



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED:23.11.2021**

**CORAM:**

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.P. (MD) .No.1309 of 2018**

**and**

**W.M.P (MD) .No.1372 of 2018**

C.Mercy Grace

... Petitioner

vs.

1.The District Elementary Educational Officer,  
Madurai District, Madurai.

2.The District Educational Officer,  
Madurai District, Madurai.

3.The Assistant Elementary Educational Officer,  
Kalikudi,  
Madurai District.

4.The School Correspondent,  
Capron Hall Higher Secondary School for Girls,  
Madurai 625 01

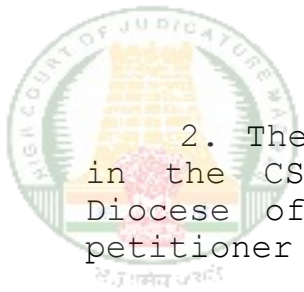
... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to regularise the period from 20.12.2002 to 21.12.2003 so as to count the same for the purpose of pay, increment and selection grade and for pension and to treat the petitioner herein in under the Old Pension Scheme.

|                |                                                 |
|----------------|-------------------------------------------------|
| For Petitioner | : Mr.V.Karthikeyan<br>for Mr.V.Vijayshankar     |
| For R1 to R3   | : Mr.A.K.Manikkam<br>Special Government Pleader |
| For R4         | : No appearance                                 |

**O R D E R**

Heard Mr.V.Karthikeyan, learned counsel for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader for the official respondents /R1 to R3. No appearance for R4 being the School Correspondent of the Capron Hall Higher Secondary School for Girls, despite service being completed and the name of the School printed in the cause list.



2. The petitioner was appointed as a Secondary Grade Assistant in the CSI Primary School, Satharasankottai falling within the Diocese of Madurai and Ramnad. The order of appointment of the petitioner is dated 26.07.2001 and she joined service on 01.08.2001.

3. It is relevant to note at this juncture, that her appointment was against a sanctioned post and thus, there is no dispute whatsoever on the position that the services of the petitioner stand regularised with effect from 26.07.2001, being the date of her appointment.

4. While this is so, the petitioner was transferred by the Diocese to the CSI Primary School, Sangapadai with effect from 20.12.2002. Since there was a surplus of teachers there, as there were only three sanctioned posts in the school, the petitioner, though she avers that she was rendering service even in the interim, officially stepped into a vacancy caused by the transfer of one of the teachers in the three sanctioned posts only on 21.10.2003.

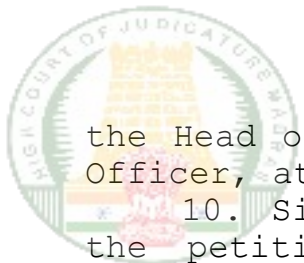
5. Her statement that she had rendered services from 20.12.2002 to 21.10.2003 in R4 school is confirmed by the school in their communication dated Nil addressed to the official respondents. However, the approval of her posting in R4 school was only with effect from 21.10.2003, by proceedings of the District Educational Officer/R2 and proceedings of R1 in Na.Ka.No.10496/A3/04, dated 15.06.2005.

6. The stand adopted by the respondents is that there has been a break in her service between the period 20.12.2002 to 21.10.2003, when she was rendered surplus and this would disentitle her for the benefit of the Contributory Pension Scheme.

7. The petitioner argues that her eligibility must be determined qua the date of her regular appointment only, being 26.07.2001 and even assuming without prejudice that the period between 20.12.2002 and 21.10.2003 constituted a break in service, this would not be relevant to determine her eligibility.

8. Per contra, Mr.A.K.Manikkam, learned Special Government Pleader would emphasise upon the break in service, drawing my attention to Rule 11 of the Tamil Nadu Pension Rules falling under Chapter III (in short Rules) entitled 'qualifying service'. Rule 11 (4) deals with the commencement of qualifying service and sets out the methodology for computing the period of qualifying service subject to certain conditions.

