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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21155 of 2021

and

W.M.P.No.22447 of 2021

(Through Video Conferencing)

- 1.S.Murugan
- 2.P.Kanthimathi
- 3.N.Jeyanthi
- 4.A.Arokia Rani
- 5.E.Vimala
- 6.S.Rajeswari
- 7.S.Mariammal
- 8.P.Packia Lakshmi
- 9.A.Manivannan
- 10.G.Selvi
- 11.P.Kanthimathi
- 12.S.Sundara Raman
- 13.T.Jeyaprakesh
- 14.M.Rajakumari
- 15.F.Malliga Matha
- 16.A.Seetha Lakshmi
- 17.W.Johnson
- 18.M.Nainar
- 19.D.Ganesan
- 20.A.Kanagavel
- 21.A.Kanthimathi
- 22.S.Kanagasabapathy
- 23.A.Gulzar Feroz Begam
- 24.S.Subitha
- 25.M.Sankara Subramanian
- 26.R.Yoga Rani
- 27.P.Jeyanthi
- 28.A.Jesu
- 29.S.Paper Ananthan
- 30.C.Mary Anitha

...Petitioners

Vs

1. The Secretary to Government,
Personnel and Administrative Department,
Secretariat, Chennai.



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2. The Secretary to Government,
Finance Department,
Secretariat, Chennai - 9.
3. The Commissioner,
School Education Department,
DPI Campus, Chennai - 600 006.
4. The Commissioner,
H.R & C.E. Department,
Nungambakkam, Chennai - 600 034.
5. The Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai - 600 005.
6. The Secretary to Government,
Transport Department,
Fort. St. George, Chennai - 600 009.
7. The Inspector of Registration,
Santhome High Road,
Chennai - 600 028.
8. The Principal Accountant General Tamil Nadu,
Order of the Principal Accountant General (A & E),
Chennai, Tamil Nadu. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, direct the respondents to include the petitioners names in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978 and not the new contributory pension scheme by deeming the date of the appointment of the petitioners as 23.11.2001 (the date of Government Order in G.O.Ms.No.209, P & AR Department 23.11.2001) for the purpose of extension of the pensionary benefits alone.

For Petitioners	: Ms.Dakshayani Reddy
For Respondents	:
For R1 to R7	: Mr.L.S.M.Hasan Fizal Government Advocate
For R8	: Mr.Vijay Shankar



ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the first to seventh respondents and Mr.Vijay Shankar, learned counsel on behalf of the eighth respondent.

2.The petitioners were absorbed into the service of the respondent stay after the cut off date 01.04.2003. The petitioners have waged a long battle with the respondents for being absorbed into the Government Service during the beginning of the last decade.

3.Ultimately, the issue came up before the Hon'ble Supreme Court. An interim order came to be passed pursuant to which Government orders were issued by the Government fixing onerous conditions for absorbing the petitioners. During the pendency of the proceedings before the Hon'ble Supreme Court, the Government issued G.O.Ms.No.144, Personnel & Administrative Reforms (P) Department, dated 11.08.1999 the Hon'ble Supreme Court in its judgment dated 28.09.1999 in Government of Tamilnadu and another Vs G.Mohamed Ammenudeen and others AIR 1999 SCC 3825 finally settled the issue.

4.The Hon'ble Supreme Court by its order dated 28.09.1999 held as under:

5.Now, Shri V.Krishnamurthy, the learned counsel for the appellants, has brought to our notice that the appellant has issued an order G.O.Ms.No.144 dated 11.08.1999 which takes note of the various aspects to which we have adverted to earlier for absorption of the respondents subject to the following conditions:

(i)Retrenched employees of the Census Organisation in Tamilnadu with not less than six months service were employed in priority (iii) list under Group III for employment assistance through Employment Exchange.

(ii)A period of three years was ordered to be excluded in computing their age for appointment through the Tamil Nadu Public Service Commission and the Employment Exchanges, provided they had rendered temporary service of at least six months in the Census Organization of this State.



