



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.21052 of 2019

A.Clement Rosy

... Petitioner

-Vs-

1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of Education,
St. George Fort, Chennai-600 009.

2.The Director of School Education Department,
DPI Campus, College Road, Chennai.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Madurai, Madurai District.

... Respondents

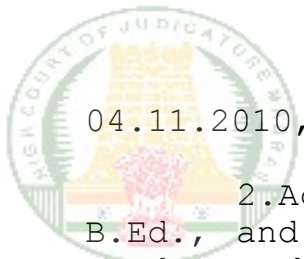
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to herein to compute the service of the petitioner as Secondary Grade Teacher from 20.02.1998 to 03.10.2007 in private Government Aided School for pensionary and terminal benefits as held by the Division Bench in judgment reported in 2004 (2) L.W. 591 and order dated 21.03.2018 passed in W.A.(MD)No.74 of 2015 and etc, and consequently, bring the petitioner under old pension scheme by extending the benefit of G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010, within the time limit fixed by this Court.

For Petitioner : Mr.M.Dinesh

For Respondents : Mr.A.Thiagarajan,
Government Advocate.

ORDER

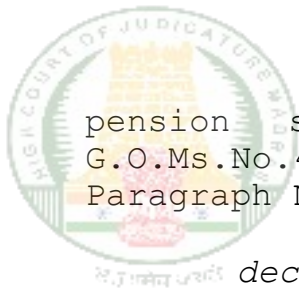
This Writ Petition is filed to direct the respondents to compute the service of the petitioner as Secondary Grade Teacher from 20.02.1998 to 03.10.2007 in private Government Aided School for pensionary and terminal benefits as held by the Division Bench in the judgment reported in **2004 (2) L.W. 591 (State of Tamil Nadu and others Vs. Pallivasal Primary School)** and order dated 21.03.2018 passed in W.A.(MD)Nos.74 of 2015 and 957 of 2016, and consequently, bring the petitioner under old pension scheme, by extending the benefit of G.O.Ms.No.413, Finance (PGC) Department, dated



04.11.2010, within the time limit to be fixed by this Court.

2. According to the petitioner, she is possessing B.Sc., B.Ed., and M.Sc., qualification and she was appointed as Secondary Grade Teacher in Holy Family Girl's Higher Secondary School, Madurai on 20.02.1998. Subsequently, she has participated in the selection process conducted for the post of B.T. Assistant (Maths) and was selected and appointed as B.T. Assistant (Maths) in Government Higher Secondary School, T.Vadipatti, Madurai District, with effect from 08.10.2007 and till date, she is working in that School. The Government has issued G.O.Ms.No.559, Education, Science and Technology Department, dated 11.07.1995, directing the authorities not to approve the appointment of B.T. Assistants / Tamil Pandits in Secondary Grade Teacher vacancies in future in all kinds of Schools, including minority School. Subsequently, the Government, by issuing G.O.Ms.No.203, Education, Science and Technology Department, dated 19.03.1996, has modified the said G.O.Ms.No.559, by observing that the post of B.T. Assistants / Tamil Pandits in the Secondary Grade Teacher vacancies should not be restored to after 11.07.1995 ie., date of issuance of G.O.Ms.No.559. The management of the various Schools have challenged the said Government Order, by way of filing Writ Petitions. The same were dismissed and Writ Appeals were also dismissed. At the time of hearing the Writ Appeals, the learned Additional Advocate General has submitted that the Government would consider the case of the persons, who are having B.Ed., qualification and appointed in the post of Secondary Grade Teachers and would give practical training and consider the each cases individually. The Division Bench of this Court, while dismissing the Writ Appeal, has recorded the said submission and directed the Government to complete the said exercise, within a time frame. The said judgment is reported in **2002 Writ L.R. 173 (Secretary and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School, Pullapatti, Karur District Vs. State of Tamil Nadu and others)**.

