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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 06.04.2022

ORDER PRONOUNCED ON : .06.2022

CORAM

**HON'BLE JUSTICE MR.JUSTICE S.VAIDYANATHAN
AND
HON'BLE JUSTICE MRS.JUSTICE.N.MALA**

**W.A.Nos. 1573, 1574 and 1577 of 2021
and C.M.P. Nos.9919, 9922, 9925, 9937 and 9939 of 2021**

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

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

...Appellants in W.A.Nos.1573,1574 and 1577 of 2021

3.The District Elementary Educational Officer,
Ariyalur District.

...Appellant in W.A.No.1573 of 2021

4.The District Elementary Educational Officer,
Nagapattinam District.

...Appellants in W.A.Nos.1574 and 1577 of 2021



Vs.

1.R.Chitradevi

2.The Secretary,
Gandhi Kalanilayam Aided Middle School,
Veerakkan, Senthuraai Union,
Ariyalur District.

...Respondents in W.A.No.1573 of 2021

3.C.Jothi

4.The Secretary,
Sivan Aided Elementary School,
Sembanarkoil Union,
Nagapattinam District.

...Respondents in W.A.No.1574 of 2021

5.N.Rajeswari,

6.The Secretary,
Sivan Aided Elementary School,
Sembanarkoil Union,
Nagapattinam District.

...Respondents in W.A.No.1577 of 2021

Common Prayer: The Writ Appeal is filed under Clause 15 of Letters Patent praying to set aside the common order dated 18.12.2020 passed in W.P.Nos.8916, 9555 and 9559 of 2019.

Appellants : Mr.Abishek Murthy
for all W.A.Nos. Government Advocate

Respondent for R1 : Mr.S.N.Ravichandran



for R2 name not printed

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COMMON JUDGMENT

[Order of the Court was made by S.VAIDYANATHAN,J. and N.MALA,J.]

The issues raised in all the writ appeals are common. Therefore all the three writ appeals are taken up together and disposed by this common order. The individual facts of each case is dealt with separately as there are slight variations in the service particulars of the respondent/writ petitioners.

2. Brief Facts in W.A. No. 1573 of 2021:

The respondent was appointed as secondary grade teacher on 07.12.1998 in the second respondent school which is an aided elementary school governed by Tamil Nadu Private School Regulation Act. The respondent was appointed against sanctioned vacancy in view of the resignation of the earlier incumbent on 31.07.1997. The proposal for approval of the respondents appointment was rejected by the District Elementary Educational officer, the 3rd appellant herein, on the ground that the respondents appointment was in violation of G.O.Ms.No.559 dated 11.07.1995 which prohibited the appointment of higher qualified persons to



the post of secondary grade teachers.

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3. Brief Facts in W.A. No. 1574 of 2021:

The respondent was appointed as a secondary grade teacher on 05.03.2001 in the second respondent school which is an aided elementary school governed by Tamil Nadu Private School Regulation Act. The respondent was appointed against the sanctioned vacancy which arose in view of the resignation of the earlier incumbent on 05.04.1998. Soon after the appointment of the respondent a proposal was sent for approval of her appointment to the third appellant for approval. The proposal was rejected by the 3rd Appellant on the ground that her appointment was in violation of G.O.Ms.No.559 dated 11.07.1995 which prohibited the appointment of higher qualified persons to the post of secondary grade teacher.

4. Brief Facts in W.A. No. 1577 of 2021:

The respondent was appointed as a secondary grade teacher on 25.11.1998 in the second respondent school which is an aided elementary school governed by Tamil Nadu Private School Regulation Act. The respondent was appointed against the



sanctioned vacancy which arose in view of the resignation of the earlier incumbent on 03.10.1996. Soon after the appointment of the respondent a proposal was sent for approval of her appointment to the third appellant. The proposal was rejected by the 3rd appellant on the ground that her appointment was in violation of G.O.Ms.No.559 dated 11.07.1995 which prohibited the appointment of higher qualified persons to the post of secondary grade teacher.

