

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04-09-2019
CORAM
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD,
W.P.No.4878 of 2010

T.Padma Latha

.. Petitioner

- Vs. -

1.The Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai 600 009.

2.The Secretary
Tamil Nadu Public Service Commission,
Chennai 600 005.

3.The Commissioner,
Backward Classes Welfare Department,
Chepauk, Chennai 600 005.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other writ or order in the nature of a direction declaring the G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003 and consequential amendment made in respect of G.O.Ms.No.304, Finance (Pension) Department, dated 27.05.2004 and letter No.41524/Finance(Pension)/09, dated 22.07.2009 of the office of the first respondent is illegal, unwarranted, in operative in law and in applicable and quash the same, in so far as concerned with the petitioner case and consequently directed the respondent No.1 and 3 to grant the regular scheme of pensionary benefits applicable to the petitioner prior to 01.04.2003.

सत्यमेव जयते

For Petitioner	: Mr.R.Venkatesan
For R1 and R3	: Mr.N.Srinivasan
	Additional Government Pleader
For R2	: Ms.Niraimathi

O R D E R

This Writ Petition has been filed praying for the issuance of Writ of Certiorari or Mandamus, or any other writ or order in the nature of a direction declaring the G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003 and consequential amendment made in respect of G.O.Ms.No.304, Finance (Pension) Department, dated 27.05.2004 and letter No.4152/Finance (Pension)/09, dated 22.07.2009 of the office of the first respondent is illegal, unwarranted, inoperative in law and inapplicable and quash the same in so far as concerned with the petitioner case and consequently direct the respondent No.1 and 3 to grant the regular scheme of pensionary benefits applicable to the petitioner prior to 01.04.2003.

2 The petitioner has been recruited by Tamil Nadu Public Service Commission for the post of Junior Assistant-cum-typist. He was selected for Group 4 Services for the Tamil Nadu Ministerial Service for the year 1999-2000. She was originally allotted to revenue unit, Nilgiris District at Udagamandalam, vide appointment order dated 28.06.2001. However, originally there was no vacancy in the cadre of Junior Assistant in Udagamandalam. The post had been surrendered to Tamil Nadu Public Service Commission by the District Collector, Nilgiris. The petitioner was then re-allotted to the Department of Backward classes welfare department, Chennai vide appointment order dated 23.12.2003. This was done after a lapse of two years while the persons selected along with the petitioner were appointed in the first allotment itself. Pursuant to the letter appointment order dated 21.12.2003, the petitioner joined duty as Junior Assistant-cum-typist in the Department of Backward Class of Welfare on 05.01.2004.

3 While so, by issuing G.O.Ms.No.259 Finance (Pension) Department Dated 06.08.2003, the Government of Tamilnadu has introduced a new Pension Scheme called Contributory Pension Scheme based on defined contributions to the State Government employees who are recruited on or after 01.04.2003. Further in G.O.(Ms)No.304, Finance (Pension) Department, dated 27.05.2004, the Government have issued amendments to rule 4 of the General Provident Fund (Tamil Nadu) Rules in which it contained that the General Provident Fund Rules shall not apply to Government servants appointed on or after 1st April 2003 to services and posts in connection with the affairs of the State, either temporarily or permanently and the policy of the Government is not to extend the Pension Scheme to the employees who are appointed on or after 01.04.2003 and they are eligible only for

Contributory Pension Scheme (CPS) and this prerogative available to the employees appointed prior to 01.04.2003 could not be disputed by the employees.

4 By virtue of the above, the petitioner was denied pensionary benefits of the erstwhile GPF Scheme which was existing prior to the contributory pension scheme which was introduced by the impugned G.O. Therefore, being aggrieved by the denial of the benefits of the earlier GPF scheme, the petitioner has come forward with the present Writ petition challenging the impugned G.Os.

5 A detailed counter affidavit has been filed on behalf of the first respondent inter alia stating that the petitioner was appointed on 05.01.2004 and hence she would come under the purview of new contributory pension scheme introduced with effect from 01.04.2003 by G.O.(MS) No.259 dated 06.08.2003. In the said G.O., it has been clearly mentioned that contributory pension scheme will be applicable to all the employees who are recruited on or after 01.04.2003.

