

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.9027 & 9035 of 2019

and

WMP Nos. 9570 & 9572 of 2019

1. S.Dhanasekaran.
2. J.Muthukumaran
3. R.Padmavathi
4. K.Balamurali
5. B.Anandhaboopathy
6. Mrs.S.Joseph Jeyasingh
7. K.Ramesh.
8. C.Palani
9. S.Sankar
10. K.Kamalakaran
11. N.Shanthidevi
12. J.Gangadaran
13. S.Nesamani
14. S.Sethuramalingam

.. Petitioners in both WPs.

.Vs.

1. The State of Tamil Nadu,
represented by Secretary to Government,
Finance (Pension) Department,
Fort St. George,
Chennai - 600 009.

2. Greater Chennai Corporation,
represented by Commissioner,
Pa.Ka.Ku. (Education)
Rippon Buildings, Chennai - 600 003.

3. The Accounts Officer,
Education Department,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

4. The Education Officer,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

.. Respondents in both WPs.

Prayer in WP No.9027 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of certiorarified mandamus, to call for the records of the 3rd respondent having reference No.Pa.Ka.Ku.Kalvi Na.Ka.No./Thani/ 2019, dated 06.03.2019 and quash the same as illegal and consequently direct the 1st respondent to extend all the benefits under the Tamil Nadu Pension Rules, 1978 to the petitioners and allot new General Provident Fund numbers to the petitioners and continue to deduct General Provident Fund (GPF) from the salary of the petitioners.

Prayer in WP No.9035 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of declaration, declaring that G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003 is arbitrary and violative of article 14 of the Constitution of India in so far as the said Government order has been given retrospective effect from 01.04.2003 by taking away the vested rights of the petitioners who joined service as Corporation School Teachers on 05.06.2003 prior to the date of the above Government Order to be under the purview of the Tamil Nadu Pension Rules, 1978.

For Petitioners : Mrs. Nalini Chidambaram, Sr. Counsel
in both WPs. for Mrs.C.Uma

For Respondents : Mr.Akhil Akbarali (for R1)
in both WPs. Government Advocate

Mr.V.C.Selvasekaran, Sr. Counsel
Chennai Corporation (for R2 to R4)

C O M M O N O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioners numbering 14 have filed W.P.No.9027 of 2019, for issuance of a writ of certiorarified mandamus, to call for the records of the Accounts Officer, Education Department, Greater Chennai Corporation, Rippon Buildings, Chennai, the 3rd respondent herein, in No.Pa.Ka.Ku.Kalvi Na.Ka.No./Thani/2019, dated 06.03.2019 and to quash the same as illegal and consequently, to direct the Secretary to the Government, Finance (Pension) Department, Chennai, the 1st respondent herein to extend all the benefits under the Tamil Nadu Pension Rules, 1978

to the petitioners and to allot new General Provident Fund numbers to them and to continue to deduct General Provident Fund (GPF) from the salary of the petitioners.

2. WP No.9035 of 2019 is filed by the petitioners for a writ of declaration, declaring that G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003 as arbitrary and violative of Article 14 of the Constitution of India, in so far as the said government order has been given retrospective effect from 01.04.2003, by taking away the vested rights of the petitioners, who joined service, as Corporation School Teachers on 05.06.2003 prior to the date of the above Government Order to be under the purview of the Tamil Nadu Pension Rules, 1978.

3. Facts leading to the filing of the writ petitions are as follows:

(i) The Petitioners were recruited as Teachers in Schools run by Corporation of Chennai after they wrote and passed the recruitment exam held by the Teachers Recruitment Board (TRB) on 21-04-2002. In the appointment order issued by the Accounts Officer, Education Department, Greater Chennai Corporation, Chennai, the 3rd respondent herein, to the Petitioners on 05-06-2003 it was specifically stated that the petitioners would be paid basic salary of Rs.5500-125-9000 and other allowances, as per regulations and other eligible allowances from the date of joining the post. There was no reference to the Contributory Pension Scheme. In contrast, teachers who joined as Teachers in Corporation Schools in the year 2004 it was specifically stated in the appointment orders that after completion of 5 years as Teachers in Corporation schools on contract basis, they will be brought under the Contributory Pension Scheme. The government have been deducting GPF from the salary of the petitioners till date thus confirming that the petitioners come under the purview of the Tamil Nadu Pension Rules, 1978. GPF account of the Petitioners is maintained by the 3rd Respondent. Now the Petitioners have received the copy of the communication dated 06-03-2019 issued by the Greater Chennai Corporation, represented by Commissioner, Chennai, the 2nd respondent herein, to the 3rd Respondent (Education Department) through their respective Head Masters stating that it has been noticed that wrongly the government have been deducting GPF from the salary of the Petitioners. The communication further stated that as per G.O.Ms.No.214 (School Education) EE 3 (23) Department dated 19-10-2017 and G.O.Ms.No. 31 (School Education) EE 3 (23) Department dated 14-02-2019, it has been decided that GPF account has to be handed over to the Accounts Officer (Education) w.e.f. 31-03-2019 and it is decided that hereafter no deduction of GPF should be made from the salary of the Petitioners since the Petitioners are eligible only for the CPS and not eligible for GPF scheme.

