



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 07.02.2023

PRONOUNCED ON : 10.02.2023

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.8584, 8589, 8592, 8593 and 8595 of 2021

W.P.No.8584 of 2021

1.S.Sudhakar

2.S.Senthilkumar

3.V.Palpandian

4.S.K.Mahamuni

5.K.Adhinarayanan

...Petitioner

.Vs.

1. Government of Tamil Nadu
Rep.by its Secretary to Government
Finance (Pension) Department
Fort. St. George
Chennai -9.

2. The Secretary to Government
Home (Police -III) Department
Fort St. George, Chennai.



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3. The Director General of Police
Mylapore, Chennai.

4. The Chairman
Tamil Nadu Uniformed Service
Recruitment Board
Chennai.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to consider the representation of petitioner dated 29.01.2020 and bring the petitioner under old pension scheme prevailed prior to implementation of contributory pension scheme prevailed prior to implementation of contributory pension scheme (CPS) vide G.O.No.259 Finance (Pension) department dated 06.08.2003 and transfer the pension contribution collected already from the petitioner to old pension scheme.

W.P.No.8589 of 2021

- 1.D.Sadhasivam
- 2.C.S.Karthik
- 3.J.Mohanachandiran
- 4.K.Sundaram
- 5.B.Karthikeyan

.Vs.



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W.P.No.8592 of 2021

1.D.Saravanakumar

2.D.Kumaresa Seenivasan

3.B.Raja

4.M.Paul Pandey

5.M.Balamurugan

..Petitioners

.Vs.

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Fort. St. George
Chennai -9.

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W.P.No.8593 of 2021

- 1.C.Vijayaraj
- 2.G.Ramachandran
- 3.K.Muthukrishnan
- 4.Sictus Jenivar
- 5.S.Subbiah alias Sugumar

..Petitioners

.Vs.

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W.P.No.8595 of 2021

- 1.V.Sivasakthivel
- 2.GR.Manikandan
- 3.K.Kandeepan
- 4.K.Thanga Thamizharasan
- 5.G.K.Vinayagamoorthy

..Petitioners

.Vs.

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For Petitioners : Mr.V.Prakash
in All WPs Senior Counsel
for Mr.P.Arumugavel

For Respondents : Mr. D.Ravichander
in All WPs Special Government Pleader

**COMMON ORDER**

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The issue involved in all these writ petitions pertains to the entitlement of the petitioners to avail the benefit under the old Pension Scheme that prevailed prior to the implementation of the Contributory Pension Scheme that was brought into force *vide* G.O.No.259 Finance (Pension) Department dated 06.08.2003.

2. The brief facts of the case are as under:

2.1. The petitioners joined as Police Constables (Grade-II) in the selection for the year 2001-2002. This selection was made pursuant to the notification issued by the Tamil Nadu Uniformed Services Recruitment Board [TNUSRB] on 25.05.2002, where applications were invited to fill up 3500 posts of Police Constable (Grade-II). The total posts was increased to 4931 by virtue of the subsequent notification issued on 05.03.2003.

2.2. It is stated by the petitioners that the recruitment process immediately commenced and the selection for the post of Police Constable (Grade-II) was done in the following manner:



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25.5.2002	Notification was published for 3500 posts
05.03.2003	Notification was published for 4931 posts
14.05.2003	Physical Entrance Test was conducted
10.06.2003	Written Examination was conducted
15.08.2003	Results for Written Examination was published
26.08.2003	Medical test was conducted
12.11.2003	Appointment order was issued

2.3. The 1st respondent issued a new Pension Scheme named Contributory Pension Scheme *vide* G.O.No.259 Finance (Pension) Department dated 06.08.2003. Through the said Government Order, an amendment was brought by issuing a notification, whereby a proviso was added to Rule 2 in Chapter I, as follows:

“Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent ”.



2.4. Pursuant to the above Government Order, G.O.No.430, dated 06.08.2004, was issued and it was provided as follows:

Heads of the Departments/Heads of Offices should new employees who have already joined the Government Service after 31.03.2003 within a month from the date of this G.O. As and when new employees join in future, they should be admitted to this scheme compulsorily by the Heads of the Department/Heads of offices by promptly applying for allotment of the Index No. to the Accountant General within a month from the date of joining of the new employees.

