



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.07.2019
Delivered on : 02.08.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)No.307 of 2019

V.Vasanthi
Secondary Grade Teacher,
D.D. Vinayagar Primary School,
Vellipattinam,
Ramanathapuram,
Pin code - 623 504.

... Appellant/Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by Secretary,
Finance (Pension) Department,
Fort St. George,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
rep. by the Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 3.The Accountant General,
Office of the Accountant General,
261, Anna Salai, Chennai 600 018.
- 4.The Director of Elementary Education,
College Road,
Chennai - 600 006.
- 5.The District Elementary Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 6.The Assistant Elementary Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 7.The Additional Assistant Elementary-
Educational Officer,
Ramanathapuram District,
Ramanathapuram.



8.The Secretary,
D.D. Vinayagar Primary School,
Vellipattinam,
Ramanathapuram District,
Pin code - 623 504.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 19.11.2018 in W.P(MD)No.901 of 2015.

Prayer in WP(MD). 901/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 7th responent AAEO in Na.K.No.429/A1/2014 dated 30.5.2014 and the proceedings issued by the 5th respondent DEEO in Oo.Mu.NO.02876/A2/2014 dated 15.07.2014 quash the same and further direct the respondents herein to allow forthwith the petitioner to continue under her Teacher provident Fund Scheme i.e. Old pension Scheme bearing Account No.339306.

For Appellant : Ms.Amala for
Mr.R.Manoharan
For Respondents : Mrs.S.Srimathy
Spl. Govt. Pleader (for R1 to R7)
No appearance (for R8)

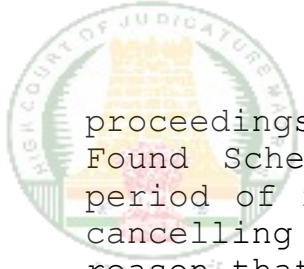
JUDGMENT

K.RAVICHANDRABAABU, J.

This writ appeal is preferred against the order of the Writ Court in dismissing the writ petition filed by the appellant herein. In the said writ petition, the order of the seventh respondent, dated 30.05.2014 and that of the fifth respondent, dated 15.07.2014, were put to challenge. Through the impugned orders, earlier allotment granted to the writ petitioner under Old Pension Scheme was cancelled and the writ petitioner was placed under the New Pension Scheme. Consequently, the petitioner seeks for direction to continue her under Old Pension Scheme, namely, Teacher Provident Fund.

2.The followings are the short facts and circumstances, which necessitated the filing of this writ appeal:-

The writ petitioner was appointed as Secondary Grade Teacher on 29.07.2002. She possessed B.A., (Economics) and B.Ed., (Economics) degree. Based on G.O.Ms.No.301, School Education (B1) Department, dated 15.10.1999, the writ petitioner was selected and appointed for the post of Secondary Grade Teacher. The fifth respondent through proceedings, dated 16.05.2003, recommended the writ petitioner to undergo one month Child Psychology Training. Accordingly, the writ petitioner completed such training on 27.10.2004. Thereafter, her service was regularized in the time scale of pay through



proceedings, dated 20.12.2004. She was allotted Teacher Provident Fund Scheme Account No.339306 on 31.08.2005. However, after a period of nearly nine years, the impugned orders came to be passed cancelling the allotment of old scheme to the writ petitioner on the reason that she was regularised in service only on 20.12.2004, after the commencement of New Contributory Pension Scheme, which came into force on 01.04.2003.

3.The Writ Court dismissed the writ petition on the reason that the writ petitioner has completed her Child Psychology Training only on 27.10.2004 and therefore, she is not entitled to claim under Old Pension Scheme.

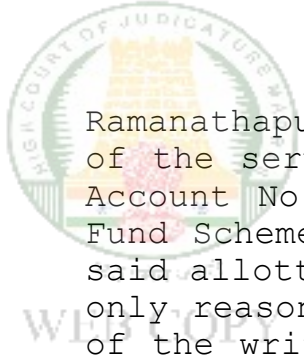
4.The learned counsel for the appellant/writ petitioner submitted that for considering the eligibility of the writ petitioner under Old Pension Scheme, the actual date of her appointment is relevant and not the actual date of regularization. She further contended that in view of the order passed in W.A.No.249 of 2002 etc., dated 02.04.2004 reported in **2004-2-L.W. 591 [The State of Tamil Nadu vs. Pallivasal Primary School]**, the writ petitioner's past service shall have to be counted, even though approval of her appointment can be made only from the date of completion of the Child Psychology Training.

