



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.A. (MD) .No.1026 of 2019

R.Kalpana

... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Education Department,
St.George Fort,
Chennai.

2.The Accountant General
DMS,
Nandanam,
Chennai.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent, against the order dated 22.07.2019 passed by this Court in W.P(MD). No.13734 of 2014.

Prayer in WP(MD) . 13734/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the 2nd respondent to extend the General Provident Fund Scheme to the petitioner by considering the representation preferred by the petitioner on 16.7.2014 within the time that may be stipulated by this Honble Court.

For Appellant :Mr.R.R.Kannan

For R1 :Mrs.S.Srimathi

Special Government Pleader

For R2

:Mr.R.Gunasekaran

JUDGMENT

(Judgment of this Court was made by **T.S.SIVAGNANAM, J**)

This appeal is directed against the order passed in W.P(MD). No.13734 of 2014, dated 22.07.2019.

2.Heard Mr.R.R.Kannan, learned counsel appearing for the appellant, Mrs.S.Srimathi, learned Special Government Pleader appearing for the first respondent and Mr.P.Gunasekaran, learned counsel appearing for the second respondent.

<https://hcservices.courts.gov.in/hcservices/>



3.The appellant filed the writ petition praying for a direction to the respondents to extend General Provident Fund Scheme to the appellant by considering his representation, dated 16.07.2014. The writ petition was entertained and notice was ordered and the matter was pending for nearly 5 years, however, the respondents did not file any counter affidavit. When the writ petition was heard on 22.07.2019, the learned Special Government Pleader submitted before the Writ Court that the appellant was appointed on 02.12.2003 well beyond the date on which, the Contributory Pension Scheme came into force, ie., with effect from 01.04.2003. Taking note of the submission of the learned Special Government Pleader, the Writ Court clarified that the appellant is entitled to the benefits of Contributory Pension Scheme alone. However, the moot issue, which was before the Writ Court is whether the appellant could have been denied the benefit of the General Provident Scheme. In the light of the facts set out by the appellant before the Writ Court and in the representation filed before the respondents, in the absence of counter affidavit, the Writ Court was precluded from adjudicating the correctness of the claim of the appellant. It is not known as to why the Secretary Education Department, Government of Tamil Nadu failed to file a counter affidavit, though the writ petition was pending for 5 long years.

4.Be that as it may, we note the arguments of Mr.R.R.Kannan, learned counsel appearing for the appellant, which are on the following terms. The notification for recruitment of School Assistants including Language Pandits in the Tamil Nadu School Educational Subordinate Service and Block Resource Teachers in the School Assistants' scale of pay under the Sarvashiksha Abhiyan through an open common Written Competitive Examination was notified by the Tamil Nadu Teachers Recruitment Board. The appellant was one of the applicant in the said recruitment process. The Notification was issued on 01.01.2002, the selection process was completed and the first set of School Assistants were appointed on 11.07.2002 and the second set of School Assistants were appointed on 17.03.2003. Both these appointments being well before the advent of the Contributory Pension Scheme ie., with effect from 01.04.2003, have been extended the benefit of General Provident Fund Scheme. The appellant opted for the post of Block Resource Teachers and she was appointed on 06.05.2003 and posting orders were issued and she joined duty on 02.12.2003. Since the appointment was on 06.05.2003, after 01.04.2003 the appellant has been denied the benefit of General Provident Fund Scheme.

5.The learned counsel for the appellant pointed out that as per the notification issued by the Teachers Recruitment Board, the candidates are entitled to exercise their options either for the post of Block Resource Teachers or for the School Assistants and

<https://hcservices.ednls.gov.in/hcservices/> is exercised, it is final and the first recruitment



to be made for Block Resource Teachers post and the second to be made for regular post of School Assistants/language pandits.

6.The learned counsel for the appellant submitted that in utter disregard to clause 7 of the Notification issued by the Teachers Recruitment Board, the Block Resource Teachers were recruited in the last spell ie., from 06.05.2003 thereby, they were put to prejudice and they have been denied the benefit of General Provident Fund Scheme.

7.The learned counsel places reliance on the decisions of the High Court of Delhi in the case of **INSPECTOR RAJENDRA SINGH 7 ORS. VS. UOI & ORS.**, in **W.P(C).2810/2016**, dated **27.03.2017** and the decision in **TANAKA RAM AND ORS. VS. UNION OF INDIA AND ORS.**, in **W.P (C).No.6680 of 2017**, dated **12.02.2019**. The reliance is also placed in the decision of the Division Bench of this Court in the case of **V.VASANTHI VS. STATE OF TAMIL NADU**, reported in **2019(4) CTC 865**.

8.In our considered view, the respondents should have taken a specific stand as regards the contention raised by the appellant atleast by filing a counter affidavit in the writ petition. Had the respondents taken a decision on the representation dated 16.07.20014, the need for the appellant to approach the Writ Court would not have been there. In any event, this matter needs to be decided by the first respondent by passing a speaking order and while doing so, the contention advanced by the appellant before us, which we have been recorded in the preceding paragraph have also to be taken note of.

9.For the above reasons, this Writ Appeal is allowed and the order passed in the writ petition is set aside and the writ petition stands disposed of by directing the first respondent to consider the petitioner's representation, dated 16.07.2014 and pass a speaking order on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. The appellant is directed to forward the copy of the representation along with the copy of this judgment to the first respondent through proper channel. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Ns



To

1.The Secretary,
The State of Tamil Nadu,
Education Department,
St.George Fort,
Chennai.

2.The Accountant General
DMS,
Nandanam,
Chennai.

+2 CC to Mr.RR KANNAN, Advocate (SR-91880[F] dated 15/10/2019)
+1 CC to SPL GP (SR-92102[F] dated 16/10/2019)

W.A. (MD) .No.1026 of 2019
15.10.2019

MK (26.11.2019) 4P 6C