(ii) Petitioners are aggrieved by the communication dated 06-03-2019 issued by the 2nd Respondent to the 3rd Respondent Education Department.

(iii) Petitioners have contended that the recruitment examination was held on conducted by the Teachers Recruitment Board (TRB), for selection of BT Assistants and Tamil pandit. The petitioners took the said exam. The petitioners have submitted that soon after the announcement of the results of the recruitment examination (TRB) that was held Government of Tamil Nadu appointed the selected candidates in various Government Schools prior to 01.04.2003. The Petitioners who were selected under the same examination were appointed as Teachers only on 09.09.2003 in various schools administered by Corporation of Chennai. The petitioners have submitted that at the time of their appointment the 3rd Respondent by orders dated 05.06.2003 and another order dated 13.08.2003 in No.Ka.Thu.Na.Ka.No.E9/4367/2000 fixed their pay scale as Rs.5500-175-9000. The same pay scale and benefits was fixed for all the candidates who were selected through the recruitment examination (TRB) held on 21.04.2002 and they were included in the General Provident Fund Scheme (GPF). The scheme was implemented right from their initial appointment by deduction through their respective GPF account number. All the candidates who wrote the recruitment exam (TRB) on 21.04.2002 are drawing the same pay scale with other benefits.

(iv) 1st Respondent issued G.O.Ms.No.259 Finance (Pension) Department dated 06-08-2003. As per the GO it was decided that a new contributory 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. By the said GO the following amendment was made to the Tamil Nadu Pension Scheme.

NOTIFICATION

In exercise of the powers conferred by the proviso to Articles 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

2. The amendment hereby made shall be deemed to have come into force on the 1st April of 2003

AMENDMENT

In the said Rules, in Chapter I, the following proviso shall be added to rule 2:

"Provided that these rules shall not apply to Government

Servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent."

(v) Despite the said GO, the petitioners were not treated as coming under the purview of the said GO and the Government continued to deduct GPF from the salary of the petitioners and the petitioners continued to have the GPF number allotted to them soon after joining as Teachers on 05.06.2003.

(vi) Petitioners have submitted that while this being the situation, the Petitioners were issued with a Form to fill up their details to include their names in the Contributory Pension Scheme (CPS) but the Form did not call for any willingness from the Petitioners to include their names in the Contributory Pension Scheme (CPS). Upon enquiry, they found out that the 3rd Respondent has passed order dated 03.11.2009 having Reference No.Ka.Thu.Na.Ka.No.E3/E9/5142/09 stating that new CPS account number has been given to 380 Teachers who were appointed after 01.04.2003 and their contribution will be deducted from November 2009. But not all the Petitioners filled up the form and only to some of them under compulsion from their Head Masters, who filled up the form, a index number under the Contributory Scheme was allotted.

(vii) Petitioners who were given appointment orders on 05.06.2003 were not individually informed that they have been brought under the CPS. The Petitioners continued to have the GPF account number allotted to them by the Corporation and Government was deducting GPF from the salary of the Petitioners. However as a matter of abundant caution the Petitioners filed W.P.No.25922 of 2009 for the following relief:

'Writ of Certiorari Mandamus, or any other writ, order or direction calling for the records pertaining to the order passed by respondent order dated 03.11.2009 having reference No Ka.Thu.Na.Ka.No.E3/E9/5142/09 and quash the same in so far as it relates to the inclusion of the names of the petitioners in the list of the Teachers to be brought under the contributory Pension Scheme and consequently direct the 3rd Respondent to retain the names of the petitioners in the existing General Provident Fund and pension scheme"

(viii) In WP No.25922 of 2009, petitioners filed Miscellaneous Petitions seeking for interim stay and direction. By order dated 17-12-2009 this Court granted stay of the order dated 03-11-2009. The Government continued to deduct GPF from

the salary of the Petitioners. The said Writ Petition is pending disposal and listed for hearing only in the year 2019.

(ix) At this juncture the Petitioners have now received a copy of the communication dated 06-03-2019 issued by the 2nd Respondent to the 3rd Respondent (Education Department) through their respective Head Masters stating that it has been noticed that wrongly the Government deducting GPF from the salary of the Petitioners. The communication further stated that as per G.O.Ms.No.214 (School Education) EE 3 (23) Department dated 19-10-2017 and G.O.Ms.No. 31 (School Education (EE 3 (23) Department dated 14-02-2019 it has been decided that GFP account has to be handed over to the Accounts Officer (Education) w.e.f. 31-03-2019 and direction was issued that hereafter no deduction of GPF should be made from the salary of the Petitioners since the Petitioners are eligible only for CPS and not eligible for GPF scheme.

(x) Petitioners have contended that when the Petitioners took charge as teachers in Corporation Schools on 05-06-2003 there was no contributory Pension Scheme. A government order cannot be given retrospective effect and Contributory Pension Scheme made applicable to teachers who had joined service prior to the issuance of the GO. Therefore, petitioners have filed the writ petitions for the relief as stated supra.