5. The further facts apart from the above brief facts are as follows:

The Government of Tamil Nadu passed G.O.Ms.No.559 School Education Department dated 11.07.1995 prohibiting the appointment of graduate teachers in secondary grade vacancy. The schools in question appointed the respondents on the dates mentioned supra, which was against G.O.Ms. 559 dated 11.07.1995. The appellants therefore did not approve the appointment of the respondents. Teachers who were affected by Go.Ms.No.559 dated 11.07.1995 approached the Hon'ble Court in W.P. No. 6388 of 1993 and W.A Nos. 991 to 998 of 1998 and the Hon'ble Division Bench by order dated 29.06.2001 upheld the validity of the said G.O with a direction to approve the appointments made from 11.07.1995 to 19.05.1998. Consequent to the judgment of this Hon'ble Court the Government passed



G.O.Ms.No.155 School Education Department dated 03.10.2002 with a direction to approve the appointment up to 19.05.1998, subject to the completion of one month Child Psychology Training by the said teachers. In pursuance to G.O.Ms.No. 155 dated 03.10.2002 the teachers covered under the said G.O underwent one month Child Psychology Training and on completion of the training their appointments were approved in the regular time scale of pay in the year 2003.

6.The respondents and 19 similarly placed teachers who were not considered for extension of benefits under G.O.Ms.No.155 dated 03.10.2002 on the ground that their appointments were beyond the cut off date of 19.05.1998 through an association which espoused their cause submitted a memorandum to the Government seeking extension of benefit of G.O.Ms.No.155 dated 03.10.2002 in respect of the teachers who were appointed upto the order of the Hon'ble Division Bench Judgment dated 29.06.2001. The Government considered the memorandum favourably and issued G.O.Ms.No.150 dated 02.07.2007 extending the benefits of G.O.Ms.No.155 dated 03.10.2002 to the respondents and 19 similarly placed teachers. In pursuance of G.O.Ms.No.150 of 02.07.2007 the Government approved the appointments of the teachers covered under the said G.O. on completion of



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Child Psychology Training vide proceeding dated 04.12.2007 with effect from 09.12.2007.

7.As G.O.Ms.No.155 dated 03.10.2002 not only covered the approval of the secondary grade teachers with higher qualification but also contained certain provisions which contemplated recovery of payments from the teachers the aggrieved teachers filed several cases in W.A.Nos. 249, 282 and 448 to 452 of 2002 and 80 of 2004 and W.P.No. 42067 batch. The Hon'ble Division Bench vide the Judgment dated 02.04.2004 reported in 2004(2) Law Weekly 591 while setting aside a part of the Government order which directed the recovery from the teachers held that the past services however shall be counted for pension. The said order of the Hon'ble Division Bench was taken up by way of appeal to the Hon'ble Supreme Court in Civil Appeal No. 5012 of 2006 and the same was dismissed. Meanwhile the Government implemented the New Contributory Pension scheme for those who joined Government service on or after 01.04.2003 vide G.O.Ms.No.430 dated 06.08.2004. The secondary grade teachers who were appointed between the period from 11.07.1995 to 19.05.1998 and who were covered by G.O.Ms.No.155 dated 03.10.2002 filed writ petitions in W.P.Nos 26933 and 26934 of 2007, W.P. (MD)



Nos. 10447 and 5174 of 2008, 4537 of 2009, 1375 of 2010, 12280 to 12282 of

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2010 before this Hon'ble Court praying for direction to count their past services prior to completion of Child Psychology Training for the purpose of pensionary benefits. This Hon'ble Court in the said writ petitions held that the petitioners therein, were to be extended the pension scheme prevailing prior to 01.04.2003 and that they would not be covered by G.O.Ms.No.430 dated 06.08.2004. In pursuance of the said orders of the Hon'ble Court, the Government issued G.O.Ms.No.413 dated 04.11.2010 extending the Old Pension Scheme to the secondary grade teachers appointed between 11.07.1995 to 19.05.1998 and whose services were regularised as per G.O.Ms.No.155 dated 03.10.2002 while clarifying that the New Pension Scheme in G.O.Ms.No.430 dated 06.08.2004 would not apply to them.

8.It is the case of the respondents that they are similarly placed to the teachers covered under G.O.Ms.No.155 dated 03.10.2002 and even the Government had passed G.O.Ms.No.150 dated 02.07.2007 extending the benefit of G.O.Ms.No.155 dated 03.10.2002 to the respondents and 19 others and as much the respondents who were appointed as secondary grade teachers with effect



from 07.12.1998, 05.03.2001 and 25.11.1998 were entitled to the benefit of counting of past services for pensionary benefits. In this regard the first respondent in W.A. No. 1574 and W.A. No. 1577 earlier filed writ petitions in W.P.No. 30137 and 30143 of 2010 and the Hon'ble Court vide order dated 29.12.2010 directed the appellants to consider the representation of the respondents and to pass appropriate orders extending the Old Pension Scheme as directed in the order. The respondents further relied on the Judgment of the Hon'ble Court passed in the case of Shri. Jayapal and Shri. Sampasivam, wherein the Hon'ble Court allowed the counting of past service from 26.02.1999 to 08.11.2007 for the purpose of pensionary benefits on par with the secondary grade teachers who were appointed prior to 01.04.2003. The Government preferred an appeal against the said order which was dismissed on the ground of limitation. Thereafter on threat of contempt G.O.Ms. 34 dated 15.02.2017 was passed extending the benefit of the Old Pension Scheme to the said two persons only, even though similar orders were passed in favour of the respondents also. The respondents therefore filed the present writ petitions claiming benefit of G.O.Ms.No.34 dated 15.02.2017.

