



W.P.No.29839 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.29839 of 2010

and

M.P.No.1 of 2010

R.Vijayan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Finance Pension Department,
Fort St.George,
Chennai -9.
2. The Director of Elementary Education,
College Road,
Chennai -6.
3. The District Elementary Educational Officer,
Tanjore District.
4. The Assistant Elementary Educational Officer,
Thiruvaidaimarudur, Tanjore District.
5. The Secretary,
Aided Primary School,



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A Semmangudi,
Kumbakonam Taluk,
Tanjore District 612 602.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaration or any other Writ or order or direction in the nature of a Writ, declaring the New Contributory Provident Fund Scheme in G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2003 and subsequent G.O.Ms.No.304 dated 27.05.2004 is not applicable to the petitioner because it cannot be given retrospective operation and direct the respondent to restore the Teachers Provident Fund (Family Pension) Scheme and Account No.339452.

For Petitioner : Mr.S.N.Ravichandran

For R1 to R4 : Dr.T.Seenivasan, Spl.G.P

For R5 : Mr.K.Sathishkumar

ORDER

The Writ Petition has been filed to declare the New Contributory Provident Fund Scheme in G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2003 and subsequent G.O.Ms.No.304 dated 27.05.2004 are not applicable to the petitioner.



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2. The petitioner was appointed as Secondary Grade Teacher in the 5th respondent school on 03.04.2003. The appointment order was also approved by the third respondent. He is eligible for the Teacher Provident Fund and he was enrolled as TPF No.339452. All of a sudden, the petitioner's enrolment number was cancelled and deductions were stopped from the month of February 2010. As per the G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, the Tamil Nadu Pension Rules 1978 was amended. As per the abovesaid G.O, the Tamil Nadu Pension Rules shall not apply to the Government Servants who were appointed on or after 01.04.2003. The new Contributory Provident Fund Scheme was notified only by G.O.Ms.No.304 dated 27.05.2004.

3. On a perusal of records, it revealed that the petitioner was appointed as Secondary Grade Teacher in the fifth respondent school in the vacancy post that arose on 01.02.2003. Tmt.J.Jaya, who was working as Secondary Grade teacher, was promoted to the post of Headmistress. In the said vacancy, the petitioner was appointed and subsequently, his appointment was also approved by the third respondent vide order dated 19.04.2004.



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4. In a similar issue, this Court held that though G.O.Ms.No.259 dated 06.08.2003 came into effect from 01.04.2003 and the old pension scheme will not apply to the Government service who are appointed on or after 01.04.2003, the process of appointment was started from the date of vacancy and ended with the issuance of appointment order. In the above said G.O., the new Pension Scheme has been brought in with retrospective operation. Because of the retrospective operation of the New Pension Scheme, no employer and employee would have forethought that appointments made after 01.04.2003 would not be eligible for the Old Pension Scheme.

5. As stated supra, the petitioner was appointed in the vacancy arose before 01.04.2003 and he was enrolled as TPF.No. 339452. Therefore, this Court is of the view that G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2003 and the subsequent G.O.Ms.No.304 dated 27.05.2004 are not applicable in the case of the petitioner. Further, the respondents are directed to restore the Teachers Provident Fund (Family Pension) Scheme and TPF No.339452 in respect



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of the petitioner and permit him to continue under the Provident Fund (Family Pension) Scheme.

6. With the abovesaid direction, the Writ Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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(2/2)

mfa

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order



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