



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.11777 of 2020

and

W.M.P.No.14485 of 2020

P.Paul Ebenezer

... Petitioner

Vs.

- 1.The Secretary to Government,
School Education Department,
Fort St.George, Chennai - 9.
2. The Commissioner,
Government Data Centre,
Guindy, Chennai - 25.
3. The Director of School Education,
DPI Complex, College Road,
Chennai - 06.
4. The Chief Educational Officer,
Thiruvalluvar, Thiruvalluvar District.
5. The District Educational Officer,
Ambattur, Chennai - 53.
6. S.K.D.J. Higher Secondary School,
Represented by managing Trustee &
Secretary P.Jayachandran,
Thiruverkadu, Chennai - 600 077.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating the impugned order passed by the fifth respondent in his proceedings No.3702/A4/2019 dated 31.01.2020 (signed on) and quash the same and consequently direct the respondents to include the petitioner under the Old Pension Scheme under the assigned TPF.No.339727 based on the petitioner initial date of appointment (16.12.2002) and disburse monthly pension and other retirement and service benefits.

For Petitioner : Mr.K.H.Ravi Kumar
For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader.

ORDER

This writ petition is filed challenging the proceedings of the fifth respondent in No.3702/A4/2019, dated 31.01.2020 and consequently, directing the respondents to include the petitioner under the Old Pension Scheme under the assigned TPF.No.339727 based on his initial date of appointment (16.12.2002) and disburse monthly pension and other retirement and service benefits to him.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a physically handicapped person with 40% disability. He was



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appointed as PG Assistant in Commerce Department in a sanctioned post by the sixth respondent through the proceedings dated 16.12.2002. The appointment of the petitioner was approved by the proceedings of the District Educational Officer, Ponneri, with effect from 07.04.2003 by his proceedings in Na.Ka.No.760/A3/2003 dated 22.03.2006 after a lapse of three years in the post of PG Assistant in Commerce Department.

3. The learned counsel for the petitioner further submitted that based on the appointment made on 16.12.2002, the petitioner was brought under the Old Pension Scheme under Account Number 3339727, deductions were also made towards Provident Fund and other statutory benefits till the year 2010. While so, to the shock and surprise of the petitioner in the year 2010, without any notice or opportunity of hearing, the petitioner was assigned and brought under the New Pension Scheme under a new Account No.404439 with effect from 01.06.2010. The petitioner was subsequently promoted in the year 2018 and he attained superannuation on 31.12.2019. The petitioner has been making several representations to the authorities concerned to bring him under the Old Pension Scheme based on his initial date of appointment.



However, the same was rejected by the fifth respondent through G.O.Ms.No.430, Finance (Pension), dated 06.08.2004, on the ground that half of the past service of the Government servants, those who were appointed before 01.04.2003, but were absorbed in regular service after 01.04.2003, will not be entitled to be counted for the purpose of determination of qualifying service.

4. Aggrieved by the same, the petitioner has filed the present writ petition for the relief as stated in the opening paragraph.

5. In support of his contentions, the learned counsel for the petitioner relied on the following decisions of this Court in:-

"(i) V.Vasanthi Vs State of Tamil Nadu in W.A.(MD).No.307 of 2019, dated 02.08.2019.

(ii) State of Tamil Nadu Vs R.Chitra devi & others in W.A.No.1573, 1574 and 1577 of 2021, dated 30.06.2022."

6. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that the Old Pension Scheme is



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applicable only to the employees appointed prior to 01.04.2003. Since the sixth respondent is a non-minority aided school, which is governed by Rule 15(4)(ii)(c) of the Tamil Nadu Recognized Private Schools Rules (Regulations), 1974, it stipulates that prior approval of the competent Government authority is necessary to make appointment in the Government Aided non-minority schools. He also contended that the sixth respondent should have obtained prior permission from the authority while making appointment of the petitioner on 16.12.2002. It is pertinent to note that the appointment of the petitioner was approved only on 07.04.2003.

7. It is further contended by the learned Additional Government Pleader, that mere giving a TPF number by an inadvertent mistake made by the officials, certainly would not give any legal right to the petitioner to avail the benefit under the Old Pension Scheme. In support of his contentions, he relied on a Judgment of a Division Bench of this Court passed in W.A.No.584 of 2018, dated 24.04.2018. Accordingly, he prayed for dismissal of the writ petition.