4. Placing reliance on W.P.(MD).No.5016 of 2015, dated 27.04.2018, in the case of Joseph Joy and others vs. State of Tamil Nadu, represented by Secretary to Government, Chennai and others, learned Senior Counsel further submitted that vested rights of the petitioners cannot be taken, retrospectively by issuance of government order.

5. Heard the learned Senior Counsel for the petitioners and perused the materials available on record.

6. In W.P.No.9027 of 2019, petitioners have sought for issuance of a writ of certiorarified mandamus, to call for the records of the Accounts Officer, Education Department, Greater Chennai Corporation, Rippon Buildings, Chennai, the 3rd respondent herein, in No.Pa.Ka.Ku.Kalvi Na.Ka.No./Thani/2019, dated 06.03.2019 and to quash the same as illegal and consequently, to direct the Secretary to the Government, Finance (Pension) Department, Chennai, the 1st respondent herein to extend all the benefits under the Tamil Nadu Pension Rules, 1978 to the petitioners and to allot new General Provident Fund numbers to them and to continue to deduct General Provident Fund (GPF) from the salary of the petitioners.

7. In W.P.No.9035 of 2019, petitioners have sought for a writ of declaration, declaring that G.O.Ms.No.259 Finance

(Pension) Department, dated 06.08.2003 as arbitrary and violative of Article 14 of the Constitution of India, in so far as the said government order has been given retrospective effect from 01.04.2003, by taking away the vested rights of the petitioners, who joined service, as Corporation School Teachers on 05.06.2003 prior to the date of the above Government Order to be under the purview of the Tamil Nadu Pension Rules, 1978.

8. As both the writ petitions arise of common facts and grounds, they are disposed of by a common order.

9. G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003, impugned in this writ petitions, is as follows:-

GOVERNMENT OF TAMIL NADU
FINANCE (PENSION) DEPARTMENT
G.O.No.259, DATED 6th August, 2003
(Subhamt, Aadi-21, Thiruvallur Aandu 2034)

Pension - Pension Scheme - Introduction of
Contributory Pension Scheme to Tamil Nadu State
Government employees with effect from 1.4.2003 -
Amendment to Tamil Nadu Pension Rules, 1978 - Issued.

ORDER:

In the Budget for 2001-2002, the Government of India have announced that a new Pension Scheme based on defined contributions will be introduced to those who enter Central Government service (Defence, Railways, Posts, Telecom, Autonomous Bodies and Scientific Organisations) after 1.10.2001. The Government of India had constituted a Committee with Thiru B.K. Bhattacharya, former Chief Secretary, Government of Karnataka as Chairman to go into pension reform with the specific reference of recommending a contribution scheme.

2. The Government of Tamil Nadu had announced in the Budget Speech 2003-2004 to introduce a new Pension Scheme based on defined contributions for the employees of this State, who are newly recruited after 1.4.2003. Under the new Contributory Pension Scheme, each employee has to contribute a certain amount and Government may contribute a certain amount.

3. Accordingly, the following orders are issued :-

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 after or after 1.4.2003.

ii) The employee's contribution and the Government contribution, if any towards the scheme shall be spelt

out separately.

iii) After issue of detailed orders from Government of India, introducing new scheme to their employees, the State Government will, if necessary, modify these orders and issue rules and regulations for the Contributory Pension Scheme for State Government employees recruited on or after 1.4.2003.

4. The following notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Articles 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

2. the amendment hereby made shall be deemed to have come into force on the 1st April of 2003.

AMENDMENT

In the said Rules, in Chapter I, the following proviso shall be added to rule 2:-

"Provided that these rules shall not apply to Government servants appointed on or after the 1 April 2003, to services and posts in connection with the affairs of the State which are home on pensionable establishments, whether temporary or permanent."

(BY ORDER OF THE GOVERNOR)

N. NARAYANAN.

DEVELOPMENT COMMISSIONER &
SECRETARY TO GOVERNMENT

10. Though notification by the Teacher Recruitment Board, and examination was conducted in the year 2002, prior to 01.04.2003, admittedly appointment orders were issued only on 05.06.2003, much after the issuance of G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003. After referring to the distinction between recruitment and appointment, a catena of decisions, including the contention of vested right being taken away, a Hon'ble Division Bench of this Court in Writ Appeal (MD) No.217 of 2011 etc. batch of writ petitions, dated 19.06.2014, sustained the validity of G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003.

11. W.P.(MD).No.4445 of 2010 has been filed by one T.Madavaraj, challenging G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003, as not applicable to him. Writ petition came to be dismissed, resulting in W.A.(MD).No.1529 of 2014. While confirming the decision of the writ court, a Hon'ble Division Bench of this Court, vide order dated 02.08.2017 in W.A.(MD).No.1529 of 2014, held as follows:-

The un-successful writ petitioner is on appeal challenging the order dated 16.12.2013 made in W.P. (MD).No.4445 of 2010.

