



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.02.2022
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.21697 of 2019

A.Antony Xavier ... Petitioner

-vs-

1.The Principal Secretary/
Commissioner of Treasuries & Accounts,
Guindy, Chennai-600 025.

2.The Director of Elementary Education,
College Road, Chennai.

3.The Additional Assistant Elementary
Educational Officer, Ponnamaravathi,
Pudukottai District-622 407.

4.The Secretary,
Palaniappa Aided Elementary School,
Valayapatti, Pudukottai District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the Impugned Order in Final Authorization No.2551/CPS/2018 dated 10.12.2018 on the file of the 1st respondent and quash the same and further directing the respondents to pay the pension to the petitioner with interest under the Teachers Provident Fund Scheme.

For Petitioner : Mr.K.Vinokaran
for Mr.G.Prabhu Rajadurai
For RR1 to 3 : Mr.V.Om.Prakash, Government Advocate
For R4 : No appearance

O R D E R

The order dated 10.12.2018 granting the pensionary benefits under the new Contributory Pension Scheme is questioned by the writ petitioner.

2.The writ petitioner is the husband of Smt.K.Sahayamary, who was working as a Secondary Grade Teacher in the 4th respondent - School and expired on 13.11.2017. The petitioner, being the legal heir of the deceased employee, claims that his wife is entitled for the Old Pension Scheme.



3.The learned counsel for the petitioner states that the Government issued G.O.Ms.No.413 (Finance Department), dated 04.11.2010 granting the benefit of Old Pension Scheme in respect of similarly placed employees like that of the wife of the writ petitioner. Thus, the said benefit is to be extended to the writ petitioner.

4.The learned Government Advocate appearing on behalf of respondents 1 to 3 objected the said contention by stating that the wife of the petitioner contributed for the Contributory Pension Scheme and she was not enrolled under the Old Pension Scheme. When the employee herself contributed under the new Contributory Pension Scheme, the legal heirs cannot seek the benefit of Old Pension Scheme, which is not applicable otherwise in respect of the employee, who is no more.

5.This Court is of the considered opinion that legal heirs are entitled to claim the benefit attached with reference to the rights accrued. For claiming of new rights, the legal heirs may not have *locus standi* to agitate.

6.As far as the service rights are concerned, the employee alone is competent to claim such right and only in respect of consequential benefits, if any arose with reference to the rights already accrued, then the benefit can be settled in favour of the legal heirs. In the present case, the 1st respondent in clear terms stated as follows in para 4 of the counter affidavit:-

"4.Regarding the averment made by the petitioner in paragraph 4 of the affidavit it is submitted that the wife of the petitioner was a regular subscriber to the Contributory Pension Scheme. It is further submitted that introduction of contributory pension scheme is the policy decision of the Government which has been implemented taking into account some factors such as financial position of the Government and the number of Government employees in the State etc. The wife of the petitioner was very well aware of the facts and circumstances under which she was enrolled under the new Contributory Pension Scheme. Notwithstanding the above said fact the proposal for sanction of Final Authorisation of Contributory Pension Scheme of his deceased wife duly executing an undertaking that he will not claim any further due for pension/family pension settlement / benefits in future under Contributory Pension Scheme has been received from the petitioner. Since the application for CPS Final Settlement Authorisation for Tmt.K.Sagayamary (Late), S.G.Teacher, Palaniappa Aided Elementary School, Valayapatti, Pudukottai was



received in complete shape with the required undertaking duly signed by the petitioner, the same was processed by Commissionerate of Treasuries and Accounts and necessary authorization was issued vide CPS Authorisation No.2551/CPS/2018, dated 10.12.2018."

7.In view of the fact that the wife of the petitioner was a member of new Contributory Pension Scheme and she contributed under the said scheme till her date of death, this Court is of the considered opinion that the benefits accrued under the Contributory Pension Scheme alone can be paid to the writ petitioner, which have already been sanctioned by respondents 1 to 3 and therefore, the petitioner is not entitled for any other benefits under the Old Pension Scheme or otherwise.

8.With the above observations, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal Secretary/
Commissioner of Treasuries & Accounts,
Guindy, Chennai-600 025.

2.The Director of Elementary Education,
College Road, Chennai.

3.The Additional Assistant Elementary
Educational Officer,
Ponnamaravathi,
Pudukottai District-622 407.

+1cc to Mr.G.PRABHU RAJADURAI, Advocate Sr.No.6410

+1cc to Special Government Pleader Sr.No.6449

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