



W.P. No.11248 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.11248 of 2020

S.A.Gobikrishnan

... Petitioner

Vs.

- 1.The Secretary,  
Health and Family Welfare Department  
Secretariat, Fort St. George,  
Chennai – 600 009.
- 2.The Director of Public Health  
and Preventive Medicine,  
359, Anna Salai, DMS Complex,  
Teynampet, Chennai – 600 009.
- 3.The Deputy Director of Health Service,  
Collectorate Campus, Salem – 636 001.
- 4.The Deputy Director of Health Service,  
Collectorate Campus, Namakkal District.
- 5.The Block Medical Officer,  
The Government Primary Health Center  
Erayamangalam, Tiruchengode Taluk,  
Namakkal District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents herein to place the petitioner under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme) and allot G.P.F. Number to the petitioner based on



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his initial date of appointment by the proceedings of the Deputy Director of health Services, Salem vide Letter No.R.No.2180/E7/2002 dated 16.08.2002 as Pharmacist, which is applicable to those who entered into service prior to 01.04.2003 and extend all the benefits.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.C.Kathiravan  
Special Government Pleader

### ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents herein to place the petitioner under the Tamil Nadu Pension Rules, 1978 (Old Pension Scheme) and allot G.P.F. Number to the petitioner based on his initial date of appointment by the proceedings of the Deputy Director of Health Services, Salem vide Letter No. R.No.2180/E7/2002 dated 16.08.2002 as Pharmacist, which is applicable to those who entered into service prior to 01.04.2003 and extend all the benefits.

2. The petitioner was appointed as temporary Pharmacist on contract basis by order dated 16.08.2002 and accordingly he joined as temporary Pharmacist on 20.08.2002 in the Primary Health Center, Nainampatty, Nainampatty Block, Salem District.



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3. He had been continuously working in that capacity, subsequently by order dated 18.08.2006 of the 3<sup>rd</sup> respondent, the petitioner was brought under regular time scale of pay of Rs.4500-125-7000 with effect from 20.08.2004 accordingly he has been continuously working.

4. Now the grievance of the petitioner is that, though the petitioner had been appointed in 2002 i.e. before 01.04.2003, from that date a New Pension Scheme has been brought in, he has not been put under Old Pension Rule as those employees who got appointed and regularised prior to 01.04.2003 would be entitled to get the pensionary benefits under Old Pension Scheme. Therefore, in order to get the Old Pension Scheme from the New CPS, the petitioner had given a representation on 23.07.2020 and the said representation since has not been considered, he has approached this Court by filing the present writ petition.

5. Reiterating the aforesaid, the learned counsel appearing for the petitioner would submit that, if a direction is given to the respondents to consider the representation of the petitioner dated 23.07.2020 and pass orders thereon on merits and in accordance with law, the petitioner would be satisfied.



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6. On the other hand, Mr.C.Kathiravan, learned Special Government Pleader appearing for the respondents would submit that, the petitioner in fact was initially appointed as contract employee subsequently as per the conditions of contract, after putting two years service as contract employee, he has been brought under time scale of pay as per the instruction issued under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and therefore he has been brought under time scale of pay. Even in the order dated 18.08.2006, this has been specifically mentioned, having accepted the said order since the petitioner has been working all along and now turn around and say that from temporary basis only he has been regularised and he ought to have been regularised with effect from his date of initial engagement as contract employee as on 20.08.2002 and accordingly Old Pension Scheme shall be implemented to the petitioner. Therefore the learned Special Government Pleader for the respondents opposing the plea raised by the petitioner and he seeks dismissal of the writ petition.

7. I have considered the said rival submissions made by both sides and have perused the materials placed before this Court.



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8. Insofar as the claim made by the petitioner that, whether he is entitled to get the pension under Old Pension Scheme by taking his initial date of appointment as 20.08.2002 or not based on the service conditions under which he was initially appointed as contract employee subsequently he has been regularised under regular time scale of pay, has to be considered only by the respondents for which the representation given by the petitioner dated 23.07.2020 can be considered and disposed of accordingly on merits. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the respondents to consider the representation of the petitioner dated 23.07.2020 and pass orders thereon on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

9. With this direction, this Writ Petition is disposed of. No costs.

12.09.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl



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R.SURESH KUMAR, J.

Sgl

To

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