



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.151 of 2021

and

W.M.P(MD)Nos.132 & 134 of 2021 & 5322 of 2021

and

W.P(MD)No.185 of 2021

and

W.M.P(MD)Nos.149 & 150 of 2021 & 5314 of 2021

and

Cont P(MD)Nos.352 & 357 of 2021

and

Sub Applications (MD)Nos.72 & 75 of 2021

W.P(MD)No.151 of 2021

M.Vijayalakshmi

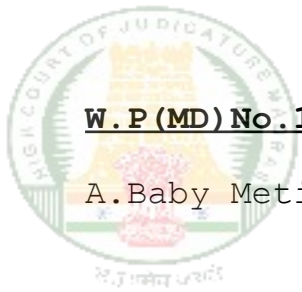
... Petitioner

versus

- 1.The Commissioner,
Government Data Centre,
Chennai-600 025.
- 2.The District Elementary
Educational Officer,
Kuzhithalai,
Karur District.
- 3.The Block Educational Officer,
Krishnarayapuram,
Karur-639 102.
- 4.The Correspondent,
Sri Ramakrishna Aided Primary School,
Perumal Kavundampatti,
Thondamanginam Post,
Kadavur Taluk,
Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020 and quash the same as illegal, arbitrary and in violation of principles of natural justice insofar as the petitioner alone.



W.P(MD)No.185 of 2021

A.Baby Metilda

... Petitioner

versus

1.The Commissioner,
Government Data Centre,
Chennai-600 025.

2.The District Elementary
Educational Officer,
Kuzhithalai,
Karur District.

3.The Block Educational Officer,
Krishnarayapuram,
Karur-639 102.

4.The Headmaster,
St. Antony's Aided Primary School,
Sengulam,
Mathagiri Post,
Kadavur Taluk,
Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020 and quash the same as illegal, arbitrary and in violation of principles of natural justice insofar as the petitioner alone.

	(in both WPs)
For Petitioners	: Mr.B.Saravanan
For R1 to R3	: Mr.S.Saji Bino, Special Government Pleader
For R4	: No appearance

Cont.P(MD)No.352 of 2021

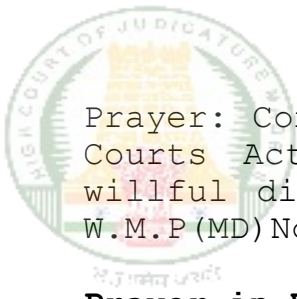
A.Baby Metilda

... Petitioner/Petitioner/Petitioner

Vs.

Mr.Palanisamy
The Block Educational Officer,
Krishnarayapuram,
Karur-639 102.

... Contemnor/3rd Respondent/
3rd Respondent



Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act seeking to punish the respondent for deliberate and willful disobedience of the order passed by this Hon'ble Court in W.M.P(MD)No.149 of 2021 in W.P(MD)No.185 of 2021 dated 08.01.2021.

Prayer in WMP(MD) . 149/ 2021 :

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Court to grant an order of interim stay of the operations and all further proceedings of the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020 pending disposal of the above writ petition and thus render justice

Prayer in WP(MD) . 185/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-38. to issue an order or orders or directions or writs in the nature of writ of certiorari calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020 and quash the same as illegal, arbitrary and in violation of principles of natural justice in so far as the petitioner alone and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.

Cont.P(MD)No.357 of 2021

M.Vijayalakshmi ... Petitioner/Petitioner/Petitioner

Vs.

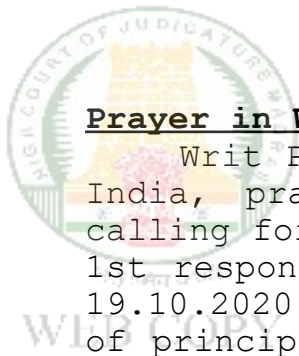
Mr.Palanisamy
The Block Educational Officer,
Krishnarayapuram,
Karur-639 102.

... Contemnor/3rd Respondent/
3rd Respondent

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act seeking to punish the respondent for deliberate and willful disobedience of the order passed by this Hon'ble Court in W.M.P(MD)No.132 of 2021 in W.P(MD)No.151 of 2021 dated 07.01.2021.

Prayer in WMP(MD) . 132/ 2021 :

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Court to grant an order of interim stay of the operations and all further proceedings of the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020 pending disposal of the above WP and thus render justice.



Prayer in WP (MD). 151/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-38. to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020 and quash the same as illegal arbitrary and in violation of principles of natural justice in so far as the petitioner alone and pass such further or other orders as this Honourable court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.B.Saravanan
For Contemnor : Mr.S.Saji Bino
Special Government Pleader
(in both Contempts)

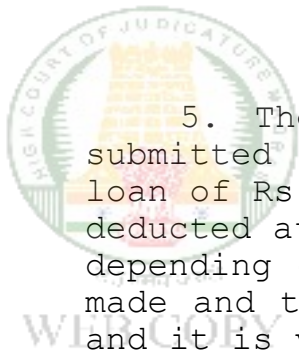
COMMON ORDER

The issues involved in both Writ Petitions are one and the same and therefore, both Writ Petitions are heard together and disposed of by way of this common order.