6 It is further stated that the claim of the writ petitioner that the process of recruitment commenced prior to 01.04.2003 cannot be construed that the petitioner was recruited prior to 01.04.2003 as "process of recruitment" and "recruited to the post" are different. For the Government petitioner will be deemed to be recruited to the post only when she joined the post which was after 01.04.2003. The petitioner was allotted to "The Nilgiris district Collectorate by the Tamilnadu Public Service Commission. The petitioner surrendered to the Tamil Nadu Public Service Commission by the District Collector as there was no vacancy. The petitioner was not subsequently posted to Back Ward Class and Most Back Ward Class Department, Chennai and she joined duty on 25.01.2004. It is stated that if the petitioner was having any grievance over her delayed posting then she should have raised the same at that time itself, and therefore her delayed posting cannot be a reason for declaring the G.O. (Ms) No.259, Finance(pension) Department, dated 06.08.2003 and consequential amendment in G.O.Ms.No.304, Finance (Pension) Department, dated 27.05.2004 and Govt., Letter No.41524/Finance (pension) Department/09 dated 22.07.2009 as illegal, unwarranted, inoperative in law and inapplicable. It is stated that since the petitioner was appointed on 05.01.2004 she is not entitled to the old pension scheme which was applicable to the persons who were appointed before 01.04.2003. With these averments the first respondent sought for dismissal of the writ petition.

7 Learned counsel appearing for the petitioner would submit that the petitioner has been denied pensionary benefits under old GPF scheme on the ground that she came to be appointed only on 05.01.2004 and by virtue of impugned G.Os., she is only entitled to new contributory pension scheme introduced with effect from 01.04.2003, according to the learned counsel which cannot be sustained. The learned counsel would point out that originally the petitioner was recruited and appointed on 03.12.2001. However as there was no vacancy in Nilgiris District of posting and since the post was surrendered her appointment got delayed by two years and later she was given appointment on 05.01.2004. The appointing authority has to be blamed to the delay and not the petitioner. The petitioner cannot be denied her benefits because she was wrongly posted at the place where there was no vacancy, while the candidates who were selected along with the petitioner were appointed in 2001 itself and had been given the pensionary benefits under the old schemes. The learned counsel for the petitioner would contend that the original date of appointment as far as the petitioner is concerned has to be taken as 03.12.2001 and thereby she is entitled to the benefits of the erstwhile GPF scheme.

8 Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the petitioner though recruited in the year 2001 was appointed only on 05.01.2004 and she joined duty only on 25.01.2004, by that time G.O.Ms.259 dated 06.08.2003 had come into force and therefore, the petitioner will come under the purview of new contributory pension scheme and hence she cannot claim the benefits under the old GPF scheme.

9 Heard the learned counsel appearing for the petitioner and the learned Government pleader for the respondents 1 to 3 and perused the entire materials placed on record.

10 It is an admitted fact that originally the petitioner was recruited and appointed on 03.12.2001. However as there was no vacancy in the place of where she was originally posted, her appointment got delayed by two years and later she was given appointment on 05.01.2004. For this the petitioner cannot be blamed and the appointing authority only has to be blamed. The candidates who were selected along with the petitioner were appointed in 2001 itself have been given benefit under the old pension scheme.

11 G.O.Ms.No.259, dated 06.08.2003 contemplates that new Contributory Pension Scheme based on defined contribution will be introduced to the newly recruited employees and that the same will apply to all employees, who are recruited on or after 01.04.2003. Needless to say that the words 'recruited employees' used in the said Government Order would mean that it is applicable to the persons, who are selected and appointed to the service on or after 01.04.2003, not in respect of persons, who joined the service either as temporary or consolidated pay much earlier to the date of the said G.O.

12 In fact, the very same issue was considered by this Court in a decision reported in (2013)3 MLJ 56 (S.Mary Sherly vs. Secretary to Government, Education Department, Chennai and others) and clause 3(i) of the said G.O., was taken up for consideration and this Court has held in Paragraphs 19 and 20 which read as follows:-

"19. At any event, I have already found that very order of appointment appointed the petitioner on 26.3.2003. If such appointment was made on 26.3.2003, whether the petitioner can be denied the benefit of the earlier GPF scheme, which was existing prior to the Contributory Pension Scheme is the question to be considered now. While considering the said question, it is necessary to look into G.O.Ms.No.259, dated 6.8.2003 is the question to be considered now. A perusal of the said Government Order only says that the Contributory Pension Scheme was introduced to the newly recruited employees, who were recruited on or after 1.4.2003. The relevant clause in 3(i) of the said G.O. is extracted hereunder:-

"3(i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003?

