



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **27.01.2020**
CORAM:

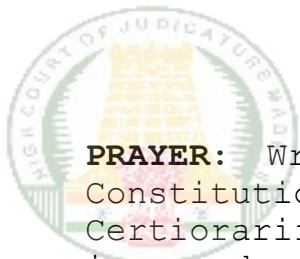
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P(MD)No.15123 of 2015
and
M.P. (MD) .Nos.1 and 2 of 2015

S.Sumathi .. Petitioner
Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Department of Finance (Pension),
Fort St. George,
Chennai - 600 009.
 - 2.The Commissioner,
Government Data Centre,
Guindy,
Chennai - 600 025.
 - 3.The Director of Elementary Education,
College Road,
Chennai - 600 006.
 - 4.The District Elementary Educational Officer,
Madurai,
Madurai District.
 - 5.The Assistant Elementary Educational Officer,
Kottampatti at Karunkalakudi,
Madurai District.
 - 6.The Assistant Elementary Educational Officer,
T.Vadipatti,
Madurai District.
 - 7.The Correspondent,
Jeya Primary School,
Madurai - 9.
 - 8.The Headmistress,
Panchayat Union Middle School,
Mannadimangalam,
T.Vadipatti Union,
Madurai District.
- .. Respondents



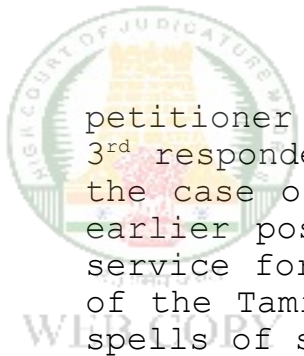
PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 3rd respondent / Director of Elementary Education in Na.Ka.No.010792/C2/2015, dated 16.06.2015, declining to place the petitioner under Old Pension Scheme and quash the same and to direct the respondents to place the petitioner under Old Pension Scheme based on the initial date of appointment of the petitioner as Secondary Grade Teacher on 24.03.2003 in the 7th respondent School viz., Jeya Primary School, Madurai, including the petitioner's joining in the Panchayat Union Middle School, Attapatti, Kottampatti Union, Madurai District on 06.06.2007 and subsequent entire service periods till the petitioner's retirement.

For petitioner : Mr.S.Xavier Rajini
For respondents 1 to 6 : Mr.N.Shanmugaselvan,
Special Government Pleader
For respondents 7 & 8 : No appearance

ORDER

This writ petition has been filed by the petitioner challenging the order refusing to place her under Old Pension Scheme and for a direction to the respondents to place her under Old Pension Scheme based on the initial date of her appointment as Secondary Grade Teacher on 24.03.2003 in the 7th respondent School viz., Jeya Primary School, Madurai, including the petitioner's joining in the Panchayat Union Middle School, Attapatti, Kottampatti Union, Madurai District on 06.06.2007 and by calculating entire service periods.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher in the 7th respondent aided school on 24.03.2003 and she was placed under Old Pension Scheme. Subsequently, she resigned the said post for the purpose of joining as Secondary Grade Teacher in the 8th respondent - Panchayat Union Middle School and accordingly, she was relieved on 31.05.2007 from the 7th respondent school. She joined in the Panchayat Union School on 06.06.2007, in view of holidays of the school between 01.06.2007 and 05.06.2007. Stating that there is break-in-service for five days, the petitioner was placed under Contributory Pension Scheme. Though the petitioner has been making repeated representations to the respondents for placing her under Old Pension Scheme, they were not considered by the respondents. When the petitioner approached this Court in W.P.(MD).No.1382 of 2015 seeking a direction to the respondents to place her under Old Pension Scheme, this Court, by order dated 05.02.2015, directed the respondents to consider a fresh representation to be submitted by the petitioner within a stipulated time. Accordingly, the



petitioner has sent her fresh representation to the respondents. The 3rd respondent, by the impugned order dated 16.06.2015, has rejected the case of the petitioner on the ground that she has resigned the earlier post and then, joined in the subsequent post with break of service for five days. He would further submit that as per Rule 25 of the Tamil Nadu Pension Rules, 1978, the interruption between two spells of service would be automatically condoned and therefore, the petitioner is entitled to be placed in Old Pension Scheme. He would next submit that the case of the similarly placed persons by name V.M.Loyola, A.Sakila, A.Aristotile and G.Prishilla were considered by the respondents subsequently and they were placed under Old Pension scheme. But, the petitioner alone has been discriminated. Thus, he prayed to allow this petition.

3. Learned Special Government Pleader appearing for the official respondents submitted that the petitioner has joined in the 8th respondent school after resigning her earlier post in the 7th respondent school and therefore, her earlier service cannot be taken into account, as per Rule 41 of the Tamil Nadu State and Subordinate Service Rules. He would further submit that there is also break-in-service of five days and therefore, the claim of the petitioner cannot be considered. The 3rd respondent has rightly passed the impugned order and therefore, the same need not be interfered with. Thus, he prayed to dismiss this petition.

