



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

Coram:

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.28410 of 2021

1. S.Dhanasekaran
S/o. M. Sarangapani
New No. 40, Old No. 8,
First Street N. S. Garden,
R. A. Puram, Chennai - 28.
2. J. Muthukumaran
S/o. A. Jayaraman
No. 3/492 Sri Venkateswara Nagar
III Street Kottivakkam,
Chennai - 600 041.
3. Mr. S. Joseph Jeyasingh,
S/o. V. Sabarianantham,
No. 32-A Ramalingam Main Street,
Gandhi Nagar, Avadi,
Chennai - 600 054.
4. K. Ramesh,
S/o. V. Kothandam,
No. 4/92-67 Magazine Road,
St. Thomas Mount,
Chennai - 600 016.
5. K. Kamalakannan,
S/o. R. Kanniappan,
No. 37 Deivanagar 3rd Street,
Tambaram West Chennai - 45.
6. N. Shanthidevi,
D/o. B. Narasiman
No. 367 Lloyds Road
Triplicane Chennai - 5.
7. S. Nesamani,
S/o. S. K. Sivasubramanian,
Plot No. 2 Nelson Mandela Street,
Chittalapakkam,
Chennai - 4.
8. J. Gangadaran,
S/o. Late. Jayaraman,
New No. 9, Old No. 50,
Anbilnarmalingam Street,



Velacherry,
Chennai - 42.

..Petitioners

Vs

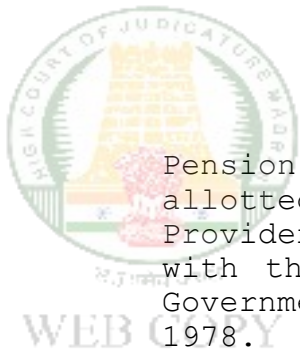
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1. Union of India,
Rep by its Secretary,
Department of Pension
Government of India,
Lok Nayak Bhawan,
Khan Market,
New Delhi.
2. The State of Tamil Nadu,
Rep by its Secretary to Government,
Finance (Pension) Department ,
Fort St. George ,
Chennai - 600 009.
3. Teachers Recruitment Board,
Rep by its Chairman,
EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai - 600006.
4. Greater Chennai Corporation,
Rep by Commissioner,
Education Department,
Rippon Buildings Chennai - 3.
5. The Accounts Officer,
Education Department,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.
6. The Education Officer,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

..Respondents

Prayer:

This Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus to direct the 2nd respondent to issue an Office Memorandum on the lines of the Office Memorandum issued by the 1st respondent dated 17.2.2020 stating that for Government Servants whose selection process for the vacant posts which had arisen before 1.4.2003 had been completed before 1.4.2003 but the appointment orders were actually issued only after 1.4.2003 such Government Servants will be governed by the Tamil Nadu



Pension Rules, 1978 and the said Government Servants will be allotted General Provident Fund Account numbers and General Provident Fund should be deducted from their salaries along with the arrears by following the same procedure as for the Government Servants governed by the Tamil Nadu Pension Rules, 1978.

For Petitioner ..	Ms.C.Uma
For Respondents..	Mr.Subbu Ranga Bharathi, AC.G.S.C for R1 Mr.G.Nanmaran,Spl.G.P. for R2 Mr.C.Kathiravan for R3 Mr.RajaShrinvas, Standing Counsel for R4 to R6.

O R D E R

The petitioners have filed the present writ petition praying to direct the 2nd respondent to issue an Office Memorandum on the lines of the Office Memorandum issued by the 1st respondent dated 17.2.2020 stating that for Government Servants whose selection process for the vacant posts which had arisen before 1.4.2003 had been completed before 1.4.2003 but the appointment orders were actually issued only after 1.4.2003 such Government Servants will be governed by the Tamil Nadu Pension Rules, 1978 and the said Government Servants will be allotted General Provident Fund Account numbers and General Provident Fund should be deducted from their salaries along with the arrears by following the same procedure as for the Government Servants governed by the Tamil Nadu Pension Rules, 1978.

2. The case of the petitioners herein is that they participated in the selection for recruitment to the post of B.T.Assistant conducted by the Teachers Recruitment Board on 02.04.2002. The petitioners were declared successful in the examination and according to them, they became eligible for appointment to the post of B.T.Assistant before 01.04.2003. According to these petitioners, the candidates who participated in the Teachers Recruitment Board examination to the post of B.T.Assistant, had received appointment orders as B.T.Assistant in Government Schools before 01.04.2003 and were brought under the Tamilnadu Pension Rules, 1978. But unfortunately, as far as the B.T. Assistants in Corporation Schools, there was a delay in issuance of appointment orders and the petitioners herein received appointment orders only on 05.06.2003, appointing them in Corporation Schools.