5.On the other hand, the learned Special Government Pleader for the respondents contended that the writ petitioner, admittedly, has undergone the Child Psychology Training and completed the same only on 27.10.2004 by which time, the New Pension Scheme has come into force with effect from 01.04.2003. Therefore, she contended that the writ petitioner is not entitled to be considered under the Old Pension Scheme and therefore, the impugned order of cancellation was rightly passed.

6.Heard both sides.

7.The point for consideration in this writ appeal is as to whether the writ petitioner is entitled to be placed under the Old Pension Scheme as claimed by her or under the New Pension Scheme, as claimed by the respondents.

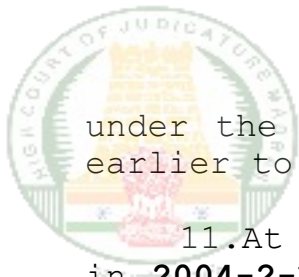
8.There is no dispute to the fact that the writ petitioner was appointed as Secondary Grade Teacher on 29.07.2002. There is no dispute to the fact that immediately after appointing the writ petitioner in the said post, the school management sent a proposal to the department on the very same day to send her for Child Psychology Training. However, the said request was considered by the department only on 16.05.2003 and accordingly, the writ petitioner was allowed to undergo Child Psychology Training. Consequently, the writ petitioner completed the training on 27.10.2004. On completion of such training, the writ petitioner's service was also regularised through proceedings, dated 20.12.2004, issued by the District Elementary Educational Officer,



Ramanathapuram. It is not in dispute that after the regularization of the service, the writ petitioner was allotted Old Pension Scheme Account No.339306, thereby placing her under the Teacher Provident Fund Scheme (Old Scheme). However, through the impugned orders, the said allotment was cancelled after a period of nearly 9 years. The only reason stated for such cancellation is that the regularization of the writ petitioner was made only on 20.12.2004, by which time, the New Pension Scheme came into force on 01.04.2003. In other words, it is the contention of the official respondents that her appointment itself is to be construed to have taken place only on 20.12.2004 and therefore, she cannot be placed under Old Pension Scheme.

9.We are not in a position to agree with the above contention of the official respondents. Admittedly, the writ petitioner was appointed as Secondary Grade Teacher on 24.09.2002, on which date, the old scheme namely, Teacher Provident Fund Scheme alone was in force. No doubt, the petitioner had to undergo the Child Psychology Training for the purpose of getting approval of such appointment and monetary benefits. It is seen that the school has sent the proposals on the date of appointment itself for sending the writ petitioner for such training. However, such request was considered by the department only on 16.05.2003. In any event, as the writ petitioner has completed such training on 27.10.2004, her service was regularized on 20.12.2004.

10.Now, the question arises for consideration is as to whether the date of approval of appointment is the relevant date for considering the claim of the writ petitioner under the Old Pension Scheme or the date of approval of her original appointment to the said post. Appointment to the post by the School/Management and approval of the same by the Education Department are two different events and thus, relevant dates of those two events are certainly different and distinguishable. Approval of appointment is granted by the department for the purpose of extending the monetary benefits. Therefore, it does not mean that date of approval itself has to be construed as the date of appointment for the purpose of considering the applicability of the relevant pension scheme. Approval of such appointment may be granted either from the date of such appointment or from any other subsequent date depending upon the facts and circumstances of each case like want of vacancy or sanction etc. At any event, the date of appointment remain to be the same. The dispute herein is not with regard to the claim for salary from the date of the appointment of the writ petitioner. On the other hand, it is in respect of the applicability of relevant pension scheme, under which, the writ petitioner has to be placed. For this purpose, the date of approval of appointment is not relevant factor and on the other hand, it is only the date of appointment that matters. In other words, if the writ petitioner is entitled to count her service period from the date of her appointment for the purpose of pension, she must be placed only



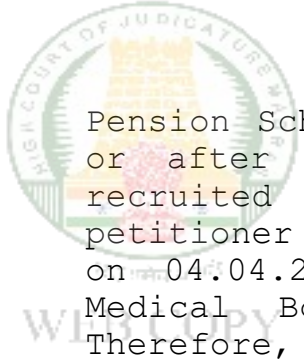
under the Old Pension Scheme, since her appointment was admittedly earlier to the introduction of the New Pension Scheme.