9.The appellants filed counter affidavit disputing the entitlement of the



respondents/writ petitioners to the relief claimed in the writ petition. According to the appellants, as the approval of appointment of the respondents was issued on 09.11.2007 the respondents were not entitled to the benefit of Old Pension Scheme. The appellants submitted that the counting of past service for the purpose of pension would take effect from the date of approval of regular appointment and not from the date of initial appointment. The appellants further relied on the Judgement of this Hon'ble Court dated 08.02.2017 in W.P.(MD).No. 2356 of 2011 and order dated 21.03.2018 in W.P. No. 74 of 2015 and 957 of 2016 in support of their case.

10.The learned Judge after hearing the arguments of the respective counsels and on perusal of the records found favour with the respondents. The appellants aggrieved by the order of the learned Single Judge have preferred the above appeal.

11.The factual narratives stated above are not denied. The pivotal issue raised in the factual matrix of the case is whether the respondents are entitled for pensionary benefits under the Old Pension Scheme or under the New Pension



Scheme notified in G.O.Ms.No. 430 dated 06.08.2004.

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12.The learned Government Advocate submitted that as the respondents appointments were approved only after the completion of the Child Psychology Training programme, the date of appointment should be reckoned from the date of the approval of the appointment dated 09.11.2007 and not from the date of initial appointment which is 07.12.1998, 05.03.2001 and 25.11.1998. The learned Government Advocate further submitted that the respondents would be covered by G.O.Ms.No. 430 dated 06.08.2004 under which the New Pension Scheme was introduced with effect from 01.04.2003. The learned Government Advocate submitted that as the respondents appointments were approved after 01.04.2003 they would be covered by the New Pension Scheme which is Contributory Pension Scheme and not under the Old Pension Scheme. The learned Government Advocate relied on the Judgment of this Hon'ble Court in W.P.(MD). 2356 of 2011 dated 08.02.2017 and the W.A.No. 74 and 957 of 2016 dated 21.03.2018 in support of his submissions.

13.Per contra, the counsel for the respondents submitted that the date for



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determining the entitlement to the Old Pension Scheme would be the date of initial appointment and not the date of approval of appointment as contended by the appellants. The learned counsel further submitted that, in view of the orders passed by this Hon'ble Court in their favour in W.P.No. 30137 of 2010 and 30143 of 2010 dated 29.12.2010, the appellants are bound to extend the benefit of Old Pension Scheme to them. The respondents counsel further submitted that when similarly placed Secondary Grade teachers were extended the benefit of the Old Pension Scheme vide G.O.Ms.No. 34 dated 15.02.2017, the failure to extend the same benefit to the respondents is discriminatory and violative of Article 14 and 21 of the Constitution of India. The learned counsel for the respondents therefore prayed that the writ appeal may be dismissed and the order of the learned Single Judge may be affirmed.

14.We have heard the learned counsel for both sides and we have perused the records.

15.The genesis of the issue relates back to the issuance of G.O.Ms. No.559 dated 11.07.1985, wherein the Government directed not to approve the appointment of higher qualified persons to the post of Secondary Grade teachers.



The said Government order was challenged before this Hon'ble Court in W.A.Nos.

991 to 998 of 1998 and the Hon'ble Division Bench was pleased to uphold the G.O with a direction to the Government to consider the approval of appointments made between 11.07.1995 and 19.05.1998. In pursuance and in compliance of the above said Division Bench order the appellants issued G.O.Ms.No. 155 dated 03.10.2002 giving permission for approval for B.T teachers who were appointed as Secondary Grade teachers during the period from 11.07.1995 to 19.05.1998, subject to their undergoing one month Child Psychology Training. The teachers covered under G.O.Ms.No.155 dated 03.10.2002 on completion of Child Psychology Training were granted approval of appointment with effect from 02.06.2003 in the regular time scale of pay. The respondents as also 19 other secondary grade teachers who were appointed subsequent to the cut off date of 19.05.1998 were not covered by G.O.Ms.No. 155 dated 03.10.2002. A representation was given by the President of Tamil Nadu recognised aided School Managers Association requesting for extension of benefit of G.O.Ms. 155 dated 03.10.2002 to the teachers appointed till the order of the Hon'ble Division Bench dated 29.06.2001. The Government accepted the representation and issued G.O.Ms.No. 150 dated 02.07.2007 extending the benefits of G.O.Ms.No.155 dated 03.10.2002 to the 22 teachers who



