



W.P.(MD).No.25137 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.25137 of 2019

and

W.M.P.(MD).Nos.21735 of 2019 and 687 of 2020

M.Thirumugam Thiresa

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by it's Secretary to Government,
School Education Department,
Secretariat,
Chennai – 9.
- 2.The Director of School Education,
O/o. the Director of School Education,
D.P.I. Campus,
College Road,
Chennai – 6.
- 3.The Chief Educational Officer,
O/o. the Chief Education Office,
Dindigul,
Dindigul District.
- 4.The District Educational Officer,
O/o. the District Education Office,
Vedachandur,
Dindigul District.



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5.The Secretary,
Loyola Higher Secondary School,
Hanumantharayankottai,
Dindigul,
Dindigul District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the fourth respondent in his proceedings in ஓ.மு.எண்.808/அ1/2018 dated 21.06.2019 and quash the same as illegal and consequently to direct the respondents 3 and 4 to continue the petitioner under the old pension scheme based on the date of initial appointment as Secondary Grade Assistant on 04.06.1997 in the light of judgment reported in 2019(4) CTC 865 in the case of V.Vasanthi Vs. The State of Tamil Nadu represented by its Secretary, Finance (Pension) Department within the period that may be stipulated by this Court.

For Petitioner	: Mr.C.Venkatesh Kumar for M/s.Ajmal Associates
For R-1 to R-4	: Mr.V.Nirmal Kumar, Government Advocate.
For R-5	: Fr.V.John Kennedy for M/s.Fr.Xavier Associates



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ORDER

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The petitioner's claim for pension under the Old Pension Scheme came to be rejected through the impugned order, dated 21.06.2019, stating that since the petitioner had completed the mandatory training only on 31.05.2003, which date falls after the cut-off date of 01.04.2003, she is eligible only for the Contributory New Pension Scheme.

2. The petitioner herein was appointed as a Secondary Grade Assistant on 23.03.1998 with effect from 04.06.1997. Her appointment came to be approved by the fourth respondent herein on 24.06.2003 with effect from 01.06.1997. Earlier, the proposal for approval of the petitioner's appointment was rejected on the ground that the petitioner was higher qualified, which is contrary to G.O(Ms)No.559 School Education Department, dated 11.07.1995. The challenge to the said Government Order was dismissed by this Court on 19.05.1998.

3. Thereafter, the first respondent herein had issued G.O(Ms)No.155 School Education (D2) Department, dated 03.10.2002, making one month Child Psychology Training for the higher qualified teachers as mandatory. The petitioner had completed the said training from 02.05.2003 to 31.05.2003. Her



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service was regularized with effect from 01.06.2003 into regular time scale of pay and she was subsequently promoted as BT Assistant (History).

4. The only ground on which the petitioner's request, for being brought under the Old Pension Scheme, has been rejected is that she had completed her Child Psychology Training only on 31.05.2003 and since the cut-off date prescribed for appointment for the purpose of Contributory New Pension scheme is 01.04.2003, she is not entitled for the benefit.

5. The learned Government Advocate placed reliance on the counter-affidavit and submitted that since the petitioner herein had completed her Child Psychology Training only on 31.05.2003, she cannot claim the benefit of the Old Pension Scheme.

6. This issue has already been dealt by the Hon'ble Division Bench of this Court in the case of ***V.Vasanthi Vs. The State of Tamil Nadu represented by Secretary, Finance (Pension) Department, Fort St. George, Chennai and others***, reported in ***(2019) 4 CTC 865*** in the following manner:

“12.A careful perusal of the above observation made in the said Pallivasal Primary School case would show that even though approval of the appointment of the teacher,



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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, 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.”



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7. The aforesaid extract is self-explanatory. As such, the crucial date to be taken into consideration for the purpose of determining the applicability of the pension scheme would be from the date on which the concerned employee was originally appointed. Since the petitioner's appointment has been approved by the educational authorities with effect from 01.06.1997, the stand taken by the respondents in the impugned order cannot be sustained.

8. In the result, the impugned order, dated 21.06.2019, on the file of the fourth respondent is quashed. Consequently, there shall be a direction to the third and fourth respondents herein to bring the petitioner herein under the Old Pension Scheme, based on the petitioner's initial appointment as Secondary Grade Assistant with effect from 01.06.1997, forthwith.

9. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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M.S.RAMESH, J.

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