BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.9067 of 2014
and
M.P.(MD)Nos.1, 2 and 3 2014

S.Thirunavukkarasu
Zonal Deputy Tahsildar,
Taluk Office, Shengottai,
Tirunelveli District. ... Petitioner

-Vs-

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

2.State of Tamil Nadu,
Represented by its Secretary,
Revenue Department, Secretariat,
Chennai-09.

3.State of Tamil Nadu,
Represented 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, Anna Salai,
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, Tirunelveli,
Tirunelveli District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling 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 first respondent and quash the same as illegal and consequently, to direct the first respondent 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 Court.

For Petitioner	: Mr.T.Lajapathi Roy
For R1 to R3, R6 & R7	: Mr.M.Jeyakumar, Additional Government Pleader.
For R4	: No Appearance
For R5	: Mr.P.Gunasekaran

ORDER

The order, dated 02.05.2014, is under challenge in the present Writ Petition.

2.The impugned Government Letter is a common circular issued to all the Government Departments across the State.

3.The grievance of the writ petitioner is that though the selection with reference to the post of Assistant in the Revenue Department was undertaken well before the implementation of the new pension scheme, on account of certain illegalities, the affected candidates approached the Tamil Nadu Administrative Tribunal by filing O.A.No.5445/2002. The Tribunal also passed an order dated 14.01.2013 and the relevant paragraphs are extracted hereunder:-

> *"4.I am surprised that the persons who have been selected by the Service Commission after holding the competitive examination were just turned away by the District Collectors on the specious plea that they have surrendered the selectees. There is no meaning in the Collectors saying that they have surrendered the selectees. The Collector at the best can only surrender a post, if it has become redundant or unnecessary. The Collectors should have informed the Head of the Department with regard to vacancies in the post of Assistant and only after ascertaining the vacancies from various District Collectors, the Special Commissioner of Revenue Administration should have notified the Service Commission which has taken the trouble of calling for applications and undertaking the process of selection resulting in allotment of these applicants to Revenue units. In all probability, temporary promotion should have been made to the post of Assistant by the District Collectors and that is how the post notified is now being*

occupied by the Junior Assistants who have been temporarily promoted. The Collector ought to have reverted those persons and should have given appointments and posting orders to these selectees. Perhape, the Collectors have yielded to the pressure made by the serving personnel and accepted their demand, as a result of which they have turned away the selectees. This practice cannot be allowed and it is highly deprecated. The applicants have sat for examination after preparation. They have been anxiously waiting for allotment and postings and even after their selection and allotment to various districts, their ordeal is not over and they were simply turned away by the District Collectors.

5.The learned Additional Standing Counsel Mr.V.Subbiah has also been heard in this matter and he has got instructions from the Commissioner of Revenue Administration and he also admits that all these persons must be given postings. Mr.V.Subbiah would add that the Commissioner of Revenue Administration has addressed the Government for creation or sanction of posts. This will naturally take some more time. The Collector has now stated that they have surrendered the posts. For the vacancies, the Collector has earlier notified the Service Commission, selection has made done, people have been allotted and those vacancies must be still there. Instead of reverting those people and appointing these persons selected by the Service Commission, the Collectors have strangely stated that they are surrendering the Service Commission selectees but at the same time retaining the post. Therefore, these posts only have to be filed by the selectees and persons who are temporarily promoted and occupying the posts are liable to be reverted. If the Government wants to oblige the Collectors, it is open to them to sanction new posts to accommodate them. Any how, appointments orders have to be given to these persons and a direction is given to the Government to provide postings and appointment orders to those applications either by itself or through respective District Collectors. The direction shall be complied with within a period of two months from this date."

4.Referring the above observations of the Tamil Nadu Administrative Tribunal, the learned counsel appearing on behalf of the writ petitioner states that the case of the writ petitioner is to be considered for inclusion in the old pension scheme.

5.Admittedly, the appointment of the writ petitioner was made on 24.08.2001, after the implementation of the new pension scheme, namely, Contributory Pension Scheme. Further, it is stated that on account of legal battle, there was a delay in issuing the order of appointment, for which the writ petitioner cannot be penalized.

6.The learned counsel appearing on behalf of the writ petitioner further urged this Court by stating that the rights of the writ petitioner occurred prior to the implementation of the new pension scheme and during the existence of the old pension scheme. Thus, the case of the writ petitioner is to be considered under the General Provident Fund i.e., old pension scheme. However, the respondents have included the name of the writ petitioner in the Contributory Pension Scheme and therefore, the writ petitioner is constrained to move the present Writ Petition.

7.The learned counsel appearing on behalf of the Accountant General of Tamil Nadu objected the contentions by stating that the fact remains that the writ petitioner was appointed on 24.08.2001, after the implementation of the new pension scheme with effect from 01.04.2003. Thus, the name of the writ petitioner is to be included in the Contributory Pension Scheme and not under the old pension scheme. The date of appointment is the criteria for the purpose of deciding whether an employee should be included under the new pension scheme or under the old pension scheme. When the Government categorically fixed the cut off date as 01.04.2003, all the employees, who were appointed after the date, are necessarily to be included in the new pension scheme, more specifically, under the Contributory Pension Scheme. Thus, the case of the writ petitioner is falling under the new pension scheme and accordingly, his name will be added in the new pension scheme.

8.The learned counsel appearing on behalf of the writ petitioner replied by stating that the peculiar circumstances and the facts are to be considered by the Government, in view of the fact that the delay occurred on account of certain illegalities committed by the Government and for which the writ petitioner cannot be penalized.

9.The learned counsel appearing on behalf of the writ petitioner states that illegality committed by the Government was found by the Tamil Nadu Administrative Tribunal. There is an observation to that effect. Thus, all these factors are to be considered by the Government for the purpose of re-considering the case of the writ petitioner for inclusion of his name in the old pension scheme.

10.This Court is of the considered opinion that the cut off date fixed by the Government in respect of implementation of new pension scheme cannot be modified or altered by the Court by exercising its power of judicial review under Article 226 of Constitution of India. Fixing date is the administrative prerogative of the Government, more so, the policy of the Government. Such a policy cannot be questioned nor to be modified or diluted by the Courts in favour of few individuals and only in the event of establishing any unconstitutionality, the power of judicial review can be exercised.

11.In the present case, certain facts are narrated by the writ petitioner, which caused certain grievances to the writ petitioner. This being the factum, the Government alone is competent to decide the issues and the Court cannot laid down principles by diluting the cut off date already fixed by the Government.

12.This being the factum, the second respondent / Secretary to Government, Revenue Department is directed to consider the case of the writ petitioner and take a decision on merits and in accordance with law as expeditiously as possible preferably, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioner is also at liberty to submit fresh representation, setting out all the facts and circumstances and the documents, if any, along with the order passed in this Writ Petition.

13.With these directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

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

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

3.The Secretary,
State of Tamil Nadu,
Personnel & Administrative Reforms Department,
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 M/s.P. GUNA SEKARAN, Advocate (SR-82797[F] dated 21/08/2019)

+1 CC to M/s.SPL GP (SR-82893[F] dated 21/08/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-83130[F] dated 22/08/2019)

W.P.(MD)No.9067 of 2014
20.08.2019

sji
JM/04.09.2019/6P/9C