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(iii) The rule of reservation was to be following in making the appointment of retrenched census employees.

6. However, it is brought to our notice that the condition in clause (i) above would impose hardship on the respondents if they are to be placed in Group III and they had to be placed in Group IV, condition in clause (ii) cannot be worked out at all because even if the period of three years stated therein is excluded the appellants will not get any benefit because their services had been put to an end in the year services had been put to an end in the year 1992 and over seven years have elapsed since then and, therefore, they cannot fulfil that condition at all. In the circumstances, we direct the State Government to modify the scheme in respect of these two conditions. It would be appropriate for the State Government to delete these two conditions and all that may be insisted upon is that the retrenched employees of the Census Department should be placed in Group IV and the condition relating to the exclusion of three years from their age shall be deleted. Subject to this modification, the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Government or in any of the Local authority or Government undertakings as may be feasible as expeditiously as possible. This appeal stands disposed of accordingly.

7. Before parting with the case, we must put on record our appreciation for a very reasonable stand taken on behalf of the appellants and the learned counsel appearing in the case.

5. The respondents thereafter issued G.O.Ms.No.30 dated 16.12.2000 in compliance of the directions of the Hon'ble Supreme Court in the above case.

6. Under these circumstances, some of the petitioners approached the Hon'ble Supreme Court and filed a Contempt Petition in Cont.P.(C).No.103/2000 in Civil Appeal No.810/1998. By an order dated 29.08.2001, the Hon'ble Supreme Court passed another order. The operative portion of the said order reads as under:-



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The order to the extent of clause (a) above is not justifiable to ask the ex-employees to be sponsored by Employment Exchanges and that condition will not be in conformity with the order made by this Court. We make it clear that the proper course would be to consider their cases as extrenched employees in a separate category and work out a scheme to fit them against appropriate posts in appropriate departments in the State Government, Local Bodies and Public Undertakings without insisting upon such retrenched employees being sponsored by the Employment Ex-changes. We also make it clear that clause (b) will remain undisturbed as the same as the same is in conformity with the order made by this Court. Let these directions be complied within three months from today.

7.The Government thereafter issued G.O.Ms.No.209, Personnel & Administrative Reforms (P) Department, dated 23.11.2001, which reads as under:

4.The Government examined the matter carefully and decided to accept the directions of the Supreme Court in its judgment dated 29.08.2001 indicated in para 3 above and to implement it by formulating a scheme for absorption of all Retrenched Census Employees of 1991 (except those who were already sponsored by the Employment Exchange, got a appointment and continues to be in the job) without insisting upon them being sponsored by the Employment Exchange. The Government accordingly, pass the following orders;-

1)The Director of Census operations, Tamil Nadu, Chennai is requested to prepare a list of all retrenched employees of Census 1991 category-wise with details of qualification, age, date of registration in the Employment Exchange, residential address etc in consultation with the Director of Employment and Training and furnish to the District Collector.

2)The Director of Employment and Training is requested to obtain the details of the retrenched Census Employees from various



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employment exchanges and to furnish them to Director of Census whenever required.

3) All Heads of Department, Public Sector undertakings, Autonomous bodies and Local bodies under the Government of Tamilnadu in Chennai as well as in Districts should contact the District Collectors concerned while filing up all existing and future vacancies (except those posts to be filled up by candidates through the Tamil Nadu Public Service Commission) and appoint them in the post suitable to their qualifications in such vacancies, only from those names sponsored by the District Collectors from out of the lists of retrenched census Employees of 1991 maintained by them.

4) The District Collectors shall sponsor these retrenched Census Employees of 1991 following strictly the seniority with reference to the date of registration in the Employment Exchange.

5) In respect of the candidates already sponsored for employment, got appointment and ousted subsequently for want of vacancies may also be sponsored now.