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8. Heard both sides and perused the materials available on record.

9. Admittedly, the petitioner was appointed in the sixth respondent School on 16.12.2002 and also the appointment was approved by the Competent Authority on 07.04.2003. It is true that the sixth respondent School was a non minority aided institution and they are bound to obtain prior approval of the competent authority. Accordingly, the sixth respondent School promptly sought the appointment of the petitioner by the proceedings dated 26.12.2002, which was duly acknowledged by the fourth respondent. Hence, it cannot be said that the sixth respondent School has obtained the approval of the appointment in time. However, the appointment of the petitioner was approved only on 07.04.2003 by the Competent authority. The delay on the part of the respondents cannot be attributed to the petitioner or the sixth respondent School, as the case may be.

10. The issue raised in the writ petition is no longer *res integra*. The Hon'ble Division of this Court vide judgment ***dated 02.08.2019 passed in W.P.(MD).No.307 of 2019 in a case of V.Vasanthi Vs State of Tamil Nadu,***



has categorically held as follows:-

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"10. Now, the question arises for consideration is as to whether the date of approval of appointment is the relevant date for considering the claim of the writ petitioner under the Old Pension Scheme or the date of approval of her original appointment to the said post. Appointment to the post by the School/Management and approval of the same by the Education Department are two different events and thus, relevant dates of those two events are certainly different and distinguishable. Approval of appointment is granted by the department for the purpose of extending the monetary benefits. Therefore, it does not mean that date of approval itself has to be construed as the date of appointment for the purpose of considering the applicability of the relevant pension scheme. Approval of such appointment may be granted either from the date of such appointment or from any other subsequent date depending upon the facts and circumstances of each case like want of vacancy or sanction etc. At any event, the date of appointment remain to be the same. The dispute herein is not with regard to the claim for salary from the date of the appointment of the writ petitioner. On the other hand, it is in respect of the applicability of relevant pension scheme, under which, the writ petitioner has to be placed. For this purpose, the date of



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approval of appointment is not relevant factor and on the other hand, it is only the date of appointment that matters. In other words, if the writ petitioner is entitled to count her service period from the date of her appointment for the purpose of pension, she must be placed only under the Old Pension Scheme, since her appointment was admittedly earlier to the introduction of the New Pension Scheme."

11. Relying the upon the said judgment, another Division Bench of this Court in W.A.No.1573, 1574 and 1577 of 2021, dated 30.06.2022 has held as follows:-

"19. We are not inclined to accept the submissions of the appellant. The Hon'ble Division Bench of this Court in V.Vasanthi Vs. State of Tamil Nadu 2019(4) CTC 865 held that the relevant date for claiming Old Pension Scheme is the date of actual appointment and not the date of approval of appointment. The relevant para from the Hon'ble Division Bench Judgment in Vasanthi's case is extracted hereunder:

"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, 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



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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 of 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 to services and posts. The word "appointed" referred in the said Proviso cannot be construed to mean approval of such Appointment.

Accordingly, the Writ Appeal is allowed and the Order of the Writ Court is set aside. Consequently, the Writ



Petition filed by the Petitioner/Appellant is allowed and the Respondents are directed to permit the Petitioner to continue under the Old Pension Scheme, namely, Teacher Provident Fund Scheme. No costs."

The said Judgment of the Hon'ble Division Bench squarely covers the issue raised before us."

12. The main ground urged by the respondents is that the appointment of the petitioner was approved with effect from 07.04.2003 and therefore, he would not be covered by the Old Pension Scheme, but would only be covered by the New Pension Scheme vide G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004. The issue is well settled by the aforesaid judgments that the relevant date would be the date of appointment and not the date of approval. Accordingly, the petitioner is eligible to be extended the benefit under the Old Pension Scheme, as he was appointed prior to 01.04.2003 and G.O.Ms.No430, Finance (Pension) Department, dated 06.08.2004 is not applicable to the petitioner.



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J.SATHYA NARAYANA PRASAD,J.

kmm

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