were appointed subsequent to the cut off date of 19.05.1998 and before the order of the Hon'ble Division Bench dated 29.06.2001. All the 22 teachers who were covered by G.O.Ms.No.150 dated 02.07.2007 completed their Child Psychology Training and thereafter their appointments were approved by the third appellant vide proceeding dated 05.06.2008 with effect from 09.11.2007.

16.The secondary grade teachers who were covered under G.O.Ms.No. 155 dated 03.10.2002 challenged certain provisions of the said G.O in W.A.Nos. 249, 282, 448, 452 of 2002 and 80 of 2004 before this Hon'ble Court. The Hon'ble Division bench vide order dated 02.04.2004 was pleased to set aside para 7 of the G.O which directed the recovery from the teachers. The G.O was confirmed with respect to other aspects, except that the Government was directed to consider the past service of the teachers for the purpose of pensionary benefits. After the Judgement of the Hon'ble Division Bench, the Government passed G.O.Ms.No.430 dated 06.08.2004 introducing New Pension Scheme and the cut off date for New Pension Scheme was given as 01.04.2003. The teachers covered under G.O.Ms.No. 155 dated 03.10.2002 filed writ petitions before this Hon'ble Court praying for a direction to count their past services prior to completion of Child Psychology



Training for pensionary benefits. This Hon'ble Court in the said writ petitions ordered that the petitioners therein would be entitled to the pension scheme in force prior to 01.04.2003 and that they would not be governed by G.O.Ms.No. 430 dated 06.08.2004. The Government passed G.O.Ms.Ms.413 dated 04.11.2010 implementing the above said order of the Hon'ble Court.

17. One Mr. Jayapal and Mr. Sampasivam, secondary grade teachers whose appointments were approved on completion of training with effect from 09.11.2007 filed writ petitions in W.P.No.29163 and 29164 of 2010 seeking the benefit of the Old Pension Scheme by counting their service from 26.02.1999 to 08.11.2000 (i.e) their date of appointment. This Hon'ble Court passed a common order on 22.12.2010 ordering that they would be entitled to the pension scheme applicable to teachers prior to 01.04.2003 and they would not be governed by G.O.Ms.No.430 dated 06.08.2004. The appellants preferred an appeal before this Hon'ble Court against the said order and the same was dismissed on the ground of delay. Thereafter the appellants on threat of contempt passed G.O.Ms.No.34 dated 15.02.2017 implementing the Old Pension Scheme to Mr. Jayapal and Mr. Sampasivam.



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18. The main ground on which the appellants sought to deny the respondents, the relief claimed by them was that their appointments were approved with effect from 09.11.2007 and therefore they would not be covered by the Old Pension Scheme, but would be covered only, under the New Pension Scheme introduced vide G.O.Ms.No.430 dated 06.08.2004. The appellants in this regard relied on two Judgments of this Hon'ble Court in W.P.(MD).No. 2356 of 2011 dated 08.02.2017 and W.A.No. 74 of 2015 and 957 of 2016 dated 21.03.2018 in support of their submissions.

19. We are not inclined to accept the submissions of the appellant. The Hon'ble Division Bench of this Hon'ble Court in V.Vasanthi Vs. State of Tamil Nadu 2019(4) CTC 865 held that the relevant date for claiming Old Pension Scheme is the date of actual appointment and not the date of approval of appointment. The relevant para from the Hon'ble Division Bench Judgment in Vasanthi's case is extracted hereunder:

“A careful perusal of the above observation made in the said Pallivasal Primary School case would show that even though



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approval of the Appointment of the Teacher, who has undergone Child Psychology Training, will take effect only on completion of such training the past service rendered by such Teacher i.e., service rendered before the completion of such training, is bound to be counted for Pension. In other words, the service period of such teacher commences from the date of the Appointment and not from the date of approval, even though the Monetary benefits start to accrue only from the date of completion of the training. Therefore, for all practical purposes, the date of Appointment is not altered and remain to be the same. Therefore, the date of Approval of Appointment of the Writ Petitioner cannot be construed as the date relevant for considering the applicability of the Pension Scheme and on the other hand, it is the original date on which the Writ Petitioner got appointed that matters for considering as to whether the Writ Petitioner is governed under the Old Pension Scheme or not. At this juncture, it is relevant to note that in G.O.Ms.No.259,



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Finance (Pension) Department, dated 06.08.2003, a Proviso to Rule 2 of the Tamil Nadu Pension Rule 1978, was introduced by way of amendment, wherein and whereby, it is contemplated that the Tamil Nadu Pension Rules, 1978 shall not apply to Government Servants “appointed” on or after 1st April 2003 to services and posts. The word “appointed” referred in the said Proviso cannot be construed to mean approval of such Appointment.

