



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.27214 of 2019

and

W.M.P. (MD) .Nos.23510 and 23511 of 2019

S.Selvamani

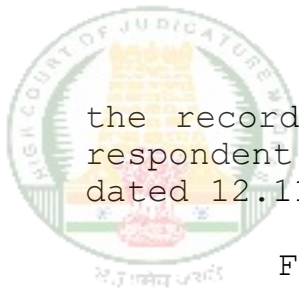
... Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary,
Department of School Education,
Fort st. George,
Chennai - 600 006.
- 2.The Accountant General,
Office of the Accountant General,
261, Annasalai, Chennai -600 018.
- 3.The Director of School Education,
College Road,
Chennai -600 009.
- 4.The Chief Educational Officer,
Madurai, Madurai District.
- 5.The District Educational Officer,
Melur - 625106,
Madurai District.
- 6.The District Treasury Officer,
Pay & Accounts Office at Madurai,
Madurai District -625 001.
- 7.The Correspondent,
LPN Girls Special Higher Secondary School,
Ratchanyapuram,
K.Pudur -625 007,
Madurai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for



the records relating to the impugned proceedings issued by the 5th respondent / District Educational Officer, in Na.Ka.No.2840/A1/2019, dated 12.11.2019 and quash the same.

For petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For respondents 1, 3 to 6 : Mr.Karuppasamy,
Government Advocate

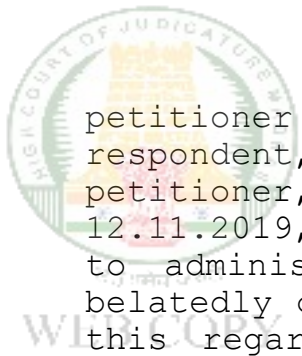
For 2nd respondent : Mr.P.Gunasekaran

ORDER

This writ petition has been filed by the petitioner, challenging the impugned order dated 12.11.2019 passed by the 5th respondent / District Educational Officer, in Na.Ka.No.2840/A1/2019, whereby and whereunder the 5th respondent placed the petitioner under New Contributory Pension Scheme.

2. Mr.Karuppasamy, learned Government Advocate took notice for the respondents 1, 3 to 6. Mr.P.Gunasekaran, learned counsel took notice for the 2nd respondent. By consent, the writ petition itself is taken up for final disposal.

3.The learned counsel for the petitioner submitted that in the selection process held on 04.03.2003, the petitioner was selected for the post of B.T. Assistant in the 7th respondent school, however, due to administrative reason, the appointment order was issued on 16.04.2003 and he joined duty on 17.04.2003. The 5th respondent approved the petitioner's appointment as B.T. Assistant with effect from 17.04.2003 by his proceedings dated 02.09.2003. The petitioner was also assigned with Teachers Provident Fund (TPF) Account No.338420 and he has been continuing his work in the 7th respondent school till date. Later, in the year 2004, the first respondent has issued G.O.Ms.No.430, dated 06.08.2004, implementing New Contributory Pension Scheme to the candidates recruited on or after 01.04.2003. While so, after a lapse of 17 years, the 5th respondent issued a proceedings dated 09.09.2019 stating that as the petitioner's appointment is on 17.04.2003, he cannot be placed under Old Pension Scheme and therefore, the petitioner is placed under New Pension Scheme by allotting CPS number, without any notice. As there was a violation of Principles of natural justice, the petitioner challenged the same before this Court in W.P.(MD). No.20477 of 2019 and this Court, by order dated 24.09.2019, set aside the impugned order and remitted the matter to the 5th respondent for fresh consideration after issuing notice to the petitioner. Thereafter, the 5th respondent issued a show cause notice on 15.10.2019 calling for explanation within 15 days as to why he should not be placed in New Contributory Pension Scheme. The



petitioner has submitted his reply immediately. But, the 5th respondent, without considering the detailed reply given by the petitioner, has erroneously passed the impugned order dated 12.11.2019, holding that though the petitioner has stated that due to administrative reason the appointment order has been issued belatedly on 16.04.2003, the school has not submitted any report in this regard. Admittedly, the 5th respondent has not issued any notice to the 7th respondent in this regard and therefore, the said conclusion of the 5th respondent cannot be accepted. He would further submit that as the impugned order placing the petitioner under New Pension Scheme is passed, after a lapse of 17 years, the same is hit by doctrine of delay and laches. Thus, he prayed to set aside the impugned order.

4. It is seen that in the earlier round of litigation ie., in W.P.(MD).No.20477 of 2019, this Court has directed the 5th respondent to consider the matter afresh, after issuing notice to the petitioner and subsequently, the 5th respondent has issued a show cause notice and the petitioner has also submitted his reply. But, the 5th respondent, without even considering the contention raised by the petitioner in his reply, has passed the impugned order, which constrained the petitioner to approach this Court again questioning the impugned order.

5. At this juncture, the learned counsel appearing for the respondents also fairly submitted that the impugned order may be set aside and the matter may be remitted to the file of the fifth respondent for passing fresh orders after considering the reply given by the petitioner.

6. In view of the above, the impugned order dated 12.11.2019 passed by the fifth respondent is set aside and the matter is remitted to the file of the fifth respondent. The fifth respondent is directed to consider the reply given by the petitioner in detail and to pass appropriate order on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

7. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Secretary to Government of Tamil Nadu
Department of School Education,
Fort st. George,
Chennai - 600 006.

2.The Accountant General,
Office of the Accountant General,
261, Annasalai, Chennai -600 018.

3.The Director of School Education,
College Road,
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4.The Chief Educational Officer,
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Madurai District.

5.The District Educational Officer,
Melur - 625106,
Madurai District.

6.The District Treasury Officer,
Pay & Accounts Office at Madurai,
Madurai District -625 001.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-106262[F] 20/12/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-106309[F] 20/12/2019)

+1 CC to M/s.Special Govt.Pleader (SR-106480[F] dated 27/12/2019)

W.P (MD) No.27214 of 2019
20.12.2019

gcg
SDS(09.01.2020) 4P-10C