3. The Government to implement the directions given by the Division Bench of this Court, has passed the Government Order in G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, providing one month child psychology training for all the teachers, who possessed B.Ed., qualification and appointed in the Secondary Grade vacancies and absorb them into service. The petitioner was sent for child psychology training and after completion of child psychology training, her service was regularized on 02.06.2003. The Government has introduced new pension scheme, by which, the persons, who were appointed on or after 01.04.2003, would be governed by new pension scheme and not by old pension scheme. The said new pension scheme was challenged by filing Writ Petitions in W.P.Nos.26933 and 26934 of 2007 and this Court, by the order dated 23.04.2008, has disposed of the said Writ Petitions, holding that the similarly placed persons, like the petitioner are not governed under new



pension scheme. Subsequently, the Government has issued G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010, in which Paragraph No.8, it has been stated as follows:-

"8.Government after careful consideration, decided to implement the orders of the High Court in the W.P.Nos.26933 and 26934 of 2007. W.P.(MD) Nos.10447 and 5174 of 2008, 4537 of 2009, 1375 of 2010 and W.P.Nos.12280 to 12282 of 2010. Government accordingly direct that the B.T. Assistant / Tamil Pandits having B.Ed., qualifications who were appointed as Secondary Grade Teachers in the sanctioned regular posts in private aided schools during the period from 11.07.95 to 19.05.98 and whose services were regularized as per G.O.(Ms)No.155, School Education (D2) Department, dated 03.10.2002 are to be extended the Old Pension Scheme and General Provident Fund as applicable to the teachers appointed before 01.04.2003 and that they are not governed under G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004."

The said benefit was extended to similarly placed persons. Seeking the similar relief, the petitioner has given a representation dated 04.02.2019. Since no order has been passed, the petitioner has come out with the present Writ Petition, seeking aforesaid relief.

4.The respondents have filed counter affidavit and the learned Government Advocate appearing for the respondents submitted that the teachers, who were appointed on or after 01.04.2003, are governed by new pension scheme ie., Contributory Pension Scheme and the petitioner has resigned her job in the aided school on 03.10.2007 and joined in Government Job on 08.10.2007. Hence, the petitioner is not entitled for pension as per old pension scheme and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

6.This Court, in W.P.Nos.26933 and 26934 of 2007, vide order dated 23.04.2008, has held as follows:-

"8.In the light of the above undisputed facts and the order of Division Bench having final due to the dismissal of Civil Appeals on 13.03.2008, the petitioners are entitled to get their pension and other benefits as per the then prevailing Tamil Nadu Pension Rules, 1978. There is no dispute that the petitioners were appointed in Secondary Grade Teacher vacancies in sanctioned posts in aided schools before 01.04.2003. The Government Order dated 06.08.2004 specifically states that persons appointed / recruited after



01.04.2003 are not governed under the Tamil Nadu Pension Rules, 1978 and will be governed under the new scheme. I submit that petitioners similarly placed like me who were appointed before the said were given Child Psychology Training in terms of G.O.Ms.No.155, Education, dated 03.10.2002 claimed that G.O.Ms.No.430, Finance, dated 06.08.2004 need not be quashed.

9. In view of the said submissions, it is ordered that the petitioners are to be extended the Pension Scheme applicable to the Teachers appointed prior to 01.04.2003 and they are not governed under G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004. If the pensionary contributions if any, payable by the petitioners as per Tamil Nadu Pension Rules, 1978 are not paid till dated by the petitioners, it is open to the respondents to claim the same from the petitioners. The writ petitions ordered in the above terms."

7. The petitioner joined in the service as Secondary Grade Teacher on 20.02.1998 in a private aided school. Subsequently, her service was regularized by applying G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002. Later, in order to join in the Government School, pursuant to the selection of the Teachers Recruitment Board, the petitioner after getting prior permission from the private school and relieved from the service on 03.10.2007 and joined in the Government Higher Secondary School, as B.T. Assistant (Maths) with effect from 08.10.2007. Hence, there is no break in service. Therefore, the petitioner is entitled to Old Pension Scheme as extended in G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010, in the light of the judgment of a Division Bench of this Court in W.A.(MD)Nos.74 of 2015 and 957 of 2016, dated 21.03.2018, the judgment reported in **2004 (2) L.W. 591 (State of Tamil Nadu and others Vs. Pallivasal Primary School)** and W.P.Nos.26933 and 26934 of 2007, dated 23.04.2008. Accordingly, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(AE)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary,
Government of Tamil Nadu,
Department of Education,
St. George Fort, Chennai-600 009.

2.The Director of School Education Department,
DPI Campus, College Road, Chennai.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Madurai, Madurai District.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 97251

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