6) Heads of Departments, Chief Executive Officers of all Public Sector Undertakings, Autonomous bodies and Local bodies under the Government of Tamilnadu shall call for the candidates required from the District Collectors indicating the posts, the qualifications prescribed for these posts and community such as General Turn, Backward Classes, Most Backward Classes/Denotified communities, scheduled Castes and scheduled Tribes.

7) Suitable candidates shall be absorbed following the roster on communal rotation to the posts for which the rule of reservation is applicable.

8) The Candidates absorbed are to be appointed as fresh employees in these departments/organisations.



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9) Rules relating to age and sponsoring through Employment Exchange may be relaxed in favour of these retrenched census Employees of 1991.

10) No fresh recruitment through the Employment Exchange from open market should be made till the lists of retrenched census Employees of 1991 maintained by the District Collectors concerned are exhausted.

11) A monthly report in the progress of absorption of retrenched personnel of Census 1991 shall be sent by the District Collectors to the government in the Personnel and Administrative Reforms(p) Department by the first week of succeeding month.

5. This order issues with the concurrence of the labour and Employment, Finance, Rural Development and Municipal Administration and water supply Departments vide their U.O.No.44206/NI/2001, dated 18.10.2001 U.O.No.3236/FS/P/2001 dated 18.10.2001, U.O.No.3/S/RD/2001, dated 19.10.2001 and U.O.No.1/S/MA&WS/2001, dated 22.10.2001 respectively.

8. Though the Government order was issued, there was only partial compliance of the order. This forced some of the petitioners to approach the Hon'ble Supreme Court once again by way of a contempt petition in Cont.P.(C).No.433 of 2002. The Chief Secretary was summoned to appear in the Contempt Petition in Contempt Petition (C) No.433 of 2002. The appointment order were issued on various dates after 01.04.2003, by which the Tamil Nadu Pension Rules, 1978 was substituted with a new Contributory Pension Scheme introduced. Vide G.O.Ms.No.259, Personal and Administration department, dated 06.08.2003 the Tamil Nadu Pension Rules, 1978 was amended. Thus, those who were appointed into Government service after 01.04.2003 became ineligible for government pension under Tamil Nadu Pension Rules, 1978. It is the case of the petitioner that the delay in appointment of the petitioner by the respondent cannot be to their prejudice by deny the benefit of government pension under the Provisions of the Tamilnadu Pension Rules 1978, as the delay in appointment wholly on account of the respondent.

9. On the other hand, it is the contentions of the respondent that the appointment of the petitioner who were working in the Census Department pursuant to various Government orders which



came to be modified by the Hon'ble Supreme Court was based on a sympathetic consideration as these posts were not under the cadre of any of the Government services and therefore the petitioners are not entitled for pension under the Tamilnadu Pension Rules 1978. The sum and substance of the defence of the respondents in these writ petitions is summarized as follows:

5.It is also submitted that against the said order, one of the Retrenched Employees of the Census, 1991 filed a Contempt Petition No.103 of 2000 in Civil Appeal No.810 of 1998 in the Supreme Court of India. Wherein, the Hon'ble Supreme Court in its order dated 29.08.2001 in the above said Contempt Petition directed that the order of the Government in G.O.(Ms.) No.30, Personnel and Administrative Reforms (P) Department, dated 16.02.2000 to the effect that 'all the Retrenched Employees of Census organization shall be placed in priority (iii) list under Group-IV for employment assistance through Employment Exchanges for sponsoring against the vacancies arising in State Government. Local Bodies and Public Sector Undertakings is not justifiable to ask the ex-employees to be sponsored again by Employment Exchanges and that condition will not be in conformity with the order made by the Court. Hence, the Supreme Court have ordered that the retrenched employees should be deal with in a separate category and a scheme has to be worked out to fit them against appropriate posts in appropriate Departments in Government, Local Bodies and Public Sector Undertakings without insisting upon such retrenched employees being sponsored again by the Employment Exchanges.

