



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2021

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WEB COPY

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD) No.15142 of 2021

R. Kalpana

... Petitioner

Vs.

1.The State of Tami Nadu,
Represented by its Secretary,
School Education Department,
St. George Fort,
Chennai.

2.The Director of School Education,
Department of School Education,
Chennai-600 006.

3.The Accountant General,
DMS,
Nandanam,
Chennai.

4.The Member Secretary,
Teachers Recruitment Board,
DPI Compound,
Chennai-600 006.

...Respondents.

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Kaditha (Nilai) No.90 dated 21.05.2021 issued to the petitioner on 15.07.2021 and quash the same as illegal and consequently direct the respondents herein to extend the Old Pension Scheme namely General Provident Fund Scheme to the petitioner and pass orders.

For Petitioner : Mr.R.R.Kannan

For Respondents : Mr. S. Shanmugavel
Counsel for State



ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, calling for the records of the first respondent in Kaditha (Nilai) No.90 dated 21.05.2021 issued to the petitioner on 15.07.2021 and quash the same as illegal and consequently direct the respondents herein to extend the Old Pension Scheme namely General Provident Fund Scheme to the petitioner

2. By consent of both parties, the Writ Petition itself is taken up for final disposal.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. According to the petitioner, the Teachers Recruitment Board (TRB), the 4th respondent herein, has issued a Notification for recruitment of Block Resource Teachers and School Assistants and consequently, conducted examination on 21.04.2002. The petitioner is one of the applicants in the said recruitment process. The first phase of selected candidates were appointed on 11.07.2002 and the 2nd phase of selected candidates were appointed on 17.03.2003. These two phases of recruitment were just prior to introduction of the Contributory Pension Scheme (CPS), which was introduced with effect from 01.04.2003. Since these two phases of selected candidates being appointed well before the advent of the Contributory Pension Scheme, i.e. Before 01.04.2003, they were extended the benefit of General Provident Fund Scheme. The writ petitioner was appointed as Block Resource Teacher on 08.12.2003. Since the petitioner was appointed after 01.04.2003, she has been brought under the new Pension Scheme, i.e. Contributory Pension Scheme. Hence, the petitioner made a representation on 16.07.2014 to the respondents, praying to consider her claim to extend the benefit of General Provident Fund Scheme. Since no response is forthcoming despite her representation, the petitioner has come forward with the present Writ Petition.

5. Mr.R.R.Kannan, learned counsel appearing for the petitioner would submit that pursuant to the Notification, dated 11.02.2002, the 4th respondent/TRB conducted the examination on 21.04.2002 and both the School Assistants and the Block Resource Teachers were appointed in a phased manner, in which, the similarly placed candidates who were appointed by 1st phase of recruitment on 11.02.2002 as well as 2nd phase of recruitment on 17.03.2003 were brought under the old Pension Scheme, i.e. General Provident Fund Scheme, while the candidates including the petitioner, who were selected pursuant to the same Notification and appointed by 3rd phase of recruitment on 06.05.2003, were denied the benefit of General Provident Fund Scheme on the ground that they were appointed after 01.04.2003, i.e. after introduction of new pension scheme. The



learned counsel for the petitioner would submit that since the 4th respondent delayed the appointment process in respect of Block Resource Teachers, which made them unqualified for the benefit of old Pension Scheme. He pointed out that if the 4th respondent had finalized the appointment process of Block Resource Teachers' in time, they would have certainly been brought under the old Pension Scheme. The learned counsel would refer to a decision of a Division Bench of this Court in W.A.(MD) No.1026 of 2019, wherein, the claim of the similarly placed person, like that of the petitioner herein, was considered and directed the respondents to consider the representation of the appellant therein. Therefore, the learned counsel sought for grant of similar relief in the present Writ Petition.

6. Mr.S. Shanmugavel, learned Standing counsel for the fourth respondent would oppose the submissions made by the learned counsel for the petitioner. He would draw the attention of this Court to the G.O.Ms.No.259 Finance (Pension) Department dated 6.8.2003, wherein, a new Pension Scheme was introduced by the Government, amending the Tamil Nadu Pension Rules 1978 by inserting a *proviso* to Rule 2 of the Tamil Nadu Pension Rules, which specifically stipulates that the Pension Rules shall not apply to the Government servants appointed on or after the 01.04.2003. By virtue of this, the learned Standing counsel would submit that the petitioner's representation cannot be considered and hence, he sought for dismissal of the Writ Petition.

7. The petitioner claims that since the 4th respondent/TRB delayed the appointment process, she was not brought under the old Pension Scheme, while the similarly placed persons who were recruited pursuant to the same notification well before the advent of the new scheme, i.e. 01.04.2003 and hence, she is entitled to be brought under old Pension Scheme.

8. It is pertinent to note that by G.O.Ms.No.259 Finance (Pension) Department, dated 6.8.2003, the Government of Tamil Nadu has introduced a new Pension Scheme, i.e. Contributory Pension Scheme based on defined contributions for the employees of the State, who are newly recruited after 01.04.2003 and amended the Tamil Nadu Pension Rules 1978 by introducing a *proviso* to Rule 2 of the Tamil Nadu Pension Rules, which reads as follows:

"Provided that these rules shall not apply to 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 pensionable establishments, whether temporary or permanent."

9. Therefore, by virtue of the above said G.O., the claim of the petitioner, who has been admittedly appointed as Block Resource Teacher on 08.12.2003, i.e. after 01.04.2003, on which date, the new



Pension Scheme came to be introduced and hence, as per amended proviso to Rule 2 of the Tamil Nadu Pension Rules 1978, the petitioner is not entitled to the benefit of the old Pension Scheme.

10. In fact, considering all the aspects of the matter relating to the Pension both under new and old Scheme, a Full Bench of this Court in a batch of cases, in W.A.Nos.158 of 2016, etc., (**State Government, rep. by Secretary to Government versus R.Kaliyamoorthy**), has categorically held as under in paras 44 and 45:

"44. The aforesaid Judgment of the Honourable Supreme Court (**State of Maharashtra v. Digambar [(1995) 4 SCC 683]**) would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as resjudicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons.

45. In the light of the above, we answer the reference as follows:

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) 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 regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.



(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) 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.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in 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."

11. Having regard to the decision of the Full Bench of this Court, particularly para 45(1) extracted above, since admittedly, the petitioner was appointed on 08.12.2003, i.e. after 01.04.2003 is not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003. Further, in view of para 44 of the decision cited supra, the prayer of the petitioner, cannot also be considered. Thus, no *prima facie* case is made out to entertain the writ petition. Consequently, the writ petition is liable to be rejected.

12. For the foregoing reasons, the Writ Petition fails and it is accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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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.

To

1.The Secretary,
School Education Department,
St. George Fort,

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



2.The Director of School Education,
Department of School Education,
Chennai-600 006.

3.The Accountant General,
DMS,
Nandanam,
Chennai.

4.The Member Secretary,
Teachers Recruitment Board,
DPI Compound,
Chennai-600 006.

+1 CC to M/s.R.R.KANNAN, Advocate (SR-27291[F]
dated 25/08/2021)

+1 CC to M/s.GP (SR-27384[F] dated 26/08/2021)

W.P (MD) No.15142 of 2021
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MGJ(27.10.2021) 6P 7C