2.The appellant herein was appointed as a Tutor in Chemistry by order dated 26.03.2003. However, he joined duty only on 01.04.2003. Unfortunately, for the appellant, the contributory pension scheme came into force with effect from 01.04.2003. If the writ petitioner/ the appellant herein had joined duty on 27.03.2003, he would have been entitled to benefits under the earlier pension scheme. Because, the appellant joined duty on 01.04.2003, the date on which the contributory pension scheme came into force, he is deprived of valuable benefits.

3.The writ petitioner therefore filed a Writ of Declaration for declaring G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003 and G.O.Ms.No.430, dated 06.08.2004 as null and void.

4.The issue is no longer res integra. The issue is covered by the order dated 19.06.2014, made in W.A.(MD).No.217 of 2011, etc., batch. There is no merit in this writ appeal. The Division Bench of this Court specifically referred to the order dated 06.02.2013 in W.P.(MD).No.2470 of 2013 upholding the validity of the amendment to the Tamil Nadu Pension Rules and Government Orders impugned in the present proceedings. Therefore, the issue cannot be gone into once again. The writ appeal stands dismissed. No costs. Consequently the connected miscellaneous petition is closed."

12. In the above case, appellant therein joined duty on 01.04.2003, and thus the scheme was made applicable to him. Ten Judicial Officers in the Tamil Nadu State Judicial Service, directly recruited, in terms of G.O.(4D) No.46, Home (Courts1A) Department, Government of Tamil Nadu, dated 09.01.2003, filed W.P.(MD).No.5016 of 2015, for issuance of a Writ of Certiorarified Mandamus, to quash the Government Orders in G.O. (Ms).No.259, Finance (Pension) Department, dated 06.08.2003, the consequential notification in G.O.(Ms).No.304, Finance Department, dated 27.05.2004, and the Government Order in G.O. (Ms) No.430, Finance (Pension) Department, dated 06.08.2004, in so far as the petitioners are concerned and direct the respondents therein to apply the old pension scheme to all the petitioners by transferring their contribution already collected into their respective accounts.

13. Besides contending that the scheme is not applicable to Judicial Officers, they also contended that cut off date cannot

be fixed. Admittedly all the petitioners therein were appointed after 01.04.2003.

14. Adverting to the submissions, a Hon'ble Division Bench, vide order dated 27.04.2018, in W.P.(MD).No.5016 of 2015, held as follows:-

"13. The petitioners have challenged the impugned (three) Government Orders namely, G.O.(Ms).No.259, G.O.(Ms).No.304, and G.O.(Ms).No.430. The Government of Tamil Nadu vide G.O.(Ms).No.259, ordered a new Contributory Pension Scheme based on defined contribution will be introduced to the newly recruited employees and this will apply to all employees, who are recruited on or after 01.04.2003. Further it was ordered that the employees contribution and the Government contribution, if any, towards the scheme shall be spelt out separately. Further, after issue of detailed orders from Government of India introducing new scheme to their employees, the State Government will, if necessary, modify the orders and issue rules and regulations for CPS for Government Employees recruited on or after 01.04.2003. Based on the said Government Order, a notification was published in the Government Gazette in exercise of the powers conferred under Article 309 of the Constitution, the Government of Tamil Nadu made an amendment to the Tamil Nadu Pension Rules, 1978, inserting a proviso after Rule 2, which provided that the Pension Rule shall not apply to the Government servants appointed on or after 01.04.2003, services and posts in connection with affairs of the State which are borne, on pensionable establishment, whether temporary or permanent.

14. The Government vide G.O.(Ms).No.304, Finance Department, dated 07.05.2004, ordered that the General Provident Fund (Tamil Nadu Rules) will not be applicable to those, who are recruited on or after 01.04.2003, necessary amendment was issued in exercise of powers under Article 309 of the Constitution. The third impugned Government Order being G.O.(Ms).No.430, which is in furtherance to G.O.(Ms).No.259, by the said Government Order, further, orders were issued as to how the CPS would operate. Admittedly, the petitioners have all joined Judicial Services after the cut-off date fixed in G.O.(Ms).No.259, i.e., 01.04.2003, as they had joined service on 31.10.2003.

15. The first objection raised by the State Government and the Principal Accountant General is on the ground that the Writ Petition is barred by delay and laches.

16. The undisputed facts being that on the date when the petitioners joined service, they were fully aware that no pension will be paid to them and they will have to become members of Contributory Pension Scheme. For 12 long years all the petitioners have effected contribution and were members of the scheme and for the first time, in the year 2015, they have come forward with this Writ Petition challenging the Government Orders, which were issued in the year 2003-04.

