



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.11.2019	14.11.2019

CORAM:

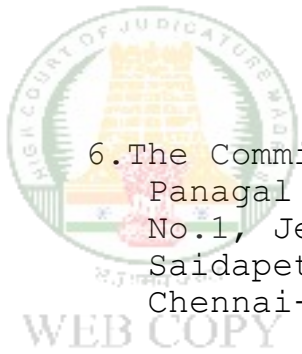
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.1157 & 1158 of 2019
and
C.M.P. (MD) No.10300 & 10301 of 2019

S.Isaivani ... Appellant in W.A.(MD) No.1157 of 2019
S.Muthulakshmi ... Appellant in W.A.(MD) No.1158 of 2019

-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-09
- 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
Teyyanpet, Chennai-08



6.The Commissioner of Treasuries and Accounts
Panagal Building
No.1, Jeenis Road
Saidapet
Chennai-600 015

7.The District Collector
Collectorate
Tirunelveli
Tirunelveli District

... Respondents in both Writ Appeals

PRAYER (in W.A.(MD) No.1157 of 2019) : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.07.2019, passed in W.P.(MD) No.9736 of 2014, on the file of this Court.

PRAYER (in W.A.(MD) No.1158 of 2019) : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.07.2019, passed in W.P.(MD) No.9738 of 2014, on the file of this Court.

Prayer in WP(MD). 9736 & 9738 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a 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 the Time stipulated by this Honble Court.

For Appellant : Mr.T.Lajapathi Roy
(in both appeals)

For Respondents : Mr.A.K.Baskarapandian
(in both appeals) Special Government Pleader
for R1 to R3, R6 & R7
Mr.P.Gunasekaran for R5

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.,

These writ appeals have been preferred by the appellants challenging the common order dated 04.07.2019, passed in W.P.(MD) Nos.9736 & 9738 of 2014, by which the writ petitions filed by them were dismissed.



2. The appellants challenged the proceedings of the first respondent, dated 02.05.2014, which is a letter addressed by the Secretary to Government (Expenditure) to all the Secretaries to Government and other Authorities giving certain directions relating to allotment of Contributory Pension Scheme Numbers to the existing employees / newly joined employees.

3. The appellants, in the writ petitions, also sought for a consequential direction to the first respondent to enroll them in the General Provident Fund Scheme as available prior to 01.04.2003 and allot General Provident Fund Account Numbers to them within a time frame.

4. The learned Single Bench, taking note of the Judgment, dated 19.06.2014, passed in W.A.(MD) No.217 of 2011 etc. batch (***V.Sahadevan vs. State of Tamil Nadu***), dismissed the writ petitions.

5. The appellants' case rests upon the directions issued by the Tamil Nadu Administrative Tribunal, dated 14.01.2003, in O.A.No.5443 of 2002 etc. batch. It is submitted in the said batch of cases, the Tribunal has specifically pointed out that though the appellants were selected by the Service Commission and their names were forwarded to the District Collectors, they were turned away by the District Collectors on the specious plea that they have surrendered the selectees. Therefore, it is submitted that the reason for the appellants not being able to join duty in the respective Collectorates was not attributable to them, but on account of the illegality committed by the official machinery, which was set right by the Tribunal and only after the directions issued by the Tribunal on 14.01.2003, they were all appointed, however, not to the Districts they were originally allotted and by then, the Contributory Pension Scheme came into vogue with effect from 01.04.2003 and the same should not be made applicable to the appellants for no fault committed by them, they could not join duty.

6. The learned counsel appearing for the appellants relied upon the order, dated 31.07.2019, passed in W.P.(MD) No.9238 of 2014 (***K.Nallaiah vs. State of Tamil Nadu***) and submitted that the petitioner therein is also a similarly placed person and the Writ Court directed that the Government to take decision in the matter by considering the representation of the petitioner therein. Therefore, it is submitted that the similar direction be issued in the appellants' case as well.

7. Further, with regard to the decision in the case of ***V. Sahadevan*** (supra), it is submitted that in the said case, the Court specifically pointed out that the delay in appointment was attributable to the candidates and not to the administration, which is not the case of the appellants herein. Therefore, the learned



counsel for the appellants prayed for setting aside the orders passed in the writ petitions.

8. Mr.P.Gunasekaran, learned counsel appearing for the fifth respondent, submitted that the law is well settled and the learned Single Bench has rightly followed the decision in the case of **V.Sahadevan** (supra) and the present attempt of the appellants is to commence a fresh round of litigation, which should not be permitted and the law having been settled, the question of directing the Government to consider the case of the appellants would not arise.

9. The learned Special Government Pleader submitted that the Honourable Division Bench in the case of **V.Sahadevan** (supra) has clearly explained as to the distinction between "recruitment" and "appointment" and without appreciating the said distinction, the prayer sought for by the appellants is misconceived.

10. We have heard Mr.T.Lajapathi Roy, learned counsel appearing for the appellants; Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 to 3, 6 and 7 and Mr.P.Gunasekaran, learned counsel appearing for the fifth respondent.

11. It is not in dispute that all the appellants were appointed and joined duty after 01.04.2003. If such is the case, it goes without saying that they will be enrolled under the Contributory Pension Scheme and not under the General Pension Scheme. The learned Writ Court had dismissed the writ petitions following the decision in the case of **V.Sahadevan** (supra). We agree with the findings of the Writ Court in the writ petitions and the decision cannot be distinguished as sought to be done by the learned counsel for the appellants. The Court laid down the legal position and pointed out that till a person is actually appointed, he is merely a selectee for the post and the selection or enlistment does not confer any right. We had taken note of the said decision (**V.Sahadevan**) in the order, dated 27.04.2018, in W.P.(MD) No.5016 of 2015 (**Joseph Joy and others vs. State of Tamil Nadu and others**) and dismissed the said writ petition.

12. The reliance placed on the order dated 31.07.2019, passed in W.P.(MD) No.9238 of 2014, in the case of **K.Nalliah** (supra), is of little avail as no useful purpose would be served in directing the Government to consider the representation, because already the law on the subject matter has been well settled as early as in the year 2014. Therefore, we are of the considered view that the appellants are not entitled to any relief.

13. In the result, the writ appeals are dismissed and the order, dated 04.07.2019, passed in W.P.(MD) Nos.9736 & 9738 of 2014,
<https://hcservices.ecourts.gov.in/hcservices/>



is confirmed, insofar as the appellants herein are concerned. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

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Sub Assistant Registrar(CS)

krk

To

1.The Secretary,
Finance (PGC) Department,
State of Tamil Nadu,
Secretariat,
Chennai-600 009.

2.The Secretary,
Revenue Department,
State of Tamil Nadu,
Secretariat,
Chennai-09.

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,
Tirunelveli,
Tirunelveli District.

+1 CC to Spl.GP (SR-97239[F] dated 11/11/2019)

+2 CC to M/s.T. LAJAPATHY ROY, Advocate (SR-97541[F] dated 12/11/2019)

+2 CC to Mr.P.GUNASEKARAN, Advocate SR-98281&98282

COMMON JUDGMENT IN

W.A. (MD) Nos.1157 & 1158 of 2019

and C.M.P. (MD) No.10300 & 10301 of 2019

14.11.2019