



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) No.8887 of 2011

G.Sugantha

... Petitioner

Vs.

1. State of Tamil Nadu,
represented by its Secretary,
Finance Department,
Fort St.George,
Chennai - 09.
2. State of Tamil Nadu,
represented by its Secretary,
Revenue Department,
Fort St.George,
Chennai - 09.
3. State of Tamil Nadu,
represented by its Secretary,
Personnel & Administrative Reforms Department,
Fort St.George,
Chennai - 09.
4. The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
5. The Accountant General (A&E),
No.361, Anna Salai,
Chennai - 08.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to enroll the petitioner in the General Provident Fund Scheme as available prior to 01.04.2003 and allot GPF Account Number for the Petitioner within a time stipulated by this Court.

For Petitioner	: Mr.T.Lajapathi Roy
For R1 to R3	: M.Muthu Additional Government Pleader
For R4	: Mr.K.K.Senthil
For R5	: Mr.P.Gunasekaran

**ORDER**

The relief sought for in this writ petition is for a direction to direct the respondents to enroll the petitioner in the General Provident Fund Scheme as available prior to 01.04.2003 and allot GPF account number for the petitioner.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was selected through Tamil Nadu Public Service Commission and issued with an order of appointment on 05.09.2001 itself for the post of Revenue Assistant. However, the writ petitioner was unable to join duty, on account of the fact that the said post was abolished. The writ petitioner had waited for long years and finally a fresh appointment order was issued in proceeding dated 16.07.2004 and thereafter, the writ petitioner joined in service on 21.07.2004.

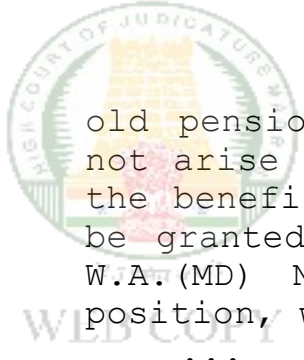
3.The Government introduced the new pension scheme namely, Contributory Pension Scheme with effect from 01.04.2013. Therefore, the respondents granted a GPF account number to the writ petitioner, in view of the fact that she joined into the Government service only after 01.04.2003.

4.The grievance of the writ petitioner is that she was selected in the year 2001 and an order of appointment was issued as early as 05.09.2001 and therefore, she must be awarded with GPF account number under the old pension schemes.

5.This Court is of an opinion that the date of joining into the Government service alone is the criteria for the purpose of probation for grant of regularization so also the pension scheme. Therefore, for the purpose of availing service benefits the date of joining into Government service is to be taken into account. The writ petitioner though was issued with an order of appointment on 05.09.2001, the post in which the writ petitioner was appointed was abolished. Therefore, the writ petitioner was unable to join duty. Subsequently, the post was restored and she was issued with an appointment order in proceedings dated 16.07.2004. Thus, for all purposes, the date of joining of the writ petitioner i.e., 21.07.2004 alone is to be taken for grant of all service benefits including pensionary benefits.

6.It is made clear that on account of the abolishment of the post and in view of the fresh appointment order issued in proceeding dated 16.07.2004, the initial order of appointment was cancelled. Thus, the writ petitioner cannot claim the service benefits based on the cancelled appointment order dated 05.09.2001. This apart, no service register was created nor the writ petitioner had served during the relevant point of time between the years 2001 and 2004. The actual date of joining in Government service was 21.07.2004 and the same alone is to be taken for the purpose of granting the service benefits.

<https://hcservices.ecourts.nic.in/hcservices/> 7.The Government has implemented the policy decision of new pension schemes to the employees joined into Government service on or after 01.04.2003. The question of application of



old pension rules, namely, Tamil Nadu Pension Rules, 1978 would not arise at all. However, the rule itself was not applicable to the benefit of GPF account as claimed in the writ petition cannot be granted. The Hon'ble Division Bench of Madras High Court in W.A.(MD) No.217 of 2011, dated 19.06.2014, clarified the same position, which is extracted here under:

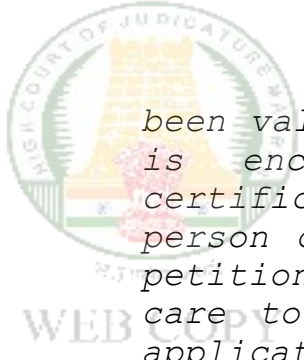
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36.The third common contention is that all others selected along with the writ petitioners and the writ appellant could join duty before 01.04.2003 and the writ appellant and the writ petitioners could not do so. According to the writ petitioners and the writ appellant, they are not responsible for the delay. Therefore, the writ petitioners and the writ appellant contend that they cannot be penalised for something for which they are not responsible.