17. As pointed out by the Hon'ble Supreme Court in the case of Sankar Co-operative Housing Society Limited and Ors., vs M.Prabhakar & Ors., (2011) 5 SCC 607, there is no inviolable Rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition, as it is the Rule of practice based on sound and proper exercise of discretion and each case must be dealt with on its own case. It was further held that unless there is a reasonable explanation for the delay, the rights of other parties, which had accrued should not be disturbed. It was pointed out that one satisfactory way of explaining delay in filing a petition under Article 226 of the Constitution is for petitioner to show that he had been seeking relief elsewhere in a manner provided by law. It was further pointed out that if the petitioner runs after a remedy not provided in the statute or statutory rules, it is not desirable for the High Court to condone the delay, as it is immaterial what the petitioner chooses to principle in the regard for remedy. Further, it was held that no hard and fast Rule can be laid down and every case shall have to be decided on its own facts and merely submitting representations, would not be adequate explanation to take care of the delay.

18. It is the submission of the learned counsel for the petitioners that the petitioners were not aware about the challenge made by the Karnataka Judicial Officers before the Hon'ble Supreme Court and only in May 2014, they came to know that the Hon'ble Supreme Court has given liberty to the Karnataka Judicial Officers to approach the High Court on the judicial side for necessary relief. The petitioners admit that it is only after they came to know of the order in May 2014, they collected material, sought permission of the High Court in 2014 and filed the Writ Petition in the year 2015. Thus, it has to be seen as to whether the explanation offered, is a satisfactory explanation for filing a petition under

Article 226 of the Constitution, after a period of 12 years, after the issuance of the impugned Government Orders. It has to be borne in mind, that the petitioners are Judicial Officers and legally trained minds. Therefore, for them to state that they were not aware of things, which were happening elsewhere in the country at the instance of similarly placed Judicial Officers, is a plea, which is hard to accept. What is important to note is that when the petitioners were appointed and joined duty on 31.10.2003, all of them were aware of the fact that in terms of G.O.(Ms)No.259, all employees recruited on or after 01.04.2003, will be under the CPS. Admittedly, the petitioners have not submitted any representation prior to 2014 and the first representation given to the Registrar General, was during June/July 2014.

19. As pointed out by the Hon'ble Supreme Court, whenever there is a delay, the Court must necessarily refuse to entertain the petition and it is a Rule of practice based on sound and proper exercise of discretion and each case must be dealt with on its own facts. The decisions, which were referred to by the learned counsel for the petitioner, pertain to seniority or other service benefits, which in certain cases have been held to give a continuous cause of action.

20. It is not the case of the petitioners that the scheme came into vogue after they joined services and cut-off date has been fixed which has taken away their vested rights. As pointed out that the CPS was in vogue much prior to petitioners joining service and having accepted the terms and conditions of appointment, it is too late for the petitioners now maintained a challenge to G.O(Ms).No.259. This finding would be sufficient for us to dismiss the Writ Petition.

21. Nevertheless as we heard Mr.M.Gregory Retna Raj, elaborately we propose to deal with the other points urged by the learned counsel for the petitioner. The sheet anchor of the submission of the learned counsel is that Judicial Officers, cannot be equated to the other administrative staff of the Government. Judgeship is not an employment in that sense. In this regard, the learned counsel referred to the observations of the Hon'ble Supreme Court in All India Judges Association case and the recommendations of the Hon'ble Justice Shetty Commission and Hon'ble Justice E.Padmanabhan Commission to impress upon us that the Judicial Officers have been treated as a separate category and

they cannot be put in par with the other Government servants. Further, it is submitted that when the Hon'ble Supreme Court directed implementation of the revision of pay scales as recommended by the One Man Commission, the Government of Tamil Nadu, implemented it fully and having done so, cannot impose the CPS on the petitioners.

22. We have seen the recommendations of the One Man Commission and we find that the recommendations are with regard to revision of pay scales and there is nothing contained in those recommendations about the pension scheme. It is an admitted fact that the petitioners have received the benefit of the recommendations of the commission, which was accepted by the Government unconditionally and their pay scales stood revised and they also received the arrears in full during 2009. Even at that point of time, the petitioners did not raise even a faint plea that they should not be put under CPS, but should be given the benefit of the old pension scheme. Therefore, the challenge to the impugned orders on the ground that the recommendations of the One Man Commission was accepted, they should be given the old pension scheme, is an argument, which is stated to be rejected.

23. It was argued that the Government of Tamil Nadu introduced the scheme much prior to the same being implemented by the Central Government, when the Central Government had only called for options from the various State Governments. The decision to implement CPS is a policy decision taken by the State, there is no statutory prohibition or any other constitutional bar for the State Government to implement the CPS prior to the Central Government having implemented the scheme. It is no doubt true that the Central Government in the budget for 2001-02, announced the new pension scheme based on the defined contribution to be introduced in various Central Government services. Taking a clue from the same, the State Government had introduced the scheme implementable to all Government Employees, who were recruited on or after 01.04.2003. There is nothing on record to show that the State Government is prohibited from taking an independent decision and should definitely implement the scheme only on or after the Central Government implements the scheme. The relevant amendments pursuant to G.O.(Ms).No.259, have been done in exercise of power under Article 309 of the Constitution. Thus, the policy decision having not been shown to be either arbitrary and unreasonable, cannot be assailed by the petitioner on

the grounds raised by them.