7.With regard to the averments made in paragraph 11 of the Affidavit, it is submitted that in compliance with the directions of the Hon'ble Supreme Court of India in C.P.No.103 of 2000 in C.A.No.810 of 1998, the Government have formulated a separate scheme in G.O.(Ms).No.209, Personnel and Administrative Reforms (P) Department, dated 23.11.2001 for absorption of all retrenched employees of census, 1991 without insisting upon them being sponsored again by Employment Exchanges. Further it is



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submitted that, as a matter of policy decision, to effect economy in expenditure, the Government has issued a ban order on direct recruitment in G.O.(Ms).No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001, the scheme formulated in the G.O.(Ms).No.209, Personnel and Administrative Reforms (P) Department, dated 23.11.2001 was not given effect to. In the mean time, the petitioner in the C.P.No.103/2000 in C.A.No.810/1998 filed Contempt before the Hon'ble Supreme Court. In compliance with the orders of the Hon'ble Supreme Court the said Contempt, the petitioners were absorbed in as per G.O.(Ms). No246, Personnel and Administrative Reforms (P) Department, dated 29.08.2003. As per the proviso to rule 2 of the Tamil Nadu Pension Rules, 1978, the Government Servants appointed on or after the 01.04.2003, to services and posts in connection with the affairs to the State which are not borne on the pensionable establishment. Whether temporary or permanent are not eligible for Old Pension Scheme. The petitioner who were appointed as per above Government Order to regular service on or after 01.04.2003 are not eligible for old pension scheme.

8. With regard to the averments made in paragraph 12 of the affidavit, it is submitted that as a matter of policy decision, to effect economy in expenditure, the Government has issued a ban order on direct recruitment in G.O.(Ms.) No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001, the scheme formulated in the G.O.(MS.) No.209, Personnel and Administrative Reforms (P) Department, dated 23.11.2001 was not given effect to. Even though, the ban orders on new recruitment was in force from the year 2001 to 2006, the Government have considered the request of the retrenched Census Employees, 1991 to absorb them in the Government Department, Public Sector Undertakings, Autonomous Bodies and Local Bodies of the Government of Tamil Nadu, without insisting upon them being sponsored again by the Employment Exchanges and they were provided



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employment in the year 2004. The delay in absorbing the petitioners in Government Service is 'neither willful nor wanton'. The orders of the Hon'ble Supreme Court have been complied with by the State Government 'in letter and spirit' by absorbing the petitioner in regular vacancies. Since the petitioners were appointed to regular services on or after 01.04.2003 they are covered under contributory Pension Scheme as per the order issued in G.O.(Ms.)No.259, Personnel and Administrative Reforms (P) Department, dated 06.08.2003.

9. With regard to the averments made in paragraph 13 of the affidavit, it is submitted that in compliance with the orders of the Hon'ble Court, dated 03.08.2017 in W.P.No.15163 of 2015 filed by Thiru.Murugan and others, their earlier representation to with law and their request were rejected, vide letter No.23106/P&AR(P)/2015-22, dated 01.10.2018. Since the petitioner was appointed on or after 01.04.2003, as per the proviso to the rule 2 of the Tamil Nadu Pension Rules, 1978, the Government Servants appointed on or after the 01.04.2003, to services and posts in connection with the affairs of the State which are borne on the pensionable establishment, whether temporary or permanent are not eligible for Old Pension Scheme. Further submitted that the direction of this Court on the said W.P has been complied in letter and spirit.

10. Heard the learned counsel for the petitioners and the respondents and perused the G.Os., issued by the respondents from time to time starting from G.O.Ms.No.341 dated 13.10.1992 and ending with G.O.Ms.No.209 dated 23.11.2001. The last mentioned G.Os was issued after the Hon'ble Supreme Court gave a direction in AIR 1999 SCC 3825 and after that Contempt Petitions were filed by the some of the petitioners. Tamil Nadu Pension Rules 1978 was amended vide G.O.Ms.No.259, Personal and Administration department, dated 06.08.2003. It introduced a Proviso to Rule 2 which reads as under:-

'Provided that these Rules shall not apply to Government Servants appointed on or after 1st April, 2003 to service and post in connection with the affairs of State which



are borne on pensionable establishment, whether temporary or permanent.''

