



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Rev.Aplw.No.167 of 2019 in
WP.No.5413 of 2014

- 1.The Secretary to Government,
Education Department,
Fort St. George, Chennai-9.
- 2.The Joint Director,
School Education Department,
DPI Compound, College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Villupuram.
- 4.The Additional Chief Educational Officer (Incharge),
Anaivarukkum Kalvi Iyakkam,
(Serva Siksha Abiyan),
Villupuram District. ... Review Petitioners/Respondents

vs.

Anitha Rosaline,
B.T.Assistant (Maths),
Government Higher Secondary School,
Vellaiyur, Villupuram District. ... Respondent/Petitioner

PRAYER: Review Application filed under Order 47 read with Rule 1 of C.P.C., praying to allow the Revision Application and review the orders dated 24.02.2014 made in W.P.No.5413 of 2014 and to pass such other or further orders as this Hon'ble Court deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.5413 of 2014:

Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order vide Na.Ka.No. 147/A2.2011, dated 28.04.2011, passed by the 4th respondent and quash the same and direct the respondents to treat the petitioner under the General Provident Fund Scheme, covered under the Tamil Nadu Pension Rules, 1978, prior to its amendment dated 01.04.2003.



For Petitioners: Mr.C.Selvaraj
Government Advocate
For Respondent : Mr.S.N.Ravichandran,

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O R D E R

Heard Mr.C.Selvaraj, learned Government Advocate for the petitioners and Mr.Ravichandran, learned counsel for the respondent.

2.The petitioner in contempt petition has alleged contempt as regards order dated 24.02.2014 allowing the writ petition and quashing order dated 28.04.2011. At paragraph-6, the learned Judge has stated as follows:

'.....

6.From the facts and circumstances of the case, it is seen that though the petitioner attended the certificate verification along with other candidates and successfully complete the same on 27.02.2003, she was issued with the order of appointment, for no fault of hers, only on 01.04.2003, while others were issued with the order of appointment on 26.03.2003 itself. Hence, the impugned order is set aside and the matter is remitted back to the 4th respondent to consider the claim of the petitioner afresh in the light of the judgment reported in (2013) 3 MLJ 56 (cited supra), and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.'

3.The State was given four weeks from date of receipt of copy of that order to consider the claim of the petitioner afresh in the light of the judgment in the case of S.Mary Sherly v. Secretary to Government, Education Department, Chennai and Others (2013 3 MLJ 56). The State has not complied with the aforesaid order till date on the ground that a writ appeal had been filed challenging order dated 24.02.2014. The Writ Appeal in WA.No.98 of 2015 has been dismissed as withdrawn with liberty granted to the respondents to file a review petition. Accordingly, the State has filed a review petition in Rev.Aplw.No.167 of 2019.

4.The main ground putforth and argued is that the order of this Court in Jeeva vs. State of Tamil Nadu Rep. by the Secretary to Government, School Education Department and 3 others in WP.No.24045 of 2009, dated 31.10.2011 has not been taken into account by the learned Single Judge in passing order dated 24.02.2014. To begin with the aforesaid order was not cited before the learned Single Judge and thus, he had had no occasion to appreciate the same.



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5. In any event, order dated 31.10.2011 has infact been reversed by judgment of the Hon'ble Supreme Court, dated 20.03.2015 in SLP.(Civil)No.28979 of 2014 where the appeal of V.Jeeva has been allowed and the State directed to cover the appellant therein under the earlier pension scheme prevalent prior to 01.04.2003.

6. The operative portion of the judgment reads as follows:

'.....

3. The short question for consideration is whether the appellant is entitled for the benefit of the Pension Scheme which prevailed prior to 1st April, 2003, or the one which came into effect by way of Contributory Pension Scheme with effect from 1st April, 2000.

4. The short facts were that the appellant was issued with an order of appointment on 26th March, 2003 and the place of posting was mentioned in the said order as Madhanoor, Vellore District. To the misfortune of the appellant, when he went there to joint duty on 27th March, 2003, he was told that there was no vacancy existing in the place. When he reported back to the respondent, revised order was issued on 31st March, 2003, indicating that place of posting as Thimiri of the same Vellore District. The appellant joined on 1st April, 2003. In the meantime, then existing Pension Scheme prior to 1st April, 2003 was replaced by a Contributory Pension Scheme with effect from 1st April, 2003. When the appellant wanted to be governed by the earlier Pension Scheme, the same was not acceded to by the respondent by stating that the date of joining was 1st April, 2003, when the earlier Pension Scheme was not in force. The High Court having declined to accede to the claim of the appellant by the order impugned herein, the appellant is before us.

5. After hearing and after perusing the papers placed before us, we find that the appellant was never at fault and pursuant to the order of appointment dated 26th March, 2003, he had in compliance reported at the place of posting. Since, the concerned place where he was directed to join duty namely, Madhanoor, Vellore District and already filled up, the appellant rushed back and he was issued with subsequent order dated 31st March, 2003 indicating different place of posting. It was in that process, the appellant could not joint duty prior to 1st April, 2003, for which he could not be penalised for not getting a better Pension Scheme which was prevailing prior to 1st April, 2003.



6. In such circumstances, the impugned order is set aside, the appeal is allowed and the respondent is directed to cover the appellant under the earlier Pension Scheme which was prevalent prior to 1st April, 2003. This order is being passed in the peculiar facts and circumstances of this case and it cannot be quoted as a precedent in any other case.'

8. For this purpose, I refer to the recording of facts in the order of the learned Single Judge dated 24.02.2014. To be noted that these facts are admitted seeing as no counter has been filed by the respondents either in the writ petition or in the contempt petition before me and in any event, Mr. Selvaraj, learned Government Advocate appearing for the State would also fairly, not controvert the dates and events as below:

(ii) She responded to Notification dated 09.02.2002 issued by the Teachers Recruitment Board (TRB) for vacancy in post of B.T. Assistant Teacher and applied for the same.

(iv) The petitioner was asked to attend the certificate verification on 27.02.2003 by letter dated 20.02.2003.

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same day. Thus certificate verification was successfully completed on 27.02.2003.

(vi) All candidates who attended certificate verification on 27.02.2003 with her were issued appointment orders on 26.03.2003, barring the petitioner.

(vii) Thus on 27.03.2003, she approached the office of the TRB and the TRB recommended her for appointment on 27.03.2003 itself.

(viii) The appointment order was issued on 01.04.2003.

9. The respondent places great emphasis upon the date of appointment order to state that since the petitioner has been appointed only on 01.04.2003 she will not be entitled to the benefit of the pension scheme that was in effect till 31.03.2003. However, this submission is liable to be rejected since, for all intents and purposes, the petitioner should be taken to have been appointed on 27.03.2013 along with her colleagues who attended the certificate verification with her.

10. In fact the recommendation of the TRB for her appointment is also dated 27.03.2003. The mere fact that the appointment order has been issued by R2 on 01.04.2003 cannot stand in the way of the benefit that is available to the petitioner in the facts and circumstances as noticed by me earlier. The fact that R2 has not been prompt, and issued the appointment letter co-terminus with the appointment letters issued to those that attended certificate verification on 27.03.2003, cannot and must not, impact the petitioners eligibility. Thus the ratio of the judgment of the Hon'ble Supreme Court dated 20.03.2015 is applicable on all fours to the present case.

11. The Review Application is dismissed and as a consequence, effect will be given to order dated 24.02.2014 within a period of two weeks from today. No costs.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar

vs/kbs



1.The Secretary to Government,
Education Department,
Fort St. George, Chennai-9.

3.The Chief Educational Officer,
Villupuram.

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