9. Rule 11(4) (iii) states that service, to qualify, must be without a break. In the event of a break, reasons justifying such break are to be considered and condoned only at the discretion of



the Head of the Department, in this case, the District Educational Officer, at the relevant point in time.

10. Since in this case there has been a break in employment, the petitioner loses her entitlement to the erstwhile pension scheme. He also emphasises that in the earlier round of litigation ie., W.P.(MD).No.760 of 2004, seeking approval of her post as Secondary Grade Teacher in the Sangapadai School, the order obtained was only one of disposal of her representation on merits and in accordance with law and no positive direction came to be granted by this Court.

11. While the respondents would be willing to consider her representation for the reliefs sought, that is, regularisation of employment between 20.12.2002 to 21.10.2003, so as to count for the purpose of pay, increment and selection grade as well as for pension and treating the petitioner as falling under the old pension scheme, no positive relief is liable to be granted by this Court.

12. I partly agree. The petitioner's representation dated 04.09.2015 and 20.02.2017 seeking the relief of regularisation of employment between 20.12.2002 to 21.10.2003, so as to count for the purpose of pay, increment and selection grade will be considered by R2, the petitioner heard and suitable orders passed, within a period of twelve weeks from today.

13. As regards the request for pension, a Full Bench of this Court in the case of *Government of Tamil Nadu and others vs. R.Kaliyamoorthy* (2019 (6) CTC 705), after examining both the Schemes, have set out 01.04.2003 as being the relevant cut-off date for determining qualifying service for eligibility into the old scheme. In para-45, the Full Bench has held as follows:

*i) 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.*

*(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.

14. Thus, any candidate appointed to Government service prior to 01.04.2003 by way of regular appointment would be covered by the Old Pension Scheme and in light of there being no dispute in regard to the date of the petitioner's appointment ie., on 26.07.2001, the eligibility of the petitioner under the Old Pension Scheme cannot be questioned. Mandamus as sought for on this ground is issued.

15. Incidentally, the reliance of the petitioner on two decisions of this Court in *Union of India and others vs. K.Punniyakodi and others* [(2014) 2 CTC 777 and *V.Vasanthi vs. State of Tamil Nadu and others* [2019 (4) CTC 865 would also support the position that the relief and criteria to be taken into account in determining eligibility to the pension scheme either old or new would only the date of absorption into regular service which in this case is 26.07.2001, prior to 01.04.2003.

16. Reliance of learned Special Government Pleader upon Rule 11 (4) has no merit. Rule 11 deals with the determination to be made in regard to 'qualifying service'. Rule 11(4)(iii) sets out the methodology to be followed for determining such 'qualifying service' and states that if there was a break prior to 01.04.2003, such break becoming relevant to determine the date of absorption into regular service, then the Head of the Department is to exercise discretion in deciding whether such break be condoned or not.

17. This is not relevant in a situation where the date of regular appointment is itself not in dispute as in the present case. Rule 11(4) thus does not advance the case of the respondents. This writ petition stands disposed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

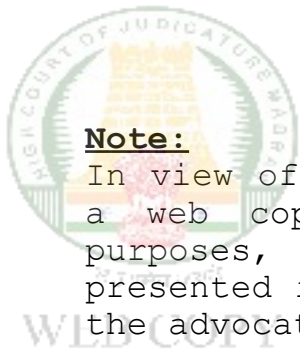
Assistant Registrar (CS II)

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/ /2022

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 District Elementary Educational Officer,  
Madurai District,  
Madurai.
- 2.The District Educational Officer,  
Madurai District,  
Madurai.
- 3.The Assistant Elementary Educational Officer,  
Kalikudi,  
Madurai District.

+1 CC to M/s.V. KARTHIKEYAN, Advocate( SR-35576[F] dated 23/11/2021 )

+1 CC to M/s.SPL GP ( SR-35890[F] dated 25/11/2021 )

**W.P. (MD) .No.1309 of 2018**

**23.11.2021**

MGJ(03.02.2022) 5P 6C