4. Heard the learned counsel appearing for the parties and perused the records carefully.

5. Admittedly, in this case, it is not in dispute that the petitioner had joined in the 7th respondent school as Secondary Grade Teacher on 24.03.2003 and she was placed under Old Pension Scheme. It is also equally not in dispute that the petitioner has resigned her earlier post in the 7th respondent school only for the purpose of joining in the 8th respondent Panchayat School and as there was holidays for five days ie., from 01.06.2007 to 05.06.2007, she joined in the 8th respondent Panchayat School only on 06.06.2007. The break-in-service has been caused only due to declaration of public holidays during the period 01.06.2007 and 05.06.2006 to the 8th respondent - Panchayat school for the purpose of conducting training programme to the Teachers and not for the fault of the petitioner.

6. Rule 41 of the Tamil Nadu State and Subordinate Service Rules could not be invoked, if the proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978 is applicable. The proviso to Rule 23 of the Tamil Nadu Pension Rules makes it clear that the resignation shall not entail forfeiture of past service, if it has been submitted to take up any appointment with prior permission. As stated earlier, the petitioner has submitted her resignation only to the 8th respondent - Panchayat School and hence, it should be



taken that the petitioner is entitled to the proviso to Rule 23 of the Tamil Nadu Pension Rules.

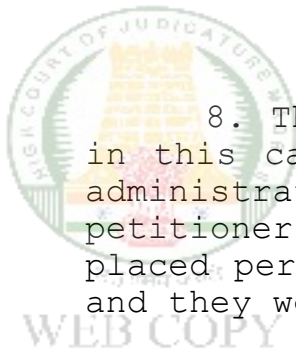
7. When the similar issue with regard to the break-in-service came into consideration, a learned Single Judge of this Court in the decision in **N.Baskar Vs. Director of Elementary Education, Chennai - 600 006 and others**, reported in (2014) 8 MLJ 341, has held in paragraph Nos.7 to 9 as follows:

"7.From the facts narrated above, it is found that there is no fault on the part of the petitioner who got break-in-service. It is only due to the administrative act on the part of the second respondent, the orders have not been issued as informed to the petitioner by the second respondent. The Government by a letter No.34911/Finance (PGC) Department 2009-1, dated 30.12.2009, in paragraph No.2 of its order, has held that intervening period as follows:

"2.The Government after careful examination directs that in all cases where an employee working under pensionable service on relief joins a new post on a day after the intervening Government/Public Holidays, need not be considered as a Break, since the intervening period shall automatically be condoned as per Rule 25 of Tamil Nadu Pension Rules, 1978."

8. From the above it is very clear that the intervening period shall automatically be condoned as per Rule 25 of the Tamil Nadu Pension Rules, 1978. When there is no fault on the part of the petitioner and there is a clear instruction by the Government in Rule 25, which is extracted supra, which supports the case of the petitioner, the Government ought not to have rejected the claim of the petitioner and 13 days delay, not due to the fault of the petitioner, should have been condoned. Further, from the fact that the appeal has not been disposed of, it is very clear that the Government is not interested in taking any decision to decide one way or the other and it has got to be presumed that the Appellate Authority has decided to confirm the original order.

9. Taking note of the submissions on both parties, I feel much force in the contention of the petitioner and the writ petition is liable to be allowed and the intervening period has got to be treated as continuity of service and not as break-in-service and the petitioner is entitled to all other benefits."



8. The above decision is squarely applicable to this case, as in this case also the break-in-service was caused only due to the administrative act and there is no fault on the part of the petitioner. More over, it is seen that the cases of the similarly placed persons have been considered by the respondents subsequently and they were brought under Old Pension Scheme.

9. In view of the above, the impugned order dated 16.06.2015 is set aside and the respondents are directed to place the petitioner under Old Pension Scheme by treating her service as Secondary Grade Teacher in the 7th respondent school from 24.03.2003 and in the 8th respondent school as continuity of service, within a period of eight weeks from the date of receipt of a copy of this order.

10. 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)

gcg

To

- 1.The Secretary,
Department of Finance (Pension),
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner,
Government Data Centre,
Guindy,
Chennai - 600 025.
- 3.The Director of Elementary Education,
College Road,
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- 4.The District Elementary Educational Officer,
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Madurai District.



5.The Assistant Elementary Educational Officer,
Kottampatti at Karunkalakudi,
Madurai District.

6.The Assistant Elementary Educational Officer,
T.Vadipatti,
Madurai District.

+1 CC to SPL.GP (SR-3588[F] dated 29/01/2020)

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-3484[F] dated
28/01/2020)

Order made in
W.P (MD) No.15123 of 2015
27.01.2020

MK (04.02.2020) 6P 9C