

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.14996 to 14998 of 2009

N.Kalaiselvi

.. Petitioner in W.P.No.14996/09

B.Bhuvaneswari

.. Petitioner in W.P.No.14997/09

V.Rajendran

.. Petitioner in W.P.No.14998/09

Vs

1.The Secretary, Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George,
Secretariat, Chennai - 9.

2.The Secretary, Government of Tamil Nadu,
School Education Department,
Fort St. George,
Secretariat, Chennai - 9.

3.The Director of Elementary Education Officer,
EVK Sampath Building,
College Road,
Nungambakkam, Chennai - 6.

4.The District Elementary Education Officer, Thiruvarur
Thiruvarur District.

5.The Assistant Elementary Education Officer,
Thiruthuraipoondi,
Thiruvarur District.

6.The Additional Assistant Elementary Education Officer,
Thiruthuraipoondi,
Thiruvarur District.

.. Respondents in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the proceedings passed by the respondents 5 and 6 in Na.Ka.No.963/A3/09 dated 13.07.2009 and quash the same and consequently direct the respondents to retain the Teacher Provident Fund (TPF) number of the petitioners.

For Petitioners : Mr.S.Concious Ilango
for Mr.V.Kasinatha Bharathy
For Respondents : Mrs.P.Kavitha, GA

O R D E R

The petitioners have filed these writ petitions challenging the impugned order dated 13.07.2009 passed by the respondents 5 and 6, in and by which, the petitioners were placed under the New Pension Scheme cancelling Teachers Provident Fund (TPF) allotted to them under the Old Pension Scheme.

2. Since the issues involved in all these writ petitions are one and the same, they are disposed of by this common order.

The petitioners, after completing Graduation and B.Ed., joined as Secondary Grade Teacher on 04.10.2002, 06.08.1997 and 04.08.1997 respectively in Aided School. After their appointment, they were working without any remuneration for some years as their appointment was not approved by the Government in view of G.O.Ms.No.559, Education Department, dated 11.07.1995, prohibiting appointment of B.Ed. qualified candidates in Secondary Grade Teacher vacancies. Whileso, the Government issued G.O.Ms.No.155, Education Department, dated 03.10.2002, stating that B.T. Teachers, who were appointed in the vacancies meant for Secondary Grade Teacher, have to undergo Child Psychology Training through District Institute of Education and Training. Pursuant to the said G.O., the petitioners had completed their one month Child Psychology Training and thereafter, they were regularized on 10.01.2004, 02.06.2003 and 02.06.2003 respectively, and accordingly, time scale of pay was also fixed to all the petitioners.

3. While the matter stood above, the Government issued G.O.Ms.No.430, dated 06.08.2003, amending the Tamil Nadu Pension Rules, whereby it is stated that persons recruited after 01.04.2003 are not entitled to get pension and they will be governed under new Contributory Pension Scheme (New Scheme) based on the pension contribution by the employees recruited after 01.04.2003. Based on this G.O., after the period of 9 years, the respondents 5 and 6 have passed the present impugned order dated 13.07.2009 placing the petitioners under the New Pension Scheme by cancelling the TPF number allotted to them under the Old Pension Scheme. Aggrieved by the same, the petitioners have filed the present writ petitions.

4. Assailing the impugned order passed by the respondents 5 and 6, learned counsel for the petitioners would submit that more than 100 teachers, who joined the services along with the petitioners and whose services were regularized after 01.04.2003, are also enjoying the Old Pension Scheme. Therefore, the impugned order passed by the respondents cancelling the Teacher Provident Fund number allotted to them under Old Pension Scheme for the reason that their services were regularized only after 01.04.2003 cannot be sustained.

