



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.04.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVANW.P(MD) No.10160 of 2019

N.Kalpana

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary
Department of Health and Family Welfare,
Fort St.George, Chennai - 600 009.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Finance (Pension),
Fort St.George, Chennai - 600 009.

3.The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai - 600 010.

4.The Director of Medical and Rural
Health Services, Chennai - 600 006.

5.The Block Medical Officer,
Government Primary Health Centre,
Katchakatti, Madurai District.

6.The Medical Officer,
Government Theni Medical College Hospital,
Theni, Theni District.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 12.02.2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Katchakatti, Madurai District including the petitioner's subsequent absorption as Regular Staff Nurse in the Government Theni Medical College Hospital, Theni, Theni District on 01.09.2006 and subsequent entire service periods till her retirement.



For R1 to R6 : Mr.S.Angappan
Government Advocate

ORDER

This writ petition has been filed seeking a direction to the respondents to place the petitioner under the Old Pension Scheme based on her initial date of appointment as Staff Nurse on 12.02.2001 as temporary appointment on contract basis in the fifth respondent hospital, including her subsequent absorption as regular staff Nurse in the sixth respondent hospital with effect from 01.09.2006 and subsequent entire service periods till her retirement.

2.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. By consent, the writ petition itself is taken up for final disposal at the stage of admission.

3.The learned counsel appearing for the petitioner submitted that the petitioner made a representation dated 26.11.2018 to the respondents seeking to place her under the Old Pension Scheme and such request was not considered by the respondents. Hence, the petitioner is before this Court. The learned Counsel further submitted that the issue involved in this writ petition is squarely covered by the earlier order of this Court in ***S.Fancy Janet Vs. The Accountant General, Office of the Accountant General, Chennai, Tamil Nadu, 261, Anna Salai, Channei - 600 018 and 5 others [W.P(MD) No.5800 of 2015, decided on 10.12.2018]*** and prayed for passing similar orders in this writ petition also.

4.This Court, in W.P(MD)No.5800 of 2015, decided on 10.12.2018 (stated supra) has held as under:

5.The case of the petitioner that she was appointed as a Staff Nurse on a contract basis and by following the communal rotation on 25.09.2001 is not in dispute. The only ground, on which the petitioner was denied Old Pension Scheme is that cut off date is prescribed in G.O.Ms.No.259 dated 06.08.2013, by which the New Pension Scheme was introduced. The question regarding which of the two Pension Schemes should apply to the persons like that of the petitioner is no longer res integra in view of the decision of the Hon'ble Division Bench of this Court in ***Union of India Vs., K.Punniyakoti*** reported in **2014(2) CTC 777**. While considering the similar provisions of the Central Pension Rules had held as follows:-

<https://hcservices.ecourts.gov.in/hcservices> 17.The word "new entrant" has got a definite meaning, "a person, who enters recently". A person



already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004, cannot be termed as "new entrant" into service. The New Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004."

6.The Hon'ble Division Bench also referred to the earlier Division Bench Judgment in W.P.Nos.26933 and 26934 of 2007 dated 23.04.2008, wherein the Hon'ble Division Bench has considered the very Government Order dated 06.08.2004 introducing the New Pension Scheme with effect from 01.04.2003. The similar question was also considered by Hon'ble Mr.Justice. N.Paul Vasanthakumar in W.P(MD).No.14369 of 2010, wherein, the contention of the State that since the petitioner was absorbed into regular service only after cut off date namely 01.04.2003, he will not be entitled to the Old Pension Scheme, was rejected.

7. In view of the above decisions, the Writ Petition has to succeed and the Writ Petition is therefore allowed. The respondents are directed to include the petitioner in the Old Pension Scheme and calculate the Pension as per the said Scheme by applying the Rule 11(2) of the Tamil Nadu Pension Rules. No costs. Consequently, connected M.P(MD).No.1 of 2015 is closed.

5.The learned Government Advocate appearing for the respondents has no objection in directing the respondents to consider the claim of the petitioner in the light of the earlier order of this Court.

6.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the order passed by this Court in W.P (MD)No.5800 of 2015, decided on 10.12.2018, this writ petition is allowed and the respondents are directed to include the petitioner in the Old Pension Scheme and calculate Pension as per the Scheme by applying Rule 11(2) of the Tamil Nadu Pension Rules. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Secretary
State of Tamil Nadu,
Department of Health and Family Welfare,
Fort St.George, Chennai - 600 009.

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

3.The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai - 600 010.

4.The Director of Medical and Rural
Health Services, Chennai - 600 006.

5.The Block Medical Officer,
Government Primary Health Centre,
Katchakatti, Madurai District.

6.The Medical Officer,
Government Theni Medical College Hospital,
Theni, Theni District.

+1cc to Mr.S.XAVIER RAJINI, Advocate, SR.No. 62509

W.P(MD) No.10160 of 2019
25.04.2019

MJ

KK/SAR/23.05.2019/ 4P- 8C

—