24. As pointed out by the learned counsel for the petitioners, the recommendations of the Committee of the Hon'ble Judges of the High Court of Karnataka cannot have any binding effect on this Court and it is submitted that it should have persuasive effect. We are not persuaded with the said argument on account of the factual matrix in the instant case, as the petitioners having accepted their terms of appointment unconditionally and having been part of the CPS, for over 12 years. Therefore, such contention raised by the petitioners also does not merit consideration. The observations made by the Hon'ble Supreme Court in All India Judges Association case, deals with the distinction between the Judges and the members of other services bearing in mind the important concept of Judicial independence. Precisely for this reason, One Man Commission was constituted to recommend pay scales for Judicial Officers, which recommendations was implemented by the State Government. The recommendations do not touch upon the pensionary benefits either under the old pension scheme or under CPS. Therefore, the observations contained in All India Judges Association case could at best be referred to and relied on with regard to the principles governing the pay structure of the Subordinate Judiciary and not for the purpose as projected by the petitioners.

25. In V.Sahadevan Vs. State of Tamil Nadu & Ors., in W.A.(MD).No.217/2011 etc batch, dated 19.06.2014, the appellants who had applied for selection to various posts such as Assistant Public Prosecutor, Junior Assistant, Assistant Medical Officer, challenged the applicability of G.O.(Ms).No.259 and all the Appellants and Writ Petitioners were issued appointment orders only after 01.04.2003 and they had not challenged the proviso to Rule 2 of the Tamil Nadu Pension Rules. The Appellants and Writ Petitioners contended that they were all actually recruited before the cut-off date, namely, 01.04.2003, though they were appointed after 01.04.2003 and the amendment in G.O.(Ms).No.259, cannot be made applicable to their cases. The Court was required to interpret two important words 'recruitment?' And 'appointment?'. After elaborately considering the said issue and after referring to various decisions of the Hon'ble Supreme court, it was held that the Appellants and Writ Petitioners, who were recruited or enlisted or selected for appointment, cannot claim a right on par with those who were actually appointed to

the service. The other contentions namely, the Amended Rule 2 of the Tamil Nadu Pension Rules, cannot be made applicable to their cases in view of the second proviso to Rule 3 of the General Rules of the Tamil Nadu State and Subordinate Service and the contention that the delay in joining the duty, cannot be a penalty to the petitioners were negatived by the Division Bench. Thus, all the Appeals and Writ Petitions were dismissed and the Division Bench quoted with approval that G.O.(Ms).No.259, was upheld in the case of R.Vijayakumar vs. State of Tamil Nadu in W.P.No.2470 of 2013.

26. Further in the case of V.Jeeva, (supra), the learned Single Bench upheld the order passed by the Director of School Education, informing the petitioner that the new pension scheme will apply to him and he is not covered under the old pension scheme. This decision was upheld by the Division Bench by judgment dated 10.07.2014. Thus, the findings rendered by the Single Bench in the case of R.Vijayakumar(supra), which was quoted in the approval by the Hon'ble Division Bench in the case of V.Sahadevan, (supra) and the decision in the case of V.Jeeva, (supra) which was confirmed by the Division Bench, are straight answers to the contentions raised by the petitioner, challenging the impugned Government Orders. Therefore, the Writ Petitions have to necessarily fail and no relief as sought for can be granted. The decision by the High Court of Bombay in the case of Vihar Durve(supra) does not bind this Court, as the Division Benches of our Court have upheld the provisions and held that it would apply to all employees, who were recruited on or after 01.04.2003.

27. Thus, for the above reasons, the relief sought for by the petitioners cannot be granted and the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

15. Proceedings dated 03.11.2009 of the Education Officer, Greater Chennai Corporation, Chennai, is extracted hereunder:-
K.T.Na.Ka.No.E3/E9/5142/09 Chennai Corporation,
Education Department.

Dated: 03.11.2009

CIRCULAR

Sub: Appointment - Chennai Corporation -
Education Department Contributory Pension Scheme - New
Account

Number given to BT Assistant working in Corporation Schools - regarding taking further action.

Ref: Letter of the Director of Contributory Pension Scheme dated 23.10.2009 having Na.Ka.No.5835/E-1/2009 to the Government.

For the teacher appointed after 01.04.2003 in the Corporation Elementary, Middle School, High School and Higher Secondary School as per the reference above New Account Number has been assigned to 380 BT Assistants under the Contributory Pension Scheme.

1. The teachers to whom new account numbers have been assigned under the Contributory Pension Scheme from November 2009 onwards deduction will be made in their salary.

2. The list of teachers to whom deduction is made under the Contributory Pension Scheme and the account statement should be forwarded to the Accountant General Office and Information Department before 10th of every month.

3. The drawing officer should maintain proper accounts of salaries deducted under the Contributory Pension Scheme. The Drawing Officers should be responsible for failure to maintain the account.

4. It is requested that the account number enclosed herewith should be forwarded to the Central School and any correction to be made in the account and if any teachers name has been omitted it should be immediately informed to the Education Department. Also if any teacher has gone on transfer to other districts are to different school in the Corporation, the information should be immediately sent to the Accountant General Office.