5. Learned counsel has also relied on a decision of the Hon'ble Division Bench of this Court in V.Vasanthi Vs. the State of Tamil Nadu, rep. by its Secretary, Finance Department, Chennai, and others (W.A.(MD) No.307 of 2019, dated 02.08.2019), whereby, it is held that even though approval of the appointment of teacher, who has undergone Child Psychology Training, will take effect only on completion of such training, the past service rendered by such teacher i.e., service rendered before the completion of such training, is bound to be counted for pension. By relying the said ratio, he further argued that in the present case, although the petitioners were appointed prior to 01.04.2003, their services were regularized on 10.01.2004, 02.06.2003 and 02.06.2003 respectively after completion of Child Psychology Training as per G.O.Ms.No.155, Education Department, dated 03.10.2002. Thus, by way of impugned proceedings, the respondents cannot unreasonably deny the benefit of Old Pension Scheme on the ground that the services of the petitions were regularized only after 01.04.2003. On this basis, he prayed for quashing the impugned order passed by the respondents 5 and 6.

6. Per contra, learned Government Advocate appearing for the respondents would submit that there is no dispute that petitioners have undergone Child Psychology Training and after completion of such training, their services were regularized

only after the crucial date i.e. 01.04.2003, therefore, they have become permanent members of teaching service only after their services regularized, hence, they cannot plead that they have entered the services prior to the cut of date i.e., 01.04.2003. Learned Government Advocate further argued that before getting regularization or before becoming permanent member of the department, they cannot claim that they are entitled to get the benefit of Old Pension Scheme and therefore, the impugned order of cancellation of Teacher Provident Fund number was rightly passed.

7. Heard the learned counsel appearing on either side.

8. It is not in dispute that the petitioners were appointed as Secondary Grade Teacher on 04.10.2002, 06.08.1997 and 04.08.1997 respectively, on which date, the Old Pension Scheme (Teacher Provident Fund) alone was in force. But, in view of G.O.Ms.No.559, Education Department, dated 11.07.1995, prohibiting appointment of B.Ed. qualified candidates in secondary grade teacher vacancies, their appointment was not approved. It is also to be noted that the Government, vide G.O.Ms.No.155, Education Department, dated 03.10.2002, stated that B.T. Teachers, who were appointed in the vacancies meant for Secondary Grade Teacher, have to undergo Child Psychology Training through District Institute of Education and Training. Subsequent to the said G.O., admittedly, the petitioners had undergone one month Child Psychology Training and thereafter, their services were regularized on 10.01.2004, 02.06.2003 and 02.06.2003 respectively.

9. Whiles, all of a sudden, after a period of 9 long years, the respondents 5 and 6 have passed the impugned order placing the petitioners under New Pension Scheme by cancelling Teachers Provident Fund (TPF) number allotted to them under Old Pension Scheme, on the ground that their services were regularized only after 01.04.2003. Therefore, it has to be seen as to whether their services prior to Child Psychology Training could be counted for pension in view of introduction of Contributory Pension Scheme (New Pension Scheme).

10. While dealing with a similar issue, the Hon'ble Division Bench of this Court in V.Vasanthi's case (cited supra) held that even though approval of appointment of the teacher, who has undergone Child Psychology Training, will take effect only on completion of such training, the past service rendered

by such teacher i.e., service rendered before the completion of such training, is bound to be counted for pension. In other words, the service period of such teacher commences from the date of the appointment and not from the date of approval, even though the monetary benefits start to accrue only from the date of completion of the training. For better appreciation, paragraph Nos.9 to 14 thereof are extracted below:-

"9.We are not in a position to agree with the above contention of the official respondents. Admittedly, the writ petitioner was appointed as Secondary Grade Teacher on 24.09.2002, on which date, the old scheme namely, Teacher Provident Fund Scheme alone was in force. No doubt, the petitioner had to undergo the Child Psychology Training for the purpose of getting approval of such appointment and monetary benefits. It is seen that the school has sent the proposals on the date of appointment itself for sending the writ petitioner for such training. However, such request was considered by the department only on 16.05.2003. In any event, as the writ petitioner has completed such training on 27.10.2004, her service was regularized on 20.12.2004.

