IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.08.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1300 of 2023
and C.M.P.No.12922 of 2023

1.The Commissioner,
Government Date Centre,
Guindy, Chennai - 600 025.
(Now 5th Floor Perasiriyar
K.Anbazhagan Maaligai
No. 571, Anna Salai, Nandanam, Chennai 035.)

2.The Additional Assistant,
Elementary Education Officer,
Tiruvannamalai District.

3.The Head Master,
Panchayat Union Middle School,
Andipalayam, Tiruvannamalai Panchayat Union,
Tiruvannamalai District. .. Appellants

Vs.

A.Dhamayanthi
No. 73, G Muthuvinayakarkovil street,
Thiruvannamalai Town, Arani,
Tiruvannamalai District. .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 30.11.2021 passed by this court in W.P.No.16562 of 2010.

For Appellants	: Mr.Silambannan, Additional Advocate General assisted by Mrs.Mythreye Chandru Special Government Pleader
For Respondent	: Ms.G.Sumitra

JUDGMENT

[Judgment of the Court was delivered by R.MAHADEVAN, J.]

Challenging the order dated 30.11.2021 passed by the learned Judge in W.P.No.16562 of 2010, the present appeal has been filed by the appellant.

2. It is the case of the appellants that the respondent was initially appointed as Assistant in Natesan Pillai Aided Primary School, Tiruvannamalai, on 09.04.2003 and ASTPF account no.337865 was assigned to her. Subsequently, the respondent resigned the said post and joined duty as a Secondary Grade Teacher in Panchayat Union Middle School, Andipalayam, Tiruvannamalai, through employment exchange on

16.07.2009. Thereafter, the respondent sent a representation to the second appellant to open a new TPF (Teacher Provident Fund) account and requested to transfer the amount already lying in ASTPF account no.337865 to the newly created TPF account. As per G.O.(Ms).No.259, Finance (Pension) Department, dated 06.08.2003, the employees who are recruited on or after 01.04.2003 will be covered under the New Contribution Pension Scheme (CPS). In view of the same and also based on the standing instructions issued by the authorities in Na.Ka.No.10994/D/2006 dated 18.01.2006, the representation of the respondent was rejected by the first appellant on 15.02.2010. Aggrieved by the same, the respondent filed a writ petition in WP.No.16562 of 2010, which was allowed and the order dated 15.02.2010 passed by the first appellant was set aside by the learned Judge, by order dated 30.11.2021, the relevant passage of which is usefully extracted below:

> *"4. The learned Additional Government Pleader appearing for the respondents would submit that the request of the petitioner for transferring the amount which is already lying in ASTPF A/c. No.337865 of the petitioner to the new TPF account to be created for the petitioner will be considered and new TPF account will be created for the petitioner.*
>
> *5. In view of the fact that the petitioner is not claiming pension under old Pension Scheme and has only request is to transfer*

> *the amount, which is already lying in ASTPF A/c No.337865 of the petitioner to the new TPF Account to be created for the petitioner and the reason stated by the respondent is contrary to the request made by the petitioner, the impugned order is set aside. Consequently, the Commissioner, Government Data Centre, Guindy, Chennai, the first respondent herein is directed to pass order afresh in the light of the observation made hereinabove, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of the order. No costs."*

Challenging the aforesaid order, the appellants / Department are before this court with the present appeal.

3. According to the learned Additional Advocate General appearing for the appellants, in view of G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2003, and G.O.Ms.No.304 Finance Department dated 27.05.2004, the respondent / writ petitioner is not eligible for the old pension scheme (PUTPF), since she has joined the service as secondary grade teacher only after 01.04.2003 in Natesan Pillai Private Aided School i.e., 09.04.2003 and therefore, a new TPF account cannot be created for the respondent / writ petitioner and she is entitled only for CPS. In such circumstances, transfer of funds lying in ASTPF account no.337865 of the respondent / writ petitioner to the new TPF account to be created for her, as directed by the learned Judge, cannot be possibly performed by the

appellant authorities, and the doctrine of impossibility is applicable to the facts of this case. However, the learned Judge erred in allowing the writ petition filed by the respondent / writ petitioner by the order impugned herein.

4. On the above submissions, we have heard the learned counsel for the respondent / writ petitioner.

5. Admittedly, the respondent / writ petitioner joined the service after 01.04.2003 and she is entitled only for the new pension scheme viz., Contributory Pension Scheme. It is also an admitted fact that the respondent / writ petitioner had already opened ASTPF A/c No.337865 while she was working in Natesan Pillai Aided Primary School, Tiruvannamalai and made contribution. The claim of the respondent herein seeking to transfer the amount lying in ASTPF account to the TPF account to be created by the first appellant, was not considered by the appellant authorities, stating that a new TPF account cannot be created for the respondent / writ petitioner, as she was appointed after 01.04.2003. However, the same was not properly placed

before the writ court, as evident from the observation made in paragraph 4 of the order impugned herein. Therefore, we grant liberty to the appellants to approach the writ court by filing petition for clarification / modification of the order passed in the writ petition.

6. Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
10.08.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

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AND
MOHAMMED SHAFFIQ, J.

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