2.5. During the tenure of the petitioners, the pension contribution was collected/deducted from their salary as per the above Government Orders.

2.6. The grievance of the petitioners is that they ought to have been brought under the old Pension Scheme since their selection process had commenced much prior to 01.04.2003 and there was a delay in completing the process and as a result, the appointment orders were given to the petitioners only during November 2003. The petitioners have taken a stand that the delay is not attributable to them and while considering the entitlement under the old Pension Scheme, the period during which



the selection process took place by notifying the vacancy, is the relevant factor and if this had taken place prior to 01.04.2003, the petitioners must be entitled to the old Pension Scheme. Therefore, the petitioners have taken a stand that the appointment order that was given subsequent to 01.04.2003 should not be put against the petitioners. Various representations were made by the petitioners to the respondents requesting for bringing the petitioners under the old Pension Scheme and since the same was not considered, these writ petitions have been filed seeking for appropriate directions.

3. The respondents have filed individual counter affidavit in each writ petition. However, the contents are the same. The relevant portions in the counter affidavit are extracted hereunder:

16. Regarding the averments made in paragraph 12 of the affidavit, it is submitted that the contention of the petitioners is not acceptable. As per Government Policy decision, the Government have introduced a New Scheme viz., Contributory Pension Scheme (CPS) in G.O.No.259, Finance (Pension) Department, dated 06.08.2003. Further in G.O. (Ms) No.304, Finance (Pension) Department, Dated 27.05.2004, necessary amendments have also been issued to



make the Tamil Nadu Pension Rules, 1978 non applicable to the persons appointed on or after 01.04.2003 under the Contributory Pension Scheme.

17. Regarding the averments made in paragraph-13 of the affidavit, it is submitted that the petitioners are referring to the Election Manifesto, and seeking restoration of the Old Pension Scheme. Hence the Petitioners claim cannot be considered till a policy decision is taken on this issue. Till such time the existing order prevails and the petitioners who joined after 01.04.2003 are not enrolled for the Old Pension Scheme.

18. Regarding the averments made in Paragraph-14 of the affidavit, it is submitted that in the year 2003, the Government of Tamil Nadu introduced the new Pension scheme viz., Contributory Pension Scheme with effect from 01.04.2003 for all the State Government servants appointed on or after 01.04.2003 as compulsory on the basis of employee contribution of 10% basic pay with an equivalent matching contribution by the employer. In the full Bench Judgment referred by the petitioners in WA.No.158 of 2016 batch case, it was ordered that the casual employees who were appointed prior to 01.04.2003 and regularized before 01.04.2003 alone are eligible to count 50% of their casual service towards qualifying service for pension and those who were regularized after 01.04.2003 are not entitled for the said benefit. It follows that those who are appointed after



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01.04.2003 are not entitled for the said benefit. It follows that those who are appointed

after 01.04.2003 are not entitled for Old Pension and therefore counting their Service after after 01.04.2003 shall not arise.

19. It is also submitted that the Petitioner will not be eligible to claim Pension under the Tamil Nadu Pension Rules 1978 since the selection process of their recruitment has not been completed before 01.04.2003 and they were not appointed before the said cut of date.

20. It is also submitted that the Physical Endurance test, Written Examination Medical Test were held after the issuance of the G.O.Ms.No.259 Finance (Pension) Department, Dated.06.08.2003. The time taken for the above process is reasonable and the Petitioners cannot allege that due to the delay caused in selection process they become ineligible for Pension under the Tamil Nadu Pension Rules, 1978.

4. Heard Mr.V.Prakash, learned Senior Counsel for the petitioners and Mr.D.Ravichander, learned Special Government Pleader appearing on behalf of the respondents.

5. The learned Senior Counsel appearing on behalf of the



petitioners submitted that for the purpose of determining the cut-off date fixed under G.O.No.259, dated 06.08.2003, the relevant fact is only the date on which the vacancies were notified and applications were called for and not when the actual appointment order was issued. The learned Senior Counsel submitted that the appointment order is only the culmination of a selection process and if the appointment process had commenced prior to 01.04.2003, the candidates selected must automatically be held to be entitled for the benefits of the old Pension Scheme. The learned Senior Counsel to substantiate his submissions, relied upon the Judgement of the Delhi High Court in WP(C) 8208 etc., of 2020, dt.15.01.2021. The relevant portions relied upon in the judgement are extracted hereunder:

8. The issue in the present batch of matters is no longer res integra. Consequently, the request for additional time to file counter-affidavit is declined.