10.Now, the question arises for consideration is as to whether the date of approval of appointment is the relevant date for considering the claim of the writ petitioner under the Old Pension Scheme or the date of approval of her original appointment to the said post. Appointment to the post by the School/Management and approval of the same by the Education Department are two different events and thus, relevant dates of those two events are certainly different and distinguishable. Approval of appointment is granted by the department for the purpose of extending the monetary benefits. Therefore, it does not mean that date of approval itself has to be construed as the date of appointment for the purpose of considering the applicability of the relevant pension scheme. Approval of such appointment may be granted either from the date of such appointment or from any other subsequent date depending upon the facts and circumstances of each case like want of vacancy or sanction etc. At any event, the date of appointment remain to be the same. The dispute herein is not with regard to the claim for salary from the date of the appointment of the writ petitioner. On the other hand, it is in respect of the applicability of relevant pension scheme, under which, the writ petitioner has to be placed. For this purpose, the date of approval of appointment is not relevant factor and on the other hand, it is only the date of appointment that matters. In other words, if the writ petitioner is entitled to count her service period from the date of her appointment for the purpose of pension, she must be placed only under the Old Pension Scheme, since her appointment was admittedly earlier to the introduction of the New Pension Scheme.

11. At this juncture, the observation made by the Division Bench in 2004-2-L.W. 591 (cited supra) at paragraph 8, is relevant to be quoted.

"8. Their right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall count for pension."

12. A careful perusal of the above observation made in the said Pallivasal Primary School case would show that even though approval of the appointment of the teacher, who has undergone Child Psychology Training, will take effect only on completion of such training, the past service rendered by such teacher i.e., service rendered before the completion of such training, is bound to be counted for pension. In other words, the service period of such teacher commences from the date of the appointment and not from the date of approval, even though the monetary benefits start to accrue only from the date of completion of the training. Therefore, for all practical purposes, the date of appointment is not altered and remain to be the same. Therefore, the date of approval of appointment of the writ petitioner cannot be construed as the date relevant for considering the applicability of the pension scheme and on the other hand, it is the original date, on which the writ petitioner got appointed that matters for considering as to whether the writ petitioner is governed under the Old Pension Scheme or not. At this juncture, it is relevant to note that in G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, a proviso to Rule 2 of the Tamil Nadu Pension Rule 1978, was introduced by way of amendment, wherein and whereby, it is contemplated that the Tamil Nadu Pension Rules 1978 shall not apply to Government Servants "appointed" on or after 1st April 2003 to services and posts. The word "appointed" referred in the said proviso cannot be construed to mean approval of such appointment.

13. In fact, the very same issue was considered by one of us (KRCBJ) in W.P(MD)No.3308 of 2007. The Contributory Pension Scheme was introduced to the newly recruited employees, who are recruited on or after 01.04.2003. Relevant clause 3(i) of G.O.Ms.No. 259 dated 06.08.2003, which has introduced the New

Contributory Pension Scheme, was taken into consideration in the said case and it was found that the said Government Order introducing New Contributory Pension Scheme, would apply only to persons, who were recruited on or after 01.04.2003 and not in respect of persons, who were recruited earlier to 01.04.2003. In that case, though the writ petitioner therein was recruited on 26.03.2003, he joined the duty on 04.04.2003 after obtaining the medical certificate from the Medical Board, since he is a physically challenged person. Therefore, it was found therein that the date of joining of such person cannot be considered as date of appointment as such event of appointment had already taken place well before 01.04.2003. We are informed that the above said order has been given effect to.

14. Under the above stated facts and circumstances, we find that the Writ Court is not justified in dismissing the writ petition on the reason that the writ petitioner has completed her Child Psychology Course only on 27.10.2004 and therefore, she is not entitled to make claim under the Old Pension Scheme. Thus, the writ petitioner is entitled to succeed."

11. A careful reading of the above said decision of this Court would depict that when a teacher is appointed prior to 01.04.2003 and the service of such teacher is regularized after 01.04.2003, it is held that for all practical purposes, the date of appointment is crucial and the date of approval of appointment of such teacher cannot be construed as the date relevant for considering the applicability of the pension scheme. In other words, the service period of such teacher commences from the date of appointment, not from the date of approval. In the present case also, as stated above, although the services of the petitioners were regularized only on 10.01.2004, 02.06.2003 and 02.06.2003 respectively on completion of their Child Psychology Training, they were initially appointed on 04.10.2002, 06.08.1997 and 04.08.1997 respectively, which is much before 01.04.2003, the cut-off date for considering the applicability of Old Pension Scheme (Teacher Provident Fund).