2. These writ petitions have been filed as against the order of recovery passed by the first respondent in his proceedings Na.Ka.No.Mu.Mu.5628/Vu/2020 dated 19.10.2020.

3. The learned counsel appearing for the petitioners would submit that the petitioners were selected and appointed as Secondary Grade Assistant Teacher at St.Antony's Aided Primary School, Sengulam, Karur District. The petitioners are now working as Secondary Grade Teacher in the fourth respondent School and deductions were made from the petitioners salary towards Contribution of General Provident Fund continuously ever since the date of appointment.

4. It is submitted that the first respondent has passed the impugned order, wherein, it has stated that as per G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, only Contributory Pension Scheme is applicable for teachers, who were appointed on or after 01.04.2003. As per the G.O.Ms.NO.259, dated 06.08.2003 Government has introduced the Contributory Pension Scheme to the Tamil Nadu State Government Employees who are recruited on or after 01.04.2003. Under the new Contributory Pension Scheme introduced to the Central Government employees, General Provident Fund Scheme is not available to the newly recruited employees. The Government have examined the issue in respect of State Government employees and directed that the existing General Provident Fund Scheme will not be applicable to the newly recruited employees, who are covered under Contributory Pension Scheme, introduced with effect from 01.04.2003.



5. The learned counsel appearing for the petitioner further submitted that without knowing the same, the petitioner has taken a loan of Rs.5,00,000/- from the General Provident Fund and now, it is deducted at the rate of Rs.16,000/- per month. His entire family is depending on his salary and all of a sudden, now recovery has been made and that 1/3rd of the salary has been deducted from his salary and it is very difficult for him to meet out his family expenses and other medical expenses.

6. This Court, by earlier orders, dated 07.01.2021 and 08.01.2021 granted an order of interim stay that it is a mistake committed on the part of the respondents, it would not be appropriate to permit them to recover the same.

7. The respondents filed counter affidavit along with Vacate Stay applications. The learned Special Government Pleader appearing for the respondents would submit that the petitioners were appointed only on 11.04.2003 and 30.04.2003 respectively and therefore, they are not entitled for the General Provident Fund and they are only entitled under the Contributory Pension Scheme. However, inadvertently, the amount has been deducted from the General Provident Fund and when this discrepancy was came to light, the Block Educational Officer, Krishnarayapuram sought clarification from the Director. The Director, Government Data Centre, Chennai, has clarified in his Na.Ka.No.Mu.Mu.No.5628/Vu/2020 dated 19.10.2020 that a communication was already sent to all the District Elementary Educational Officers on 18.01.2006 to the effect that all the teachers recruited on or after 01.04.2003 are to be admitted in the Contributory Pension Scheme and all the A.S.T.P.F.Numbers allotted wrongly were to be cancelled. New C.P.S.numbers ought to have obtained and deductions in the C.P.S. Scheme ought to have been made. In view of this clarification, the amount already deducted wrongly in the A.S.T.P.F.Account is closed and in order to remit the amount under the C.P.S. Scheme, the impugned order has been passed. Aggrieved by the orders, the petitioner has filed this writ petition.

8. The learned Special Government Pleader has also relied on the order of the Full Bench reported in **2020(3) MJ 369 (Government of Tamil Needy vs. R.Kaliyamoorthy)**, wherein, the Full Bench in paragraph 45 of the order has held as follows:-

"Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of W.A.No.158 of 2016 etc., batch proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

Those Government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a) (1) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the



Tamil Nadu Pension Rules, 1978.

In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

Those Government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10(a)(1) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

A same decision has also been taken in W.A.No1.158 of 2016 etc, batch. In view of the pension rules, they are entitled only Contributory Pension Scheme. This issue has already been settled by this Court.

9. The petitioners were appointed on 11.04.2003 and 30.04.2003 respectively and therefore, as per Tamil Nadu Pension Rules, and the orders of Hon'ble Full Bench of this Court, this writ petitions are liable to be dismissed. However, considering the difficulty expressed by the petitioners, a direction is issued to the respondents to recover the amount from the petitioner's salary for a sum of Rs.10,000/- per month instead of Rs.16,000/- per month.

10. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11. In view of the orders passed in W.P(MD)Nos.151 and 185 of 2021, both contempt petitions in Cont P(MD)Nos.352 & 357 of 2021 are closed. Consequently, Sub Applications (MD)No.72 & 75 of 2021 are also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

Note: In view of the present 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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Commissioner,
Government Data Centre,
Chennai-600 025.

2.The District Elementary
Educational Officer,
Kuzhithalai,
Karur District.

3.The Block Educational Officer,
Krishnarayapuram,
Karur-639 102.

+2 CC to M/s.B. SARAVANAN, Advocate (SR-34710 & 34711[F]
dated 17/11/2021)

+1 CC to M/s.SPL GP (SR-34831[F] dated 17/11/2021)

W.P(MD)No.151 & 185 of 2021

and

Cont P(MD)Nos.352 & 357 of 2021

16.11.2021

MA (CO)

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