5. If any form has not been sent in relation to the Contributory Pension Scheme such form should be immediately submitted.

Sd/- Education Officer
03.11.2009

16. Error committed by the respondents, is sought to be rectified and therefore, issuance of the proceedings, dated 06.03.2019 by the Accounts Officer (Education) and same is extracted hereunder:-

Pa.Ka.Ku.Education Na. Ka.No. / Separate/ 2019

Greater Chennai Corporation

Pa.Ka.Ku. (Education)

Dated: 06.03.2019

Note: To the Education Officer

Sub: Contributory Pension Scheme for 15 teachers who joined the post after 01.04.2003 has been wrongly deducted under the GPF instead of CPS.

Ref: 1. G.O.No.430, Finance (Pension)
Department, dated 06.08.2004
2. G.O.No.214, School Education (EE3(23)
Department, Dated 14.02.2019

As per GO dated 01.04.2003, the persons who joined government service after 01.04.2003, it has been made compulsory to join the CPS. There is no provision for deduction under the General Provident Fund. But the 15 teachers whose names are enclosed to this order and who joined service after 01.04.2003, it has been noticed that wrongly the government has been deducting General Provident Fund from their salary. Since it has been decided that the accounts of teachers and non teachers working in the Chennai Corporation, Education Department should be handed over with effect from 31.03.2009 to the Accounts Officer pursuant to the two GOs mentioned above and since the 15 persons are-not-eligible for the General Provident Fund Scheme and are eligible only for the CPS Scheme from March, 2019, it is directed that no deduction should be made under the General Provident Fund for the 15 teachers from March 2019. Since it has been decided to close the General Provident Fund accounts with effect from 31.03.2019, all such accounts should be closed and informed to the government with effect from 01.04.2019, there should be no credit to the General Provident Fund account. List Enclosed.

sd/- Accounts Officer (Education)

LIST OF PERSONS NOT COVERED UNDER GPF SCHEME

S.N o.	SCHOOL NAME	GPF No.	TEACHER NAME	DOA
1.	CBHSS SAIDAPET	29083	KAMALAKANNAN.K.P. G.ASST	09.06.2003
2.	CBHSS SAIDAPET	29 157	MUTHUKUMARAN I, P.G.ASST	09.06.200 3
3.	CBHSS SAIDAPET	29087	GANGADHARAN JTP	09.06.200 3

4.	CGHSS NUNGAMRAKKAM	29084	NESAMANI S.T.P.	09.06.2003
5.	CHSS ALWARPET	29079	SHANTHI DEVI N.T.P.ASST	09.06.2003
6.	CGHSS MH RD	29117	S.SETHURAMALINGA M	14.08.2003
7.	CGHSS MH RD	29107	C.PALANI , B.T.ASST	09.06.2003
8.	CGHSS MH RD	29066	R.PADMAVATHI, B.T. ASST	11.06.2003
9.	CHSS 731 T.H.RD	291 16	MOHAN RAJ N	08.09.2003
10.	C.H.S.S.VIRUG AMBAKKAM	29177	B.ANANDHA BOOPATHY P.G.A.	09.06.2003
11.	C.H.S.S.THIRU VANMIYUR	29148	S.DHANASEKARAN.P .G.A	09.06.2003
12.	C.H.S.S.THIRU VANMIYUR	29156	K.RAMESH	19.06.2003
13.	C.H. S. S. AYANAVARAM	29175	JOSEP JAYA SINGH. P.G.A.	09.06.2003
14.	C.H.S.S. WEST MAMBALAM	29106	K.BALAMURALI	09.06.2003
15.	C.H.S.S.KOYAM BEDU	29156	SANKAR	09.06.2003

sd/- Accounts Officer (Education)
12.03.2019

17. There are three Hon'ble Division Bench orders of this Court, upholding the validity of G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003. In Lily Thomas vs. Union of India, reported in 2000 (6) SCC 244, the Hon'ble Supreme Court, reiterated the principle that rulings of Larger Bench should be followed and those of Coordinate Bench of equal strength not to be different from and must be followed.

18. The petitioners have contended that vested rights have been taken away. Let us consider what vesting means,

(i) The word 'vest' as defined in Chamber's Twentieth Century Dictionary reads as follows:

"To settle, secure, or put in fixed right of possession; to endow, to descend, devolve or to take effect, as a right."

(ii) In Concise Oxford Dictionary, "vest" means, "Confer formally on him an immediate fixed right of present or future possession of it (vested rights, interest, estate, etc., possession of which is determinately fixed in a person and is subject to no contingency); (of property right etc.) vest in (person) came to him."

(iii) Wharton's Law Lexicon gives the following meaning of the term "vest" :--

"(1) Either to place in possession; to make possessor of or; to give an absolute interest in property when a named period or event occurs.

(2) of a right or interest. Its coming into the possession of any one; ensuring to the benefit of any one."

(iv) Meaning of the word, "vest", as per the Stroud's Judicial Dictionary is as follows:

"(1) "To vest", generally means to give the property in, (2) "vest" in the absence of a context, is usually taken to mean vest in interest rather than vest in possession."