Accordingly, the Writ Appeal is allowed and the Order of the Writ Court is set aside. Consequently, the Writ Petition filed by the Petitioner/Appellant is allowed and the Respondents are directed to permit the Petitioner to continue under the Old Pension Scheme, namely, Teacher Provident Fund Scheme. No Costs”

The said Judgment of the Hon'ble Division Bench squarely covers the issue raised before us.

20. We are of the view that the Judgment relied on by the appellants are not



applicable to the facts of the present case. The Judgment passed in W.P.2356 of 2011 dated 08.02.2017 was by a learned Single Judge of this Hon'ble Court and the same was also long prior to the Division Bench Judgment in Vasanthi's case. As regards the other Judgment relied by the appellants dated 21.03.2018 we find that the issue therein was with reference to disbursement of salary from the date of original appointment and the Hon'ble Division Bench in the light of the explicit condition contained in G.O.Ms.No.155 dated 03.10.2002 held that the disbursement of salary from the date of original appointment order could not be sustained as the G.O specifically stated that the salary would be paid from the date of completion of training, after approving the said appointment. The Hon'ble Division Bench Judgment is with reference to disbursement of salary and therefore has no relevance to the present issue.

21. We are therefore of the view that the issue raised in this writ appeal is covered by the Judgment of the Hon'ble Division Bench in V.Vasanthi's case. The contention of the respondent that the relevant date would be the date of approval of appointment cannot be countenanced and hence, the same stands rejected.



22. It is pertinent to note here that two of the respondents in W.A.No.1574 and 1577 earlier filed writ petitions in W.P.No. 30137 of 2010 and 30143 of 2010 wherein the learned Single Judge of this Hon'ble Court was pleased to pass the following order,

“In view of the said submission, it is ordered that the petitioners are to be extended the Pension Scheme applicable to the Teachers appointed prior to 01.04.2003 and they are not governed under G.O.Ms.No.430 Finance(Pension) Department date 06.08.2004. If the pensionary contributions if any, payable by the petitioners as per Tamil Nadu Pension Rules 1978 are not paid till date by the petitioners, it is open to the respondents to claim the same from the petitioners. The writ petitions are ordered in the above terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

In view of the same, the respondents 1 to 3 are directed to consider the representation of the petitioner dated 24.12.2010 in the light of the above said paragraphs and



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pass appropriate order extending the Pension Scheme not as per G.O.Ms.No.430 Finance(Pension) Department dated 06.08.2004 but in terms of paragraph No.9 of the above said order and such order shall be passed within a period of eight weeks from the date of receipt of a copy of this order”

In spite of the said orders, the appellants did not consider the respondents claim. What is more appalling is that the second appellant in his proceedings dated 21.03.2016 recommended that the benefit of G.O.Ms.No.413 can be extended to the 22 Secondary Grade teachers covered under G.O.Ms.No.150 dated 02.07.2007 in spite of such recommendation the appellants restricted G.O.Ms.No.34 dated 15.02.2017 to the said two persons thereby driving the respondents to this 2nd round of litigation.

In the light of the above facts we find absolutely no infirmity in the orders by the learned Single Judge and hence the same is confirmed. In fine the Writ Appeals are dismissed. Four months time is granted for the appellants to extend their benefits to the writ petitioners, if not already extended.



[S.V.N.,J.]

[N.M.,J.]

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.06.2022

To

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
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- 2.The Director of Elementary Education,
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- 3.The District Elementary Educational Officer,
Ariyalur District.
- 4.The District Elementary Educational Officer,
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- 5.The Secretary,
Gandhi Kalanilayam Aided Middle School,

22/24



Veerakkan, Senthuraai Union,
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6.The Secretary,
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Sembanarkoil Union,
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7.The Secretary,
Sivan Aided Elementary School,
Sembanarkoil Union,
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S.VAIDYANATHAN,J.

and
N.MALA ,J.

dsn

PRE-DELIVERY JUDGMENT IN W.A.Nos. 1573, 1574 and 1577 of 2021
and
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