11. At this juncture, the observation made by the Division Bench in **2004-2-L.W. 591** (cited supra) at paragraph 8, is relevant to be quoted.

"8. Their right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall count for pension."

12. A careful perusal of the above observation made in the said **Pallivasal Primary School** case would show that even though approval of the appointment of the teacher, who has undergone Child Psychology Training, will take effect only on completion of such training, the past service rendered by such teacher i.e., service rendered before the completion of such training, is bound to be counted for pension. In other words, the service period of such teacher commences from the date of the appointment and not from the date of approval, even though the monetary benefits start to accrue only from the date of completion of the training. Therefore, for all practical purposes, the date of appointment is not altered and remain to be the same. Therefore, the date of approval of appointment of the writ petitioner cannot be construed as the date relevant for considering the applicability of the pension scheme and on the other hand, it is the original date, on which the writ petitioner got appointed that matters for considering as to whether the writ petitioner is governed under the Old Pension Scheme or not. At this juncture, it is relevant to note that in G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, a proviso to Rule 2 of the Tamil Nadu Pension Rule 1978, was introduced by way of amendment, wherein and whereby, it is contemplated that the Tamil Nadu Pension Rules 1978 shall not apply to Government Servants "appointed" on or after 1st April 2003 to services and posts. The word "appointed" referred in the said proviso cannot be construed to mean approval of such appointment.

13. In fact, the very same issue was considered by one of us (KRCBJ) in W.P(MD)No.3308 of 2007. The Contributory Pension Scheme was introduced to the newly recruited employees, who are recruited on or after 01.04.2003. Relevant clause 3(i) of G.O.Ms.No.259 dated 06.08.2003, which has introduced the New Contributory Pension Scheme, was taken into consideration in the said case and it was found that the said Government Order introducing New Contributory



Pension Scheme, would apply only to persons, who were recruited on or after 01.04.2003 and not in respect of persons, who were recruited earlier to 01.04.2003. In that case, though the writ petitioner therein was recruited on 26.03.2003, he joined the duty on 04.04.2003 after obtaining the medical certificate from the Medical Board, since he is a physically challenged person. Therefore, it was found therein that the date of joining of such person cannot be considered as date of appointment as such event of appointment had already taken place well before 01.04.2003. We are informed that the above said order has been given effect to.

14. Under the above stated facts and circumstances, we find that the Writ Court is not justified in dismissing the writ petition on the reason that the writ petitioner has completed her Child Psychology Course only on 27.10.2004 and therefore, she is not entitled to make claim under the Old Pension Scheme. Thus, the writ petitioner is entitled to succeed.

Accordingly, the Writ Appeal is allowed and the order of the Writ Court is set aside. Consequently, the Writ Petition filed by the petitioner/appellant is allowed and the respondents are directed to permit the petitioner to continue under the Old Pension Scheme, namely, Teacher Provident Fund Scheme. No costs.

Sd/-

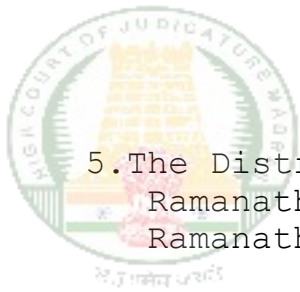
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Secretary,
Finance (Pension) Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.
3. The Accountant General,
Office of the Accountant General,
261, Anna Salai, Chennai 600 018.
4. The Director of Elementary Education,
<https://hcservices.ecourts.gov.in/hcservices/>
College Road,
Chennai - 600 006.



5.The District Elementary Educational Officer,
Ramanathapuram District,
Ramanathapuram.

6.The Assistant Elementary Educational Officer,
Ramanathapuram District,
Ramanathapuram.

7.The Additional Assistant Elementary-
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Pin code - 623 504.

+1 CC to Mr.R.MANOCHARAN, Advocate (SR-79587[F] dated 02/08/2019)
+1 CC to SPL GP (SR-79689[F] dated 05/08/2019)

Judgment made in
W.A(MD)No.307 of 2019
02.08.2019

skn

MK (14.08.2019) 7P 11C