9. In the case of certain constables of the BSF, this Court by its judgment dated 12th February, 2019 in Tanaka Ram (supra) allowed the prayer of those Petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension Scheme should be extended to all those who had been selected in the examination conducted in 2003, but were issued call letters only in January or February, 2004. It is



also pertinent to mention that the Respondents aggrieved by the said judgment filed an SLP bearing No. 25228/2019 before the Apex Court. The said SLP has been dismissed by the Supreme Court vide order dated 02nd September, 2019.

10. This Court in *Shyam Kumar Choudhary and Ors. vs. Union of India* being W.P.(C) No.1358 of 2017 allowed similar petitions vide judgment dated 09th April, 2019 against which the Respondents had again filed SLP bearing no. 31539/2019 which was again dismissed on 27 th September, 2019. The Respondents thereafter chose to file a review petition bearing no.2188/2020 before the Apex Court in the said matter and the said Review petition was also dismissed on merits vide order dated 24th November, 2020.

11. Following the judgment of *Shyam Kumar Choudhary (supra)*, the learned predecessor Division Bench in *Niraj Kumar Singh & Ors. vs. Union of India & Ors.*, W.P.(C) No.13129/2019 granted similar benefit to 17 petitioners who had applied to the post of Sub-Inspector in Central Police Organisations pursuant to an advertisement dated 21 st June, 2003 even when the written examination and physical efficiency test were held in November, 2003, medical examination was held in January-February, 2004 and final result was declared in May, 2004. The said 17 petitioners were issued offer of appointment on 02nd June, 2005 and on accepting the same, the appointment letter was issued on 14th July, 2005 for joining the Sashastra Seema Bal.

12. Another Coordinate Bench vide judgment dated 06th November, 2020 in W.P.(C) No. 6548 of 2020 as well 6989/2020 was pleased to allow the said petitions for grant of Old Pension



Scheme by following the judgment in Shyam Kumar Choudhary (supra).

13. Having regard to the fact that in the present batch of cases also the advertisement/notification was issued in September, 2003 and June, 2003 i.e. prior to coming into force of the present contributory pension scheme on 22nd December, 2003, this Court is of the view that petitioners cannot be deprived of the benefit of the Old Pension Scheme.

6. The learned Senior Counsel also relied upon the judgement of the Apex Court in ***P. Ranjitharaj .v. State of Tamil Nadu and Others*** reported in (2022) ***SCC Online SC 508*** and placed reliance upon paragraphs 12 and 13, which are extracted hereunder:

12. In the given circumstances, when those who are lower in order of merit to the appellants were appointed by an order dated 24th September, 2002, the appellants have no right of say in the matter of appointment and no justification has been tendered by the State respondent as to why their names were withheld for two/three years, when their names were cleared by the Commission on 3rd September, 2002 and sent to the State Government and finally appointments were made of the appellants on 23rd August, 2005 and 23rd April, 2004 respectively and the delay indeed in making appointments in the case of the present appellants in no manner could be attributable to them.

13. In the given circumstances, when all other candidates who had participated along with the appellants pursuant to



advertisement dated 9th November, 2001, on the recommendations made by the Commission were appointed on 24th September, 2002 including those who are lower in the order of merit, there appears no reason for withholding the names of the present appellants and merely because they were

appointed at a later point of time, would not deprive them from claiming to become a member of Tamil Nadu Pension Rules, 1978, which is applicable to the employees who were appointed on or before 1st April, 2003.

7. The learned Senior Counsel also placed reliance upon the judgement of the Delhi High Court in W.P.(C). 756 of 2020, dated 28.01.2020, to reiterate his stand that the commencement of the selection process is material and not when the appointment order was given after the completion of the selection.

8. Per contra, the learned Special Government Pleader appearing on behalf of the respondents submitted that the Contributory Pension Scheme was brought into effect from 01.04.2003, for all the State Government servants appointed on or after 01.04.2003 and it was compulsory to deduct the contribution of the employee at the rate of 10% from the basic pay with an equivalent matching contribution by the



employer. It was further submitted that the petitioners admittedly were appointed only after 01.04.2003 and they automatically come within the Contributory Pension Scheme and that they are not entitled for the benefits under the old Pension Scheme. In view of the same, the learned Special Government Pleader sought for the dismissal of these writ petitions.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. There is absolutely no dispute on the requirement that has been prescribed in G.O.No.259, dated 06.08.2003, which clearly mandates that the old Pension Rules shall not apply to Government servants appointed on or after 1st April 2003. There is also no dispute that the appointment order was issued to the petitioners only during November 2003 much after the crucial date *viz.*, 01.04.2003.

