



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.11.2020**

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P. (MD) No.16655 of 2020

L.Sekar

...Petitioner

Vs

1.The State of Tamilnadu,
represented by the Secretary to Government,
School Education Department,
Secretariat,
Chennai.

2.The Accountant General,
DMS, Nandanam,
Chennai.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Mandamus, to direct the 1st respondent to enroll the petitioner in General Provident Fund Scheme, by considering the petitioner's representation dated 18.09.2020, within the time stipulated by this Court.

For Petitioner: Mr.S.Louis

For R1 : Mr.A.Thiagarajan
Government Advocate for
Mr.P.Gunasekar

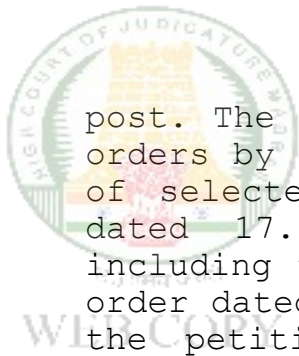
For R2 : Mr.R.Saravanakumar

ORDER

This Writ Petition is filed to direct the 1st respondent to enroll the petitioner in the General Provident Fund Scheme, by considering the petitioner's representation dated 18.09.2020.

2.By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3.The learned counsel appearing for the petitioner would submit that in pursuance to the notification issued by the TRB in Advertisement No.4/2002, dated 09.02.2002, the petitioner applied for the post of Block Resource Teacher and was selected for the said



post. The first batch of selected candidates were given appointment orders by the TRB, vide order dated 11.07.2002 and the second batch of selected candidates were given appointment orders, vide order dated 17.03.2003 and the third batch of selected candidates including the petitioner herein were given appointment orders, vide order dated 29.05.2003. Thereafter, by proceedings dated 02.12.2003, the petitioner joined duty as Block Resource Teacher at Block Resource Centre, Kamuthi Block, Ramanathapuram District, on 05.12.2003.

4.It is the main contention of the learned counsel appearing for the petitioner that though the candidates, who were all issued with the appointment orders in the 1st and 2nd batch were included in the General Provident Fund scheme, the petitioner could not be included in the said scheme, in view of the delay in issuing the appointment order. Hence, the petitioner has approached the respondents several times praying to enroll herself in the said scheme on par with the candidates appointed in the 1st and 2nd batch.

5.The learned counsel in support of his contention has relied on the office memorandum issued by the Government of India in proceedings No.57/04/2019-P&PW (B), dated 17.02.2020, wherein, it had been stated that if the appointment order is delayed due to the administrative reasons of the Government and if the Government servant has joined duty after the commencement of new pension scheme owing to such administrative delay on the part of the Government, then such Government servant could be enrolled in the old pension scheme. Therefore, the learned counsel would submit that the petitioner is entitled to enroll herself in the old pension scheme instead of the new pension scheme.

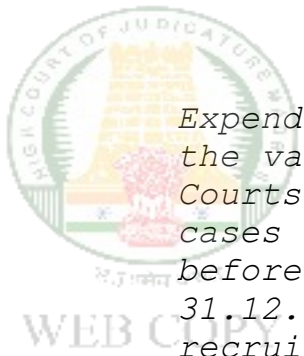
6.Mr.R.Saravanakumar, learned counsel, who accepts notice on behalf of the 2nd respondent, would submit that the Government has taken a policy decision that once the appointment order was made subsequent to the commencement of the new pension scheme, such a Government servant has to be included in the new pension scheme and by following the same, the petitioner was brought under the new pension scheme. However, he would further submit that the petitioner's representation dated 18.09.2020 will be disposed of on merits and in accordance with law, within a time frame to be fixed by this Court.

7.Heard the learned counsel on either side and perused the materials available on record.

8.In the office memorandum issued by the Government of India in proceedings No.57/04/2019-P&PW (B), dated 17.02.2020, it had been stated as follows:-

"4.The matter has been examined in consultation with

the Department of Personnel and Training, Department of



Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has been decided that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the CCS (Pension) Rules, 1972. Accordingly, such Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the Nation Pension System on joining service on or after 01.01.2004, may be given a one time option to be covered under the CCS(Pension) Rules, 1972. This option may be exercised by the concerned Government servants latest by 31.05.2020."

9. On a perusal of the above, it appears that if there is any delay in issuing the appointment orders due to administrative reasons, for the vacancies which arose before the commencement of the new pension scheme, one time option was provided, by virtue of the said office memorandum, dated 17.02.2020 to all such candidates, who were appointed subsequent to the commencement of new pension scheme and whose vacancies arose before the commencement of new pension scheme.

10. Though it is a policy decision on the part of the Government, in the case on hand, appointment orders were issued to three batch of candidates and out of the three batches, the first two batches were appointed prior to the commencement of new pension scheme. However, due to administrative reasons, there was a delay in issuing the appointment orders to the 3rd batch of selected candidates, which were issued after the commencement of new pension scheme, in which case, the petitioner should have been considered under the old pension scheme instead of new pension scheme. In this regard, the petitioner has already made a representation dated 18.09.2020 to the respondents seeking to enroll herself in the General Provident Fund Scheme.

11. Though the Government has taken a policy decision to bring all the candidates, who were all appointed from 01.04.2003, under the new pension scheme, in the present case, the respondents have not considered the petitioner's representation dated 18.09.2020 by taking into consideration of the office memorandum issued by the Government of India in proceedings No.57/04/2019-P&PW (B), dated 17.02.2020, which will be applicable for the State Government Employees also.

12. In view of the foregoing observations, this Court is inclined to pass the following direction:-
<https://hcservices.ecourts.gov.in/hcservices/>



the respondents are directed to consider the petitioner's representation dated 18.09.2020 and pass appropriate orders, in the light of the observations made in this writ petition and by taking into consideration of the office memorandum issued by the Government of India in proceedings No.57/04/2019-P&PW (B), dated 17.02.2020, within a period of eight weeks from the date of receipt of a copy of this order.

13.With the above direction and observations, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the pvresent lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

1.The Secretary to Government,
School Education Department,
Secretariat,
Chennai.

2.The Accountant General,
DMS, Nandanam,
Chennai.

+1 CC to M/s.S. LOUIS, Advocate (SR-22576[F] dated 24/11/2020)

+1 CC to SGP (SR-22970[F] dated 26/11/2020)

**W.P. [MD]No.16655 of 2020
24.11.2020**

SJ(CO)

NR (17/12/2020) 4P : 5C