pay to her service, which is subject to certain condition as found G.O(Ms) No.301 itself. Further in the counter it is also contended that the assignment of provident fund number to the petitioner herein is due to the inadvertent act of the management of the eight respondent, for which the State cannot be held responsible.

7.While the learned counsel for the petitioner would submit the judgment of this Court rendered in W.A.No.249 of 2002 reported in 2004-2-L.W 591 (The State of Tamil Nadu and others Vs. Pallivasal Primary School), few other judgments, which are followed the judgment of the Division Bench cited supra.

8.The learned Special Government Pleader submitted that the recent judgment of the Division Bench of this Court rendered in the review petition filed against the order passed in W.A(MD) Nos.74 of 2015 and 957 of 2016 touches upon the issue in hand.

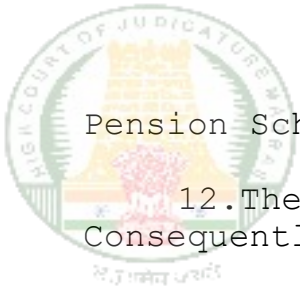
9.Considering the rival submissions, this Court is of the opinion that de hors of the judgments referred before this Court,



the contention of the petitioner herein if we look independently in the light of G.O(Ms) No.301, G.O(Ms) No.100 and G.O(Ms)No.109, the claim of the petitioner herein appears to be untenable. G.O(Ms) No.301 dated 15.10.1999 was issued to meet out the contingency which arose due to shortage of Schedule Caste candidate for the post of Secondary Grade Teacher. At that point of time in order to tide over the crisis, the Government thought fit to relax the condition without compromising the basic requirement and therefore, while permitting the private school to appoint the teachers with graduation of B.Ed decree for the post of Secondary Grade Teacher, made a pre condition that the teachers should undergo one month training in the Child Psychology course. It is also made very specific in the Government Order that before appointment they should undergo the said training at their own cost. As far as the case of the present petitioner is concerned, though the eighth respondent management has informed the Education Department that they have short-listed the name of the petitioner herein and issued permanent appointment order to her.

10.The order of the appointment issued to the writ petitioner indicates that time scale Rs.4500-125-7000/- and other attendant benefit from 24.09.2002 and the said pay will be given to her after completing one month course in Child Psychology and after the approval granted by the District Elementary Educational Officer. The above appointment order dated 24.09.2002 make very explicit that the writ petitioner herein will be given time pay scale only after complying the condition which is part and parcel of G.O(Ms) No.301 dated 15.10.1999.

11.It is an admitted fact that the petitioner has completed her Child Psychology course only on 27.10.2004. While so, it is baseless to claim that she is entitled for Old Pension Scheme and her service will not fall under new Contributory Pension Scheme. Further a reading of G.O.(Ms) No.109 dated 16.08.2004 which was passed by the Government in respect of 57 teachers who are almost similarly placed like the writ petitioner herein, indicates that the Government has made a very categorical statement in the said Government Order that the improper appointment of graduate teachers as Secondary Grade teachers is regularized subject to condition and while consenting for such appointment subject to completion of one month Child Psychology course and fixation of pay and time scale such approval shall not act any additional financial commitment to the State. Therefore, placing the manner in which the writ petitioner got selected to the post of Secondary Grade, though she did not possess the requisite qualification on the date of appointment, the relaxation in the eligibility criteria, her further completion of the requisite qualification and the Government Orders passed time to time clearly indicate that the petitioner herein has been considered as a Government employee only on 28.10.2004, i.e., on the date of she completed one month Child Psychology course. Any erroneous order passed by the management cannot be taken as a fact for the State to consider the case of the petitioner under the Old



Pension Scheme.

12. Therefore, this Writ Petition is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:-

1. The Secretary,
Department of Finance (Pension),
Fort St. George, Chennai-600 009.
 2. The Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
 3. The Director of Elementary Education,
College Road, Chennai-600 006.
 4. The District Elementary Educational Officer,
Ramanathapuram, Ramanathapuram District.
 5. The Assistant Elementary Education Officer,
Ramanathapuram, Ramanathapuram District.
 6. The Additional Assistant Elementary
Educational Officer,
Ramanathapuram, Ramanathapuram District.
 7. The Accountant General,
O/o. The Accountant General,
261, Anna Salai, Chennai-600 018
- + 1 CC TO Mr.CIBI CHAKRABORTHY, ADVOCATE IN SR No. 96148
+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 95867
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 96113

CP

TE/BK/SAR-4 : 26/12/2018 : 5P/11C

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