

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.9748 of 2014

R.Blossom

... Petitioner

Vs

1.State of Tamil Nadu, rep. by its
Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2.Director of Elementary Education,
College Road, Chennai - 600 006.

3.District Elementary Educational Officer,
Thiruvallur, Thiruvallur District.

4.Assistant Elementary Educational Officer,
Minjur, Thiruvallur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to deduct the General Provident Fund subscription from the petitioner's salary from December, 2006 with due credit in the existing Account No.326970 so as to enable the petitioner to come under the Old Pension Scheme.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.J.Ramesh, AGP

ORDER

The relief sought in this writ petition is to direct the respondents to deduct the General Provident Fund Subscription from the petitioner's salary from December, 2006 with due credit in the existing Account No.326970 so as to enable the petitioner to come under the Old Pension Scheme.

2.According to the petitioner, she was appointed as Secondary Grade Assistant in Devasagayam Chettiyar Middle School, Madurai on 16.03.2000 and her appointment was also approved by the authorities and she was enrolled in Teachers

Provident Fund and allotted P.F. Account No.326970 and subscription was also deducted from her salary from 2000 to November 2006. While so, based on her seniority in Employment Exchange, the petitioner was called for interview by the Teachers Recruitment Board for the appointment to the post of Secondary Grade Assistant. Pursuant to the same, she participated in the selection process. Consequently, she was appointed as Secondary Grade Assistant and she joined duty on 08.12.2006. Thereafter, the petitioner was asked to enrol herself in the New Pension Contributory Scheme from December 2006. The petitioner resisted the same and requested to deduct subscription from her salary and credit it to GPF account, stating that the persons selected along with her as Secondary Grade Assistants, were directed to continue their GPF accounts and accordingly, subscriptions are deducted from their salary. But, the respondents did not deduct any amount towards subscription under the Old Pension Scheme or New Pension Contributory Scheme. Therefore, the petitioner has no other option except to approach this Court with the present writ petition for the aforesaid relief.

3. Upon notice, a detailed counter affidavit was filed by the respondent, wherein, it is inter alia stated that the Government issued orders that all the Government servants and teachers appointed in Government/Aided Institutions on or after 01.04.2003 ought to have been enrolled in CPS (New Pension Contributory Scheme) alone and since the petitioner joined duty only in the year 2006, she has been directed to enrol in CPS Scheme. The petitioner was selected as Secondary Grade Assistant by Teachers Recruitment Board and joined duty on 08.12.2006 and the service rendered earlier by the petitioner in previous school upto 02.12.2006 could not be counted as break in service was not condoned by the competent authorities and the petitioner has not obtained any such order from the Government to count the service rendered by the petitioner. With these averments the 4th respondent sought for dismissal of the writ petition.

4. Today, when the matter was taken up for consideration, the learned counsel for the petitioner submitted that in similar circumstances, in WP.No.13357 of 2015, this Court by order dated 26.06.2015, allowed the said writ petition, by directing the respondents therein to continue the petitioner under the Old Pension Scheme, the relevant passage of which, is extracted below:

"18. As per Rule 24 of the Rules, the past service cannot be forfeited except when a person is removed or re-employed. Admittedly, Rule 25(1) comes to the benefit of a Government servant for automatic condonation of break in service. I am of the view that the conjoint reading of Rules 24 and 25 of the Rules

would make it clear that the petitioner is entitled to the benefit of condonation of one day break in service.

19. In fact, in N.Baskar V. Director of Elementary Education, reported in 2014 (8) MLJ 341, this Court, based on the aforesaid Rules 24 and 25 of the Tamil Nadu Pension Rules, condoned the delay of 13 days in similar circumstances. It is relevant to extract paragraphs 7 and 9 of the said judgment as hereunder :

"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 2 of its order, has stated 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."

"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."

20. Taking into account the facts of the case as well as the judgment referred to above, the impugned orders are quashed and the writ petition is allowed and a direction is issued to the respondents to continue the petitioner under the Old Pension Scheme.

21. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

Thus, the learned counsel prayed that the benefit of the aforesaid order may be extended to this petitioner as well, by considering her representation dated 18.01.2014.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents fairly submitted that the respondent authorities would consider the representation of the petitioner and pass orders, on merits and also in the light of the aforesaid order cited on the side of the petitioner.

6. Considering the facts and circumstances of the case, more particularly that earlier the petitioner was working under the Old Pension Scheme and having regard to the submissions made by the learned counsel on either side, this Court directs the respondent authorities to consider the representation of the petitioner dated 18.01.2014 and pass appropriate orders, on merits and in accordance with law and also in the light of the aforesaid order dated 26.06.2015 in WP.No.13357 of 2015, within a period of eight weeks from the date of receipt of a copy of this order.

7. This writ petition stands disposed of accordingly. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

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To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2. The Director of Elementary Education,
College Road, Chennai - 600 006.

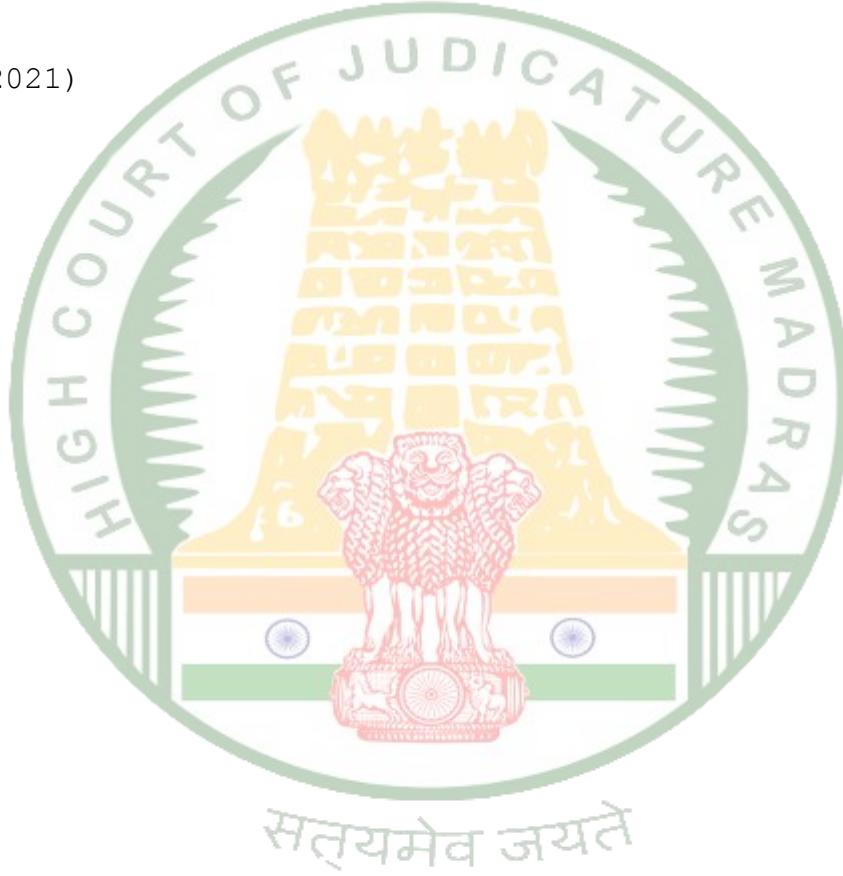
3.The District Elementary Educational Officer,
Thiruvallur, Thiruvallur District.

4.The Assistant Elementary Educational Officer,
Minjur, Thiruvallur District.

+1 CC to M/s.C.S. Associates sr 14503.

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VBM(CO)
SP(30/06/2021)



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