BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.03.2018
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.17938 of 2013

S.Margaret ... Petitioner

-vs-

1.The Secretary to Government,
Finance Department,
Chennai-05.

2.The Senior Accounts Officer,
Office of the Accountant General,
361, Anna Salai,
Chennai – 600 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pursuant to the impugned order of the second respondent in FMI/V/TR 14963/127, dated 01.07.2011 and to quash the same.

For Petitioner : Ms.Porkodi Karnan
for M/s.Polax Legal Solution
For Respondent-1 : Mr.M.Muthu,
Additional Government Pleader
For Respondent-2 : Mr.P.Gunasekaran

O R D E R

The order of rejection, dated 1.7.2011 issued by the second respondent is under challenge in this Writ Petition.

2.The Writ Petitioner completed the qualification of B.PEd and joined as Physical Education Teacher in St.Mary's Girls Higher Secondary School, Devakkottai on 9.4.2003.The School was run by minority community and aided by the State Government. Though the Writ Petitioner joined in service in the year 2003, Provident Fund Account was opened in the year 2005. Accordingly, the Teachers Provident Fund was sent by the Manager of the school on 15.2.2005 and the Account Number was given by the Accountant General Office on 12.5.2005 and an order was passed for recovery of subscriptions from May 2005 onwards. Subsequently, the Writ Petitioner was appointed as Teacher in Government Girls Higher Secondary School,Thondi on 7.2.2010 and she joined in the said school.

3.The grievance of the Writ Petitioner is that she must be given the benefit of GPF Account Number and accordingly, Old Pension Scheme to be made applicable to her. The claim of the Writ

Petitioner was rejected. Thus the Petitioner is constrained to move the present Writ Petition.

4.The learned counsel for the respondents states that the Government had introduced the New Contributory Pension Scheme to Tamil Nadu State Government Employees from 1.4.2003 by amending the Tamil Nadu Pension Rules 1978 vide G.O.No.259 Finance(Pen) Department, dated 6.8.2003. This Scheme would be applicable to all employees who are recruited on or after 1.4.2003.The Petitioner/Smt.S.Margaret was appointed as Physical Education Teacher in St.Mary's Girls Higher Secondary School, Devakkottai on 9.4.2003. She was allocated with the Teachers Provident Fund Account Number and thereafter she joined in Government Girls Higher Secondary School, Thondi on 7.2.2010 i.e., well after the date of introduction of the New Contributory Pension Scheme. Therefore the Petitioner was appointed after 1.4.2003. Accordingly C.P.F Account Number was provided to the Writ Petitioner. In view of the above fact that the G.P.F Account Number cannot be given to the Petitioner in accordance with the New Pension Scheme.

5.The learned counsel for the respondents made a submission that the Writ Petitioner joined in the Government service on 7.2.2010 well after the implementation of the New Pension Scheme and therefore, she was allotted with C.P.F Account Number. Thus there is no infirmity in the same. It is further contended that this issue was elaborately discussed by the Honourable Division Bench in W.A (MD)No.217 of 2011 and batch of cases, dated 19.6.2014 and the relevant paragraphs are extracted hereunder:

> *<u>15.Common Contention NO.I:</u>*
>
> *The first common contention of all the parties is that they were recruited before 1.4.2003, though appointed after 1.4.2003.Therefore, they claim that the amended rules cannot be applied to persons who were recruited though not appointed before 1.4.2003.*
>
> *24.Similarly, the word ''appointment'' has been considered by Courts to include both ''direct recruitment'' as well as ''promotion''.In Union of India .vs. Sankalchand Himatlal Sheth - (1977) 4 SCC 193, the Supreme Court pointed out that appointment means entry into service.*
>
> *73-A.A few persons actually filed a Writ Petition in W.P.No.2470 of 2013 on the file of this Court, challenging G.O.Ms.No.259, Finance(Pension)Department, dated 6.8.2003.In the decision rendered on 6.2.2013 (R.Vijayakumar .vs. Government of Tamil Nadu), K.CHANDRU,J upheld the amendment to the Tamil Nadu Pension Rules and dismissed the Writ Petition. Therefore,as on date, the rules hold the field. The Petitioners and the appellant having been appointed to the respectiver posts only after the cut-off date are bound by the rules that have come into force on the date*

of their appointment. Hence, their claim for the benefit of the un-amended rules cannot be sustained.

74.In view of the above, the writ appeal and the Writ Petitions are dismissed. No costs. Connected Miscellaneous Petitions are also closed.''

6.In view of the judgement of the Honourable Division Bench of this Court referred to above, the claim made by the Writ Petitioner deserves no merit consideration. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government,
Finance Department,
Chennai-05.

2.The Senior Accounts Officer,
Office of the Accountant General,
361, Anna Salai,
Chennai - 600 018.

+One cc to Mr.Porkodi Karnan, Advocate, SR.No.57193

+One cc to Mr.P.Gunasekaran, Advocate, SR.No.56888

+One cc to The Special Government Pleader, SR.No.57322

vsn
RL/6C/3P/GT/SAR4/4/4/2018

W.P.(MD) No.17938 of 2013

21.03.2018