3. In view of the appointment of these petitioners after 01.04.2003, these petitioners were brought under the



Contributory Pension Scheme in terms of the Policy decision of the Central Government implemented by the State of Tamilnadu. The Government of Tamilnadu has also issued G.O.Ms.No.304 Finance Department, dated 27.05.2004, in this regard.

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4. According to the petitioners, the Delhi High Court in W.P.(C).No.756/2019 in the case of Dr.Ravinder Singh Brar vs. Union of India, has held that the candidates who participated in the selection in 2003 would be covered under the old pension scheme, vide its order dated 28.01.2020. A subsequent decision of the Delhi High Court has also taken a similar view. It appears that the orders of the Delhi High Court were taken on appeal in S.L.P.No.173/2021 by the Union of India, but the same was dismissed by the Hon'ble Supreme Court on 04.02.2021.

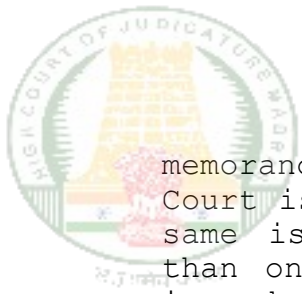
5. As far as the State of TamilNadu is concerned, further G.O.Ms.No.259 dated 06.08.2003 was issued providing new account number under Contributory Pension Scheme for the B.T. Assistants working in the Corporation Schools appointed after 01.04.2003. The petitioners are therefore, constrained to challenge the validity of G.O.Ms.No.259 dated 06.08.2003 in W.P.No.9027 of 2019. One other writ petition was also filed in W.P.No.9035/2019.

6. The above writ petitions were posted for admission before the Division Bench of this Court and the Division Bench dismissed the writ petitions, even at the admission stage on 10.06.2019. As against the order of the Division Bench, these petitioners filed SLP in Civil Nos.17631- 17632 of 2019 before the Hon'ble Supreme Court of India. Initially, the Hon'ble Supreme Court issued notice to the respondents. After notice, on behalf of the Government, a counter affidavit was filed and subsequently, the Hon'ble Supreme Court vide its order dated 22.11.2021, dismissed the S.L.P.

7. These petitioners on the basis of the law laid down by the Hon'ble Supreme Court filed review petition on the ground that the non-speaking rejection order in the S.L.P. is not a bar for preferring review petition against the orders of dismissal passed by the Division Bench of this Court in the writ petitions, at the admission stage.

8. According to the petitioners, however the doctrine of res judicata would not apply if the S.L.P is rejected by a non-speaking order and therefore, the review petition to review the order of the Division Bench dated 10.06.2019 is proposed to be filed in the matters.

9. As a matter of fact, it is not clearly stated as to whether the review petition has already been filed or not. While the matter stood thus, the present writ petition has been filed for issue of Mandamus on the lines of the office



memorandum issued by the 1st respondent dated 17.02.2020. This Court is unable to countenance the entire writ petition as the same is highly misconceived and not maintainable for more than one reason. First of all, there cannot be any Mandamus issued directing the Government, to adopt a particular policy decision in favour of these petitioners. Even otherwise, the facts as narrated above would disclose that the petitioners' earlier attempt for the same cause of action and relief has not been successful as the Division bench of this Court dismissed their writ petitions on 10.06.2019. According to the petitioners, there is a proposal to file a review as against the order of the Division Bench.

10. While the review application is sought to be filed against the order of the Division Bench of this Court, refusing the relief earlier vide its order dated 10.06.2019, if at all the petitioners have any grievance in respect of the subject order, it is for them to work out their remedies before the Division Bench. In such circumstances, the present writ petition is not at all maintainable and it is a gross abuse of process of the Court. What the petitioners could not achieve earlier before the Division Bench directly are now trying to achieve indirectly by filing the present writ petition, which in the opinion of this Court, is to be rejected outright as not maintainable.

11. For the above said reasons, the Writ Petition is dismissed as not maintainable at the admission stage itself. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. Union of India,
Rep by its Secretary,
Department of Pension
Government of India,
Lok Nayak Bhawan,
Khan Market,
New Delhi.
2. The State of Tamil Nadu,
Rep by its Secretary to Government,
Finance (Pension) Department ,
Fort St. George ,
Chennai - 600 009.



WEB COPY

3. Teachers Recruitment Board,
Rep by its Chairman,
EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai - 600006.
4. Greater Chennai Corporation,
Rep by Commissioner, Education Department,
Rippon Buildings Chennai - 3.
5. The Accounts Officer,
Education Department,
Greater Chennai Corporation,
Rippon Buildings, Chennai - 600 003.
6. The Education Officer,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

+1 cc to Ms.C.Uma, Advocate Sr.NO. 877
+1 cc to Government Pleader Sr.NO. 1656

W.P.No.28410 of 2021

pl(CO)
A.SK(04.02.2022)