The Full Bench of this Court has dealt with the plight of Government servants who were absorbed into service after 01.04.2003 in W.A.Nos.158 of 2016 batch etc., vide its order dated 03.12.2019 in the case of State of Tamilnadu Vs. R.Kaliyamoorthy 2019 6 CTC 705.

11.In an identical situation, vide order dated 21.11.2017 in W.P.No.9208 of 2012, this Court has already allowed the case. The learned Single Judge of this court in the aforesaid order has held as under:

17.Therefore, in the above circumstances, the petitioner is entitled to be covered under the old pension scheme reckoning his date of appointment from 07.01.2003, where the government had granted him the benefit vide G.O.(2D) No.2, School Education (M1) Department. The other orders passed by the second and fourth respondents herein, merely a consequential orders and therefore, in all fairness, the date of appointment of the petitioner ought to be taken as 07.01.2003, i.e., prior to coming into force of the new pension scheme with effect from 01.04.2003. The rejection letter dated 10.05.2010, rejecting the claim of the petitioner is only on the ground that the petitioner joined the post only on 16.04.2003 and hence, within the mischief of the new pension scheme cannot stand the test of judicial scrutiny.

18.In view of the above conclusion, the said rejection letter in Na.Ka.No.13272/R1/E1/2010, dated 10.05.2010, cannot be sustained in law. Therefore, the same is set aside and the writ petition is allowed. There shall be a consequential direction to the respondents that the petitioner ought to be treated as an employee covered under the old pension scheme for the purpose of pensionary benefits.

12.Further appeal to, the Division Bench of this Court in W.A.No.2708 of 2013 was also dismissed on 11.12.2018. The case of the petitioner is slightly different from the case of the employee who were covered by the decision of the full bench of this court in the above case.



13. The petitioner were entitled to absorbed into the services before the amendment to the Tamil Nadu Pension Rules, 1978 vide G.O.Ms.No.259, Personal and Administration department, dated 06.08.2003. The petitioners were not absorbed, despite the order of the Hon'ble Supreme Court on 28.09.1999. The order of the Hon'ble Supreme Court was later complied with reluctance and reservation in terms of the G.O.Ms.No.209, dated 23.11.2001. It has to be therefore construed that the petitioners were entitled to be covered under the erstwhile Tamilnadu Pension Rules 1978 as it stood prior to its amendment, as the delay in the appointment of the petitioners into the Government service was not on account of their fault, but on account of the attitude of the respondent in not absorbing them into the Government service in terms of the Hon'ble Supreme Court and the order passed in the Contempt Petition of the Hon'ble Supreme Court. Therefore, these writ petitions deserves to be allowed as prayed for.

14. Accordingly, these writ petitions are allowed. The respondents are directed to take appropriate steps to enter into the service register of these petitioners as the persons covered by Tamil Nadu Pension Rules, 1978 as it stood prior to amendment vide G.O.Ms.No.259, Personal and Administrative department, dated 06.08.2003 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Personnel and Administrative Department,
Secretariat, Chennai.
2. The Secretary to Government,
Finance Department,
Secretariat, Chennai - 9.
3. The Commissioner,
School Education Department,
DPI Campus, Chennai - 600 006.



4. The Commissioner,
H.R & C.E. Department,
Nungambakkam, Chennai - 600 034.

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5. The Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

6. The Secretary to Government,
Transport Department,
Fort. St. George, Chennai - 600 009.

7. The Inspector of Registration,
Santhome High Road,
Chennai - 600 028.

8. The Principal Accountant General Tamil Nadu,
Order of the Principal Accountant General (A & E),
Chennai, Tamil Nadu.

+1cc to M/s.Dakshayani Reddy, Advocate, S.R.No.51332

+1cc to the Government Pleader, S.R.No.52014

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and
W.M.P.No.22447 of 2021

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