



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.6161 of 2022
and
W.M.P.No.6237 of 2022

M.Chandran

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
(Presently, the Commissioner),
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Director of Evaluation
and Applied Research,
Kuralagam, 3rd Floor,
Chennai - 600 104.
4. The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.

... Respondents

Prayer: Writ petition filed under Section 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.25163/R1/E2/2021 dated 11.05.2021 and to quash the same and consequently directing the respondents to pass orders for sanctioning of GPF and other pensionary benefits including Gratuity etc., under Tamil Nadu Pension Rules, 1978, by considering the period of half of service rendered by the petitioner in the post of investigator on consolidated pay from 19.07.1990 in Evaluation and Applied Research Department (8 years 5 months and 7days) along with regular service rendered by



the petitioner in the post of Investigator and P.G.Assistant for the period of 9 years 2 months 28 days, in the light of orders passed for similarly placed person Mr.R.Baskaradoss appointed along with the petitioner in W.A.No.1122 of 2013 dated 27.03.2014.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.V.Manoharan
Additional Government Pleader

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus quashing the impugned order issued by the 2nd respondent dated 11.05.2021 and consequently directing the respondents to sanction GPF and all other pensionary benefits, by considering the period of half of service rendered by the petitioner in the post of investigator on consolidated pay from 19.07.1990 in Evaluation and Applied Research Department (8 years 5 months and 7days) along with regular service rendered by the petitioner in the post of Investigator and P.G.Assistant for the period of 9 years 2 months 28 days, in the light of orders passed for similarly placed person Mr.R.Baskaradoss appointed along with the petitioner in W.A.No.1122 of 2013 dated 27.03.2014.

3. The case of the petitioner in brief:

The petitioner was working as Investigator on consolidated pay in Evaluation and Applied Research Department from 19.07.1990 to 03.05.2007. Thereafter, vide G.O.Ms.No.68, Planning Development and Special Initiative Department dated 04.05.2007, his service was regularised and he continued to work upto 02.09.2010. Subsequently, he was selected by Teacher Recruitment Board and joined as P.G.Assistant on 03.09.2010 in Government Higher Secondary School, Latheri, Vellore District. and he retired from service on 31.07.2016.

3.1. At the time of retirement, the petitioner filed Writ Petition in W.P.No.24124 of 2008 to consider his period of service on consolidated pay for the purpose of sanctioning pension and this Court vide order dated 30.03.2011, had directed the respondents to count the half of service rendered on consolidated pay to grant pensionary benefits. The appeal filed by the Government has also dismissed by the Division Bench



of this court in W.A.No.1122 of 2013 on 27.03.2014. Though the petitioner gave several representations seeking retirement benefits by calculating the above service, it was not considered. Therefore, again the petitioner filed W.P.No.2983 of 2021, seeking GPF and other pensionary benefits and this court has directed the respondents to consider the representations of the petitioner and to pass appropriate orders. Now the second respondent issued impugned order, rejecting the claim of the petitioner. Hence this writ petition.

4. The learned Additional Government Pleader appearing for the petitioner submitted that the petitioner's representations were considered and the same were rejected on the ground that his service was already regularised on 04.05.2007 as per G.O.Ms.No.68 dated 04.05.2007 and his service was brought under the Contributory Pension Scheme. Therefore, the petitioner is not entitled for benefits under Old Pension scheme.

5. Admittedly, as per G.O.Ms.No.68 dated 04.05.2007, the petitioner's service in the earlier Department was regularised on 04.05.2007 and he was appointed as "Temporary Investigator" and his service was brought under Contributory Pension Scheme. But the contention of claim of the petitioner is that, 50% of his service period to be taken into account for pensionary benefits.

6. 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."

Therefore, by virtue of the above said G.O., the claim of the petitioner, who was admittedly appointed as Temporary Investigator on 04.05.2007, 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.

7. Further, it is pertinent to note that, 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 paragraphs 44 and 45:

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"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



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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."

8. Therefore, in the light of the above decision of the Full Bench of this Court, particularly para 45(1) extracted above and since the petitioner's service was regularised only on 04.05.2007, i.e. after 01.04.2003, and also in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003, 50% of service period rendered by the petitioner on consolidated pay in the earlier department, cannot be considered for pensionary benefits. Further, in view of para 45 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.

9. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal Secretary,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director,
(Presently, the Commissioner),
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.



3. The Director of Evaluation
and Applied Research,
Kuralagam, 3rd Floor,
Chennai - 600 104.

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4. The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.

+1cc to M/s.G.Sankaran, Advocate, S.R.No.18666

+1cc to the Government Pleader, S.R.No.18829

W.P.No.6161 of 2022 and
WMP No.6237 of 2022

RK(CO)
SU(07/04/2022)