37.But, we do not agree with the said contention for two reasons. The first is that on the question of operation of a rule or the application of a rule, circumstances, situations or sympathies can have no role. If a person could not pass the check-post, at the appointed time, he loses the benefit irrespective of the reasons as to why he could not pass the check- post at the appointed time. The applicability of statutory rules, would not depend upon the situation in which each person is placed.

38.The second reason as to why we do not agree with the petitioners and the appellant is that they are not wholly correct in contending that they were not responsible. Insofar as the two Assistant Public Prosecutors are concerned, their appointments were delayed due to the police verification on their suspected involvement in a criminal case. Insofar as the Junior Assistant is concerned, he did not produce the community certificate at the time of certificate verification. Mr.Rengaramanujam, learned counsel for the petitioner in W.P.(MD)No.8732 of 2007, contended that his client had applied for the issue of a community certificate long before and that the same was delayed by the officials for a period of six years. Therefore, he contends that his client was not responsible for the non-production of the community certificate.

39.But, the above contention is to be stated only to be rejected. The petitioner in W.P.(MD)No.8732 of 2007 applied specifically under the quota reserved for Scheduled Tribes. He claimed himself to be a person belonging to 'Hindu Kattunaicken Community', classified as Scheduled Tribe. But, unfortunately, he produced only school certificates in support of his claim. We do not know how he was included in the select list at all in the first place. An application of a person for appointment to a post, specifically reserved for certain categories, can be considered to have



been validly made only if the certificate to prove the same is enclosed to the application. If the community certificate is not enclosed, the application of such a person can be considered only under the Open Category. The petitioner in W.P.(MD)No.8732 of 2007 should have taken care to obtain the community certificate much before the application for recruitment to the post.

40.Claiming that a community certificate will not come under the category of essential certificates, Mr.Rengaramanujam, learned counsel for the petitioner, placed reliance upon the decision of a Division Bench of this Court in Secretary, Tamil Nadu Public Service Commission v. M.Chithra 2010 (2) MLJ 146. In that case, the respondent had applied for recruitment to Group-IV Services. She did not produce community certificate, both at the time of making the application and at the time of certificate verification. She produced the same later and the same was not accepted. She unsuccessfully challenged the non-selection before a learned Single Judge. But, the Division Bench reversed the said decision, creating a distinction between certificates which are essential and certificates which cannot be said to be essential. According to the Division Bench, certificates relating to special considerations as well as communities are not essential for entertaining the applications of the candidates. Therefore, on the basis of the said decision, it is contended by the learned counsel for the petitioner that the non-production of the community certificate could not have delayed the appointment of the petitioner in W.P. (MD)No.8732 of 2007.

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46.Insofar as the case of the Assistant Professors are concerned, the Notification for recruitment was issued on 24.08.2002. The selection process was completed in December, 2002. The select List was published in January, 2003. But, the appointments were made after 01.04.2003. The fact that the actual appointment took place after 01.04.2003 is only a circumstance for which both parties cannot be blamed. If the delay between January, 2003 when the select list was released and October, 2003 when they were actually appointed is considered as a huge delay, in respect of the cases of the writ petitioners in W.P.(MD) Nos.6184 of 2010, 11765 of 2012 and 4516 of 2013, the same logic can be applied in a different way also. A careful look at G.O.Ms.No.259, dated 06.08.2003, would show that the proposal for such an offer to a new pension scheme emanated in October, 2001 from the Government of India. It took nearly two years to take a full and complete shape.



Somebody got the benefit of this delay. The petitioners were affected by the delay in their appointment. So long as the delay in issuing the amendment or the delay in making the appointment is not intentional or mala fide, the fall of the guillotine on 01.04.2003 is unavoidable. Hence the third common contention is rejected.

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8. Thus, this Court is of an opinion that the employees, who had joined into Government service after 01.04.2013 cannot be granted with the benefit of the Tamil Nadu Pension Rules, 1978, under the old pension schemes and the claim made out in the present writ petition is devoid of merits and accordingly, stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Finance Department,
Fort St.George, Chennai - 09.
2. The Secretary,
Revenue Department,
Fort St.George, Chennai - 09.
3. The Secretary,
Personnel & Administrative Reforms Department,
Fort St.George, Chennai - 09.

+ 1 cc TO Mr.P.Gunasekaran , Advocate in SR No. 57678
+ 1 cc TO Mr.T.Lajapathi Roy , Advocate in SR No. 57022
+ 1 cc TO Mr.K.K.Senthil , Advocate in SR No. 57008
+ 1 cc TO The Special Government Pleader in SR No. 57312

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AE/KKR/SAR3/18.04.2018/5P/8C

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