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W.P.No. 35326 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 35326 of 2016
and
W.M.P.No. 30413 of 2016

Mr. J. Easwaran

... Petitioner

Vs.

1. The Secretary to Government,
Government of Tamilnadu (Education),
Fort St. George,
Chennai.
2. The Commissioner,
Department of Government Information Centre,
Guindy,
Chennai – 600 025.
3. The Director,
Directorate of School Education,
D.P.I. Campus,
College Road,
Chennai – 600 006.
4. The Director,
Department of Elementary Education,
O/o. The Department of Elementary Education,
Chennai – 600 006.
5. The District Elementary Educational Officer,
Office of the District Elementary Education,
Madurai.



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6. The Additional Assistant Elementary Educational Officer,
Office of the Additional Elementary Education,
Kottampatti,
Madurai District – 625 103.

7. The Accountant General,
Pay & Accounts,
Teynampet,
Chennai – 600 018,
Tamilnadu.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 18.04.2016 and 04.08.2016 more particularly by the fourth respondent.

For Petitioner	: Mr. G. Thalaimuthutharasu
For Respondents	: Mrs. S. Mythreyechandru Special Government Pleader for R1 to R6

ORDER

The relief sought for in the present writ petition is to direct the respondents to consider the representations of the writ petitioner dated 18.04.2016 and 04.08.2016, more particularly by the fourth respondent and pass orders.

2. The petitioner states that he was initially appointed on 28.01.2001 as Secondary Grade Teacher in Rowther Sahib High School Teriruvelli, Ramnad District which is an aided institution. Subsequently, the petitioner participated



in the process of selection independently and got selected and appointed as secondary grade teacher in T. Vellaiyapuram, Kadaladi Panchayat Union Primary School and joined on 10.11.2004.

3. The learned counsel for the petitioner made a submission that the petitioner was appointed in the year 2001 in the aided institution and thereafter he participated in the process of selection and joined into Government services. Thus, he is eligible for the pension under the old pension Rules namely the Tamil Nadu Pension Rules, 1978.

4. The learned counsel for the petitioner made a submission that the petitioner made several representations and the authorities have not replied to the same and thus the present writ petition has been filed.

5. In this regard, merely directing the respondents to consider the representations would do no service to the cause of justice. The writ petition is pending for the past about six years. In the event of issuing a direction to consider the representation would result in filing of another writ petition by the writ petitioner since the learned Special Government Pleader raised an objection regarding the eligibility of writ petitioner to avail the benefit under



the old Tamil Nadu pension Scheme and thus, this court is of the opinion that directing the respondents to consider the representation will not serve any purpose.

6. Regarding the eligibility, the learned Special Government Pleader appearing on behalf of the writ petitioner mainly contended that the writ petitioner admittedly joined into Government Services on 10.11.2004 i.e. after the cut of date, 01.04.2003. Thus, he is entitled for the pension under the new pension scheme that is contributory pension scheme. The petitioner has resigned his job from the aided school and joined as a fresh entrant in the Government services. The petitioner has not obtained any prior permission or approval from the education department regarding to participate in the process of selection or otherwise. Therefore, the petitioner resigned his job from the aided school and thereafter took an appointment into Government Services and thus, the petitioner is to be considered only under the contributory pension scheme and is not eligible to avail the benefits under the Tamil Nadu Pension Rules, 1978. Since the new pension scheme was introduced from 01.04.2003 and the petitioner joined into Government services on 10.11.2004, he is falling under the contributory pension scheme and thus the writ petition is to be rejected.



7. This Court is of the considered opinion that the issues raised in the regard are no more res integra. This Court has elaborately considered the issue in W.P.Nos. 5674 and 5675 of 2014 dated 08.07.2022. In the said judgment, the judgment passed by the earlier Hon'ble Division Bench and the subsequent orders were also considered.

8. The relevant portion of the said order reads as under:

'9. Rule 41 of the Tamil Nadu State and Subordinate Services provides that a member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of his resignation but all his previous services under the Government. The re-appointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply and on such re-appointment, he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order.

10. Even as per the Rule 23 of the Tamil Nadu Pension Rules, resignation from a service rendered by the petitioner prior to her resignation cannot be taken into account for the purpose of grant of pension as well.

11. As per amendment to Fundamental Rule 26, the periods prior to the discharge from service shall count for the purpose of future increment in the time scale of pay of that post. For counting the service for the purpose of future increment in the time scale of pay of that post, the petitioner should



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have been discharged (relieved) from the post. But in these cases, the petitioners, on their own volition, have tendered resignation prior to joining the new post and it was duly accepted by the authority. Hence the petitioners are not eligible for inclusion of the service rendered prior to their resignation, for the purpose of re-fixation of scale of pay and pension benefits as per Rule 41 of the Tamil Nadu State and Subordinate Services and Rule 23 of the Tamil Nadu Pension Rules.

12. The petitioners referred the case of one Rev.Fr.Stanislaus M. Fernanadez. The said case cannot be made applicable to the petitioners, since the individual in that case was relieved from the earlier service prior to joining the later service. But in the petitioners case, they had resigned the post and as such they are not entitled for the relief on par with the lines of Rev. Fr. Stanislaus M. Fernanadez.

13. Even in the case of Thiru. M. Jayaraj, pursuant to the orders passed in W.A.Nos. 291 and 292, the Government orders issued in G.O.Ms. No. 181 School Education dated 09.01.1997. In the said case also, the individual Thiru. M. Jayaraj had not resigned his post but was relieved from earlier service prior to join the later service. Thus, the said case is also not applicable to the case of the writ petitioners as they had resigned from the earlier post.

14. The grounds raised by the petitioners are applicable for the cases, where, the employee has not resigned the post but relieved properly. In the present cases, the petitioners at their own volition, resigned their post and joined as fresh appointees in the Panchayat Union School and accordingly, their scale of pay was fixed.

15. Under these circumstances, the case of writ petitioners are covered under Rule 41 of the



Tamil Nadu State and Subordinate Services Rules and Rule 23 of the Tamil Nadu Pension Rules and therefore, the petitioners are not entitled for the relief as such sought for in the present writ petitions.'

9. In view of the fact that the petitioner has joined into Government Services on 10.11.2004, the petitioner is eligible to avail the benefit under the new pension scheme namely the contributory pension Scheme and he is not eligible to get the benefits under the Tamil Nadu Pension Rules 1978. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-Speaking order

To

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S.M.SUBRAMANIAM, J.

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