(v) In P. Ramanata Aiyer's Law Lexicon has given the meaning of the word 'vest' as under:--

"To place in possession to take possession of; to take an interest in property when a named period or event occurs."

(vi) In F. & V. Merchants Union v. Improvement Trust, Delhi reported in AIR 1957 SC 344, the Supreme Court explained the word, "vest" as follows:

"The word "Vest" has not got a fixed connotation, meaning in all cases that the property is owned by the persons or the authority in whom it vests. It may vest in title or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation."

The Supreme Court in the above reported judgment, at Paragraph 19, further explained that,

"19. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain

events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

(vii) In *Mst. Bibi Sayeeda and others vs. State of Bihar and others*, reported in (1996) 9 SCC 516, at paragraph No.17, the Hon'ble Apex Court, held thus:-

"17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563 as:

"Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent."

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary, (International Edn.) at p. 1397 'vested' is defined as:

"[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests."

(viii) In *Howrah Municipal Corporation and others vs. Ganges Rope Co. Ltd. and others*, reported in (2004) 1 SCC 663, pending consideration of the application for planning permission, rules were amended, restricting the height of the construction. Applying the amended rule, application was rejected. Rejection was questioned on the ground that vested right has been taken away. Answering the issue, the Hon'ble Apex Court, at Paragraph 36, held thus,

"36. The abovestated legal position is not disputed on behalf of the respondent Company. What is being contended is that the order of the High Court fixing a period for the Corporation to decide its pending application for sanction creates a vested right in favour of the applicant Company to seek sanction for its additional proposed construction on the basis of the Building Rules, as they stood prior to the amendment introduced to the Building Rules and the consequent resolution of the Corporation restricting the height of buildings on G.T. Road. It is undeniable that after the amendment of the Building Rules and the resolution passed by the Corporation thereunder, restrictions imposed on heights of buildings on specified wards, roads and localities would apply to all pending applications for sanction. The question is whether any exception can be made to the case of the applicant seeking sanction who had approached the Court and obtained consideration of its applications for sanction within a specified period. We have extracted above the various orders passed by the High Court in writ petitions successively filed by the Company in an effort to obtain early sanction for its additional construction of three floors on the buildings in its multi-storeyed complex already completed up to the fourth floor. In none of the orders of the High Court, there is a mandate issued to the Corporation to grant a sanction. What was directed by the High Court in the first order was merely a "liberty" or option to the Company to seek sanction for additional three floors. In the subsequent order, an "expectation" was expressed for decision of the pending applications within a period of four weeks. There was, thus, in favour of the Company an order of the High Court directing the Corporation to decide its pending applications for sanction within the allotted period but non-compliance therewith by the Corporation cannot result in creation of any vested right in favour of the Company to obtain sanction on the basis of the Building Rules as they stood on the date of making application for sanction and regardless of the amendment introduced to the Building Rules. Neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant Company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. Conceding or accepting such a so-called vested right of seeking sanction on the basis of the unamended Building Rules, as in force on the date of

application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time-limit fixed by the Court for deciding the pending applications of the Company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject-matter and not the Building Rules as they existed on the date of application for sanction. No discrimination can be made between a party which had approached the Court for consideration of its application for sanction and obtained orders for decision of its application within a specified time and other applicants whose applications are pending without any intervention or order of the Court.

At Paragraph 20, the Hon'ble Supreme Court in Howrah Municipal Corporation's case, observed as hereunder:

"The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law."

19. The petitioners have been appointed on 05.06.2003 and 13.08.2003 respectively. As per G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003, for persons, who joined government service after 01.04.2003, it has been made compulsory to join contributory pension scheme. In the light of the definition to the words, "vested right", though Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioners, has relied on W.P. (MD).No.5016 of 2015, dated 27.04.2018, in the case of Joseph Joy and others vs. State of Tamil Nadu, the aspect as to whether there is any vested right and that the same has been taken away has been considered and answered in W.A.No.217 of 2011, etc. batch, we are not inclined to subscribe to the contentions, as admittedly the petitioners have been appointed after 01.04.2003. Case of the petitioners, is not different from the above three decisions, cited supra.

20. In the light of the above decisions and discussion, prayer sought for cannot be granted. Hence, both the writ petitions, are dismissed. No Costs. Consequently, the connected writ miscellaneous petitions, are closed.

ars/dm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu, Finance (Pension) Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Greater Chennai Corporation,
Pa.Ka.Ku. (Education) Rippon Buildings, Chennai - 600 003.

3. The Accounts Officer,
Education Department,
Greater Chennai Corporation,
Rippon Buildings, Chennai - 600 003.

4. The Education Officer,
Greater Chennai Corporation,
Rippon Buildings, Chennai - 600 003.

+1cc to M/S.C.Uma, Advocate, SR.No.46123

W.P.Nos.9027 & 9035 of 2019
and
WMP Nos.9570 & 9572 of 2019

Kak(17/07/2019)

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