12. Therefore, in view of the aforesaid facts and circumstances of the case, I am of the view that the present impugned order passed by the respondents cancelling the TPF number allotted to them under the Old Pension Scheme is liable to be set aside and accordingly, the same is set aside.

13. In fine, the writ petitions stand allowed and the respondents are directed to permit the petitioners to continue under the Old Pension Scheme, namely, Teacher Provident Fund

Scheme, and settle all the consequential pensionary benefits to them within a period of eight weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary, Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George,
Secretariat, Chennai - 9.

2.The Secretary, Government of Tamil Nadu,
School Education Department,
Fort St. George,
Secretariat, Chennai - 9.

3.The Director of Elementary Education Officer,
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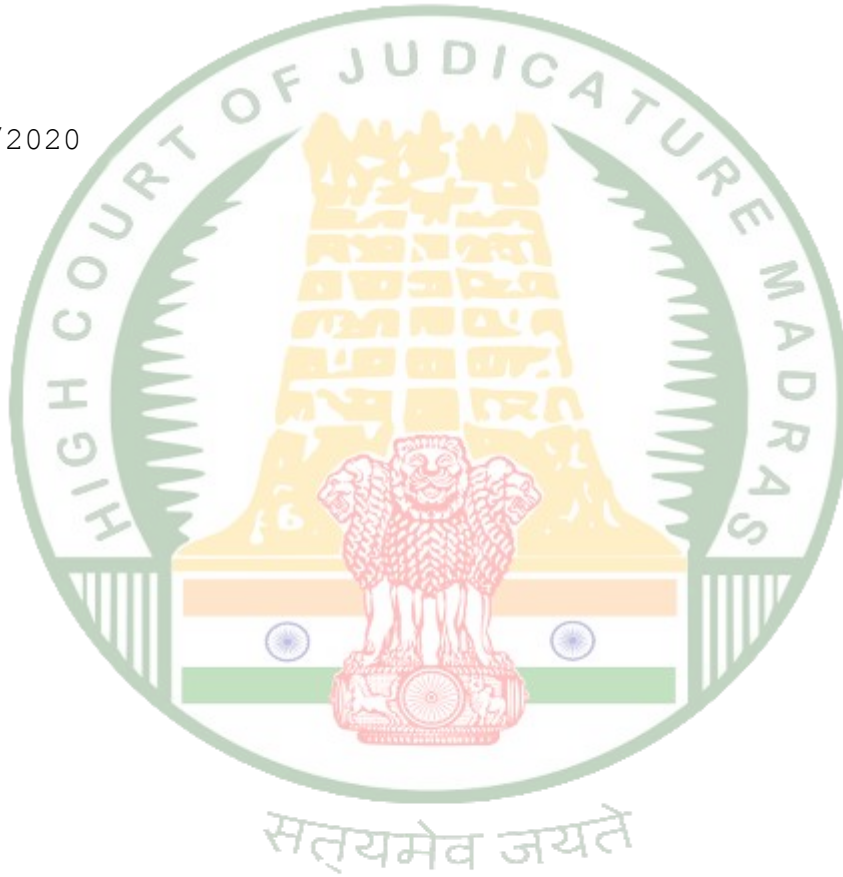
5.The Assistant Elementary Education Officer,
Thiruthuraipoondi,
Thiruvarur District.

6.The Additional Assistant Elementary Education Officer,
Thiruthuraipoondi,
Thiruvarur District.

+1cc to Mr.V.Kasinatha Bharathi, Advocate, S.R.No.23222
+3ccs to The Government Pleader, High Court,
Madras,S.R.No.24110,24111,24112

W.P.Nos.14996 to 14998 of 2009

MP (CO)
KKV/05/08/2020



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