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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.8793 of 2014

and

M.P. (MD) Nos.2 & 3 of 2014

D.Surendran

... Petitioner

vs.

- 1.State of Tamil Nadu
rep.by its Secretary
Finance (PGC) Department
Secretariat, Chennai-600 009
- 2.State of Tamil Nadu
rep.by its Secretary
Revenue Department
Secretariat, Chennai-9
- 3.State of Tamil Nadu
Rep.by its Secretary
Personnel & Administrative
Reforms Department
Secretariat, Chennai-09
- 4.The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
V.O.C.Nagar, Park Town
Chennai-600 003
- 5.The Accountant General (A&E)
No.361, Annasalai
Teynampet, Chennai-08
- 6.The Commissioner of Treasuries and Accounts
Panagal Building
No.1, Jeenis Road
Saidapet, Chennai-600 015
- 7.The District Collector
Collectorate, Madurai
Madurai District

... Respondents



PRAYER : Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order in Letter No.63734/FS/T/PGC/2013, dated 02.05.2014, on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondent No.1 to enroll the petitioner in the General Provident Fund Scheme as available prior to 01.04.2003 and allot GPF Account Number for the petitioner within a time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader
for R1 to R3, R6 & R7
Mr.K.K.Senthil for R4
Mr.P.Gunasekaran for R5

O R D E R

The order dated 02.05.2014, passed by the first respondent, is sought to be quashed in the present writ petition and further direction is sought to direct the first respondent to enroll the name of the writ petitioner in the General Provident Fund Scheme as available prior to 01.04.2003 and allot G.P.F. Account number to him.

2. The writ petitioner was recruited to the post of Revenue Assistant through Tamil Nadu Public Service Commission. He was not issued with an order of appointment, though he was selected during the year 2001. The appointment order was issued to the writ petitioner only after 01.04.2003 and therefore, he was brought under the Contributory Pension Scheme and not under the General Provident Fund Scheme. Thus, the writ petitioner is constrained to move the present writ petition.

3. The issues in relation to the selection and appointment as well as the rights of the candidates with reference to the appointment made prior to 01.04.2003 was adjudicated by the Honourable Division Bench of this Court, by Judgment dated 19.06.2014, in W.A.(MD) No.217 of 2011 etc., batch, wherein, the Honourable Division Bench considered the definition of recruitment, appointment and other criterias. The grounds raised in the present writ petition were also taken before the Honourable Division Bench in the above cited writ appeal. The relevant paragraphs of the said Judgment are extracted hereunder:

"25. Therefore, it is clear that 'recruitment' is nothing more than a mere selection or enlistment, while 'appointment' is the actual act of offering a post to an individual. Insofar as the civil posts and



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civil services under the State are concerned, it is well settled for a long time that they are not merely based on contract but are governed by statutory rules issued in terms of the proviso to Article 309 of the Constitution of India. An appointment to a post in the civil services of the State is actually one of status. Therefore, a vested right is created in a person only after he is appointed to a service or a post. Till a person is actually appointed, he is merely a selectee for the post and his selection or enlistment does not confer any right. As pointed out by the Supreme Court in *State of Madhya Pradesh vs. Raghvir Singh Yadav* - 1994 (6) SCC 151, the Government is entitled even to cancel a selection and conduct a fresh recruitment. The candidates, who got selected, may only have a legitimate expectation to be considered but, according to the rules in vogue. Therefore, on the ground that the writ petitioners and the writ appellant were recruited or enlisted or selected for appointment, they cannot claim a right on par with those who were actually appointed to the service.

...
...

72.Mr.R.Lakshman, learned counsel for the petitioners, relied upon the decision of Queen's Bench in *Carlill vs. Carbolic Smoke Ball Co.* - (1893) 1 QB 256. But, the said decision arose under the law of Contract with particular reference to wagering contracts. The employment of the petitioners is not a matter of contract. It is a matter of status. It is governed by statutory rules. Therefore, the said contention cannot be accepted.

73.A few persons actually filed a writ petition in in W.P.No.2470 of 2013 on the file of this Court, challenging G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003. In the decision rendered on 06.02.2013 (*R.Vijayakuamr vs. Government of Tamil Nadu*), K.CHANDRU,J upheld the amendment to the Tamil Nadu Pension Rules and dismissed the writ petition. Therefore, as on date, the rules hold the field. The petitioners and the appellant having been appointed to the respective posts only after the cut-off date are bound by the rules that have come into force on the date of



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their appointment. Hence, their claim for the benefit of the unamended rules cannot be sustained.

74. In view of the above, the writ appeal and the writ petitions are dismissed. No costs. Connected miscellaneous petitions are also dismissed."

4. The review petition filed against the above cited Judgment of the Honourable Division Bench was also rejected. Thus, the present writ petition filed, with reference to the very same grounds as raised and adjudicated before the Honourable Division Bench, need not be re-adjudicated.

5. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Secretary,
Finance (PGC) Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.
2. The Secretary,
Revenue Department,
Secretariat, Chennai-9.
3. The Secretary,
Personnel & Administrative
Reforms Department,
State of Tamil Nadu,
Secretariat, Chennai-09.
4. The Commissioner of Treasuries and Accounts,
Panagal Building,
No.1, Jeenis Road,
Saidapet, Chennai-600 015.



5. The District Collector,
Collectorate, Madurai,
Madurai District.

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+1CC TO MR.P.GUNASEKARAN, Advocate Sr. No. 73773
+1CC TO MR.K.K.SENTHIL, Advocate Sr. No.74032
+1CC TO MR.T.LAJAPATHI ROY, Advocate Sr. No.73868
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 73734

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and
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DKS (CO)
TR (15.07.2019) 5P 10C