BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.07.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD)No.19893 of 2015

M.Uma Maheswari ... Petitioner

-Vs-

1.State of Tamil Nadu,
Rep by its Secretary,
Finance Department,
Fort St.George, Secretariat,
Chennai-600 009.

2.State of Tamil Nadu,
Rep by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Secretariat,
Chennai-600 009.

3.The Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

4.The Secretary
Tamil Nadu Public Service Commission,
Frazar Bridge Road,
VOC Nagar, Park Town,
Chennai-600 006.

5.The Accountant General (A&E)
No.361, Annasalai,
Teynampet,
Chennai-600 008. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to enroll the petitioner in the General Provident Fund Scheme instead of the Contributory Pension Scheme by providing the G.P.F Account to the petitioner within the time stipulated by this Court.

For Petitioners : Mr.T.Lajapathi Roy

For R1 to R3 : Mr.K.Mu.Muthu
Additional Government Pleader

For R4 : Mr.K.K.Senthil

For R5 : Mr.P.Gunasekaran

ORDER

The writ petitioner was joined on 18.06.2004, thus, the writ petitioner was brought under the new Pension Scheme viz., the Contributory Pension Scheme.

2.The relief sought for in this present writ petition is for a direction to direct the respondents to enroll the petitioner in the General Provident Fund Scheme instead of the Contributory Pension Scheme.

3.It is contended that the General Provident Fund Scheme is applicable in respect of the employee, who joined in service prior to 1.04.2003 and the writ petitioner had joined after 01.04.2003, more specifically on 18.06.2004.

4.This being the factum, the issues in this regard were already adjudicated by this Court in W.P.(MD).No.9736 of 2014 and an order was passed on 04.07.2019 and the relevant portions of the said order are extracted hereunder:

> *"**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 petitions were also taken before the Honourable Division Bench in the above cited writ appeal. The relevant paragraphs of the said Judgment are extracted hereunder:*
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> *"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 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 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 petitions 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 petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”*

5.In view of the facts and circumstances, this writ petition deserves no merit consideration and the same stands dismissed. No costs.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar(CS)

To

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5.The Accountant General (A&E)
No.361, Annasalai,
Teynampet, Chennai-600 008.

+1 CC to Mr.P.GUNASEKARAN, Advocate SR-75019.
+1 CC to Mr.K.K.SENTHIL, Advocate SR-74941.
+1 CC to SPL GP SR-75045.
+1 CC to Mr.T.LAJAPATHI ROY, Advocate SR-75060.

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