11. The only issue that requires the consideration of this Court is as to whether the petitioners should be given the benefit of the old



Pension Scheme on the basis that the selection process had commenced much before 01.04.2003 and the delay in completing the process was not attributable to the petitioners.

12. The petitioners have taken a very specific stand at paragraph 7 of the affidavit to the effect that the TNUSRB, had issued a notification on 08.03.2002 for recruitment to the post of Police Constable (Grade-II)(women) for 1659 posts and within one year, the entire selection process was completed and all of them got appointed on 03.03.2003. By virtue of the same, they all became entitled for the benefits under the old Pension Scheme. Whereas when it came to the selection of men to the post of Police Constable (Grade-II), the notification was issued on 25.05.2002 and there was a delay in completion of the selection process and issuing appointment orders and therefore, the petitioners must also be treated on par with the women Constables, who underwent the selection process during the same period.

13. The judgement of the Delhi High Court that was cited by the learned Senior Counsel appearing on behalf of the petitioners, gives some



indication as to how the issue involved in the present case should be dealt with. In the case in WP(C) 8208 of 2020, the notification was issued during June 2003 and September 2003 and the contributory

Pension Scheme was brought into force during December 2003 and it was made effective from 01.01.2004. The petitioners therein got their appointment orders between June to July 2004. The Delhi High Court after taking into consideration certain early judgements, came to a conclusion that the option to continue the old Pension Scheme must be extended to all those persons, who had participated in the selection prior to the crucial date, but however got their call letters after the crucial date.

14. The other judgement that was relied upon by the learned Senior Counsel in WP.(C) 756 of 2020, also reiterates the very same position and it was held that the benefits must be extended by taking into consideration the period during which the selection process took place and not when the same was concluded and appointment order was given.

15. The language in G.O.No.259, dated 06.08.2003 is quite



clear that the old Pensions Scheme will not apply to the Government servants appointed on or after 01.04.2003. The appointment is a continuous process starting from the date of issuance of the notification and ending with issuing the appointment orders. Whenever a beneficial Pension Scheme is applied, particularly to the employees, a wider interpretation must be given so as to benefit a large section of the employees. The Court should not adopt a strict interpretation and thereby deprive an employee of a beneficial Pension Scheme.

16. In this case, the process of selection started with the issuance of Notification dated 25.05.2002, which is nearly 11 months before the new Pension Scheme was brought into force through G.O.No.259, dated 06.08.2003. This Government Order fixed the cut-off date as 01.04.2003. If the selection process of the petitioners had been completed with the very same speed with which it was done for the women Constables, the petitioners would have had the benefit of the old Pension Scheme. However, there was a delay in completing the selection process and it is nobody's case that the delay is attributable to the petitioners. Hence, even though the appointment order was issued to the



petitioners during November 2003, that will not in any way deprive the petitioners the benefit of the old Pension Scheme since the process of selection had commenced through Notification dt.25.05.2002. This

Court is in complete agreement with the judgement of the Delhi High Court that has been extracted supra. Those judgements were also confirmed by the Apex Court. The reasoning that has been given in the above judgements perfectly falls in line with regard to interpreting a beneficial Scheme. In view of the same, this Court comes to the conclusion that the petitioners cannot be deprived of the benefit of the old Pension Scheme.

17. In the light of the above discussion, there shall be a direction to the respondents to consider the representations made by the petitioners in the light of this judgement and the petitioners shall be brought under the old Pension Scheme that prevailed prior to the implementation of G.O.No.259, dt.06.08.2003 and whatever contribution has already been recovered from the petitioners, shall be transferred to the old Pension Scheme.



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18. This process shall be completed by the respondents within a period of **twelve weeks** from the date of receipt of a copy of this order.

19. In the result, all the writ petitions are allowed in the above terms. No costs.

10.02.2023

KP

Internet : Yes

Index : Yes

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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