"20. On going by the language of the said Government Order, more particularly the Clause 3 (i), there will not be any difficulty to say that the said Government Order is applicable to persons, who are appointed on or after 1.4.2003. The word 'recruited' cannot be construed or taken to mean 'joined' Certainly, the word 'recruited' has to have a related meaning of the word

'appointed'. When the 'recruitment' is the action of the employer, 'joining the duty' is the action of the employee. Both are to be seen with different connotation. When that being the position, in my considered view, the said G.O.No.259, having been made only in respect of persons, who have been recruited on or after 1.4.2003, the same cannot be applied to the petitioner's case, who was admittedly recruited earlier to 1.4.2003."

13 This Court is of the view that the word 'recruited' cannot be construed or taken to mean 'joined'. In this case, it is an admitted fact that the petitioner was selected on 3.12.2001 and was asked to join/report the duty in Nilgiri District, but due to non-availability of the posts, her appointment did not fructify, for which, the petitioner cannot be blamed.

14 Considering the fact that the petitioner had been recruited on 3.12.2001 i.e., much earlier to the cut of date fixed by the G.O.Ms.No.259 dated 06.08.2003, the decision reported in (2013)3 MLJ 56 (cited supra) is squarely applicable to the facts and circumstances of the present case. It is also brought to the notice of this Court that the aforesaid judgment has been followed by this Court in the subsequent case in "R.Kesavan vs. The State of Tamil Nadu, Rep. by its Secretary, Department of Municipal and Water Supply Department, Fort St. George, Chennai-600 009" [W.P.(MD)No.16049 of 2014], decided on 16.02.2015 and the respondents therein were directed to grant the pension to the petitioner therein.

15 In the light of above discussion, this Writ Petition is allowed with the direction to the respondents to extend the benefits of the erstwhile GPF scheme and pass suitable orders, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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-s/d-
Assistant Registrar
True Copy

Sub-Assistant Registrar

sbn

To

1.The Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai 600 009.

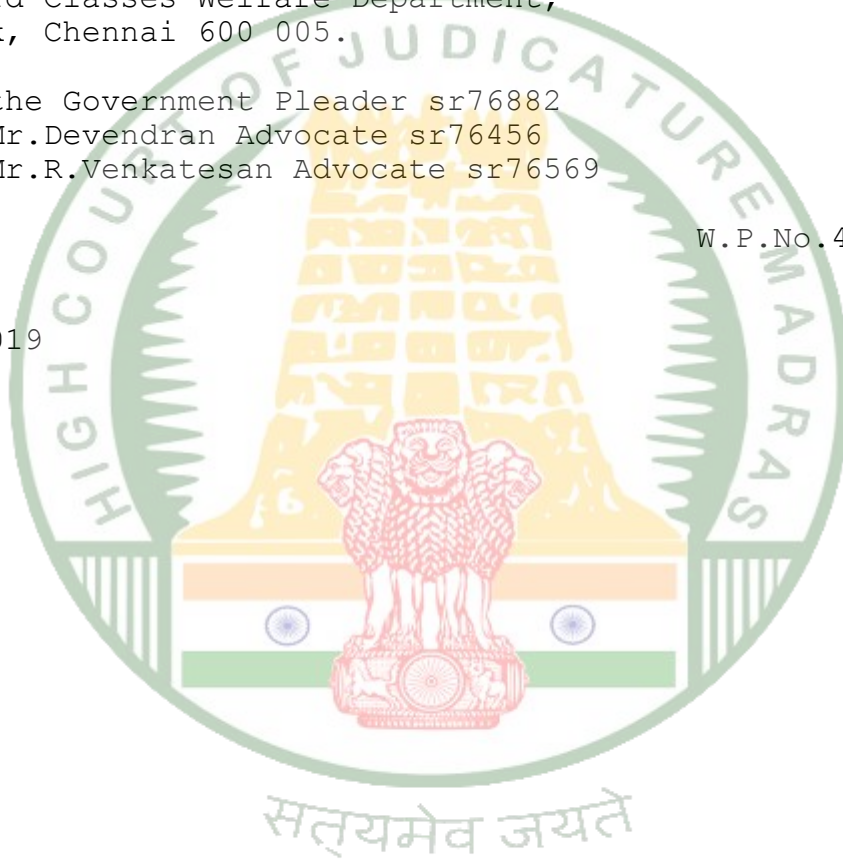
2.The Secretary
Tamil Nadu Public Service Commission,
Chennai 600 005.

3.The Commissioner,
Backward Classes Welfare Department,
Chepauk, Chennai 600 005.

+1 cc to the Government Pleader sr76882
+1 cc to Mr.Devendran Advocate sr76456
+1 cc to Mr.R.Venkatesan Advocate sr76569

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