IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.39614 of 2004

V.Suseela ...Petitioner

-Vs-

1. The Director of Pension
   No.807, Anna Salai,
   Chennai - 600 002.

2. The Commissioner
   Coimbatore City Municipal Corporation,
   Coimbatore - 641 001.

3. The Educational Officer
   Coimbatore City Municipal Corporation,
   Coimbatore - 641 001.

4. The Director of Local Fund Audit
   Chennai. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the Educational Officer of the Coimbatore City Municipal Corporation, Coimbatore, dated 24.11.2003 and made in O.Mu.17924/2003/KII and the proceedings of Director of Pension, dated 16.06.2003 and made in his OO.Mu.25958/2003/U/5 and quash them and direct the respondents to grant the petitioner financial assistance with 12% interest from the date of receipt by the Director of Pension of the communication of the Treasury Officer, Coimbatore, dated 13.05.2003 and made in his Proceedings K.Dis.20971/03/U2 till date of payment.



For Petitioner : Mr.D.Kothandaramasamy
For Respondents: Mr.K.Magesh
Special Government Pleader
for R1 and R4

Mr.R.Sivakumar
for R2 and R3

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus, calling for the records of the Educational Officer of the Coimbatore City Municipal Corporation, Coimbatore, dated 24.11.2003 and made in O.Mu.17924/2003/KII and the proceedings of Director of Pension, dated 16.06.2003 and made in his OO.Mu.25958/2003/U/5 and quash them and direct the respondents to grant the petitioner financial assistance with 12% interest from the date of receipt by the Director of Pension of the communication of the Treasury Officer, Coimbatore, dated 13.05.2003 and made in his Proceedings K.Dis.20971/03/U2 till date of payment.

2. Heard Mr.D.Kothandarasamy, learned counsel appearing for the petitioner, Mr.R.Sivakumar, learned counsel appearing for the second and third respondents, who is the contesting respondent and Mr.K.Magesh, learned Special Government Pleader appearing for first and fourth respondents.

3. The petitioner is a retired employee of the second respondent Corporation. While she was in service, there has been two Health schemes implemented by the second respondent Corporation on par with all other corporations in the State. The two Schemes namely Family Health Fund Scheme and Family Security Scheme, since were implemented in the second respondent Corporation, where, according to the petitioner, there was a contribution by every employee, based on which, on retirement, the financial benefits have to be extended to the member of the scheme, which the petitioner requested and the same has been turned out by the orders of the second respondent Corporation, dated 24.11.2003. Challenging the same, the present writ petition has been filed.

4. Mr.D.Kothandaramasamy, learned counsel appearing for the petitioner submits that, as per the G.O., since the two schemes, namely Family Health Fund Scheme and Family Security Scheme have been implemented, the benefits accrued under the scheme shall be extended to every member of the second respondent Corporation, i.e., every employee / pensioner of the second respondent Corporation. Since the petitioner is one of the employee / pensioner of the Corporation, she is also entitled to get the financial assistance under the schemes, since that was not considered and that benefit was not extended and when a request was made, that was also turned out through the impugned order, hence, the impugned order is unsustainable, accordingly, it is liable to be interfered with, he contended.

5. Mr.R.Sivakumar, learned Standing counsel appearing for the second and third respondent Corporation, by relying upon the averments contained in the counter affidavit filed on behalf of the Corporation and on further instructions received by him submitted that, no doubt there were two schemes called Family Health Fund Scheme and Family Security Scheme, which were envisaged under the relevant Government Orders passed for including the second respondent Corporation. However, in the scheme itself, it was made clear that, it is an optional for the employee to join in the scheme and there is no element of compulsion in the scheme to join.

6. Accordingly, out of totally 571 employees or pensioners, only 166 opted for the scheme, therefore, since the scheme has to be implemented feaseably only if more than 50% of employees atleast made their wish to opt for the scheme, since such option has not come from atleast 50% of the employees or pensioners, the scheme was not at all implemented.

7. The learned counsel would also submit that, even the petitioner herself has not opted for the scheme and therefore, the question of first of all implementing the scheme in the second respondent Corporation did not arise, because of the poor response from the employees as pensioners and insofar as the petitioner is concerned, she also has not opted for the scheme, therefore the question of extending the benefit under two schemes to the petitioner does not arise and therefore the impugned order is sustainable, he contended.

8. I have considered the said submission made by the learned counsel appearing for the second and third respondents and the following averments made in the counter affidavit has also been taken into account, which reads thus :

> "4. It is further submitted that in view of the above said Government Orders, the Education Department was always treated as a separate unit and they were always considered to be the Government servants. In so far as the implementation of Health Fund Scheme and Family Security Scheme as per G.O.120, dated 20.05.1999, it is submitted that as on 30.06.1999 there were about 571 pensioners who were the teachers and non-teaching staff. Out of that 571 only 83 pensioners had expressed their option till 30.06.1999. Subsequently, between 01.07.1999 to 27.07.1999 another 83 pensioners expressed their option. Therefore, totally 166 pensioners alone expressed their option to join the above

mentioned schemes. As already stated, the G.O.(Ms).No.120, dated 20.05.1999 was issued with the specific condition that the scheme may implemented only 50% of the pensioners express their option. Whereas in this respondent Corporation even those 166 pensioners, subsequently sought for return of the subscription, hence it was refunded to them. In effect, in this respondent Corporation only 166 out of 571 pensioner those schemes could not be implemented. It was only in the above context, the impugned order of the 3rd respondent dated 24.11.2003 came to be passed.

5. It is further submitted that in the above stated factual backdrop her averment in para 4 that she had applied for financial assistance under G.O.(Ms). No.120, dated 20.05.1999 but there was no response from this respondent Corporation is misleading. In view of the fact that only 166 out of 571 pensioners alone opted for the said scheme, therefore those schemes were not implement by this respondent Corporation coupled with the fact that the petitioner herself had not opted for those schemes made her ineligible to received any financial assistance. The averments in para 6 are misleading her contention that though the above schemes were initially optional but subsequently enlarged into compulsory one is misleading. According to G.O.(Ms). No.120, the scheme is only a optional and the same could be implemented only when above 50% of the pensioners enrolled themselves. The averments in para 7 that subsequent to G.O.No.702 and G.O.No.347, this Corporation was paying the salary to teaching and non-teaching staff is incorrect. From 01.04.19990 the salary to the teaching and non-teaching staff are paid only out of the Government Fund. This respondent is not paying any salary subsequent to 01.04.1990."

9. As has been rightly submitted by the learned counsel appearing for the second and third respondent Corporation, since it is an optional one, where one of the condition is that

atleast 50% of the employees should opt for the scheme generally to be implemented and the resultant situation is that only 166 out of 571 alone opted for the scheme, therefore, for the want of feasibility the scheme seems to have not been implemented.

10. Moreover, it is a fact that in para 5 of the counter affidavit, as stated above, the petitioner herein has not opted for the scheme, hence the financial assistance to the petitioner under the said scheme does not arise. Hence, this Court feel that, there is absolutely no infirmity in the impugned order and accordingly, it is liable to be sustained.

11. In the result, the writ petition fails and accordingly, it is dismissed. No costs.

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

tsvn

To

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   Chennai - 600 002.

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   Chennai

+1 CC to The Government Pleader sr 7080.
+1 CC to Mr.R. Sivakumar, Advocate sr 6985.



W.P.No.39614 of 2004

AJP(CO)
SP(14/07/2021)