



W.P.No.11852 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.11852 of 2020
and W.M.P.Nos.14567,16572,14571,14570,
14960&14564 of 2020

R.Renukadevi

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
Education (Higher Secondary Schools) Department,
Fort St.George, Chennai – 600 009.

2.The Government of Tamil Nadu,
Rep. by Secretary to Government,
Finance (Pension) Department,
Fort St.George, Chennai – 600 009.

3.The Commissioner,
Commisionerate of Treasuries & Accounts (CPS Cell),
Data Centre, Kotturpuram,
Chennai – 600 025.

4.The Director of School Education (Higher Secondary),
D.P.I. Compound, College Road,
Chennai – 600 006.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying



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for issuance of Writ of Certiorarified Mandamus calling for the records from second respondent relating to the order in G.O.Ms.NO.59, Finance (PGC) Department dated 22.02.2016 and quash the said order dated 22.02.2016 and direct the respondents to pay the petitioner her retirement benefits including gratuity with interest and monthly pension with effect from 01.02.2017.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.R.Neelakandan,
Additional Advocate General
Assisted by,
M/s.M.Keerthika,
Government Advocate

ORDER

The petitioner has filed this writ petition seeking to call for the records from second respondent relating to the order in G.O.Ms.NO.59, Finance (PGC) Department dated 22.02.2016 and quash the said order dated 22.02.2016 and direct the respondents to pay the petitioner her retirement benefits including gratuity with interest and monthly pension with effect from 01.02.2017.

2. The case of the petitioner is that the petitioner joined the service of St.Patrick Anglo Indian Higher Secondary School, Gandhi Nagar, Adyar,



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Chennai – 600 020 (Which is an aided school by the Government of Tamil Nadu) on 06.10.2005 as Junior Post-graduate Assistant (Tamil) on a consolidated salary of Rs.4,500/- per month. Thereafter, he was brought under regular time scale of pay with effect from 01.06.2006. After completion of more than 11 years of continuous service, he got retired from service under Voluntary Retirement on 31.01.2017. Subsequent to his retirement, the petitioner was advised by the school management to approach the Inspector of Anglo Indian Schools, D.P.I. Compound, Chennai for getting his retirement benefits including pension. When the petitioner has approached the said office, he was instructed by the authorities that they have to get permission from the Government.

2.2. Hence, the petitioner has made a representation dated 02.07.2020 before the respondents 1 & 2 respectively. After his representation, the third respondent informed that they had not received the petitioner's service particulars. When the petitioner enquired about the same to the school management, they said that the records were already sent to the fourth respondent. Later, through her counsel, the petitioner came to know about



the Government Order dated 22.02.2016 that she could not get any pension and would get only the accumulation of the amounts of her contribution and the Government contribution along with interest on giving an undertaking that she would not make any further demand for any monetary benefits in the Government and that if she wanted pension then, she should challenge the said Government Order dated 22.06.2016. Hence, the petitioner has come forward with the present writ petition, challenging the Government Order dated 22.06.2016.

3. Learned senior counsel for the petitioner submitted that the petitioner is not against the contributory pension scheme, but she wanted the pension to be paid only on monthly basis. So that she can use that money for buying medicine and to take care of her in all other aspects, without depending on others. If, the amount is paid on one lumpsome amount, the same will be spent and after certain years the survival of the petitioner will be in question. Though the petitioner has retired from service as early as on 31.01.2017, she has not received the pension till date and finding it very difficult for her survival.



4. Learned senior counsel for the petitioner further submitted that as per the Oxford dictionary and as held by this Hon'ble Court as early as in 1935 in a case relating to pension, the word pension means "money that is paid regularly by a Government or Company to somebody, who has stopped working (retired) because of old age or who cannot work". The Hon'ble Supreme Court of India recognize that the pension to a Government servant or to a servant of a Government aided institution is not a bounty but a legal right given under prevailing Pension Act, which has been enjoyed by Government servants for more than a century. But unfortunately, the impugned order denies that right by doing away with payment of monthly pension. The lumpsum amount cannot be called as pension. The pension scheme must provide for payment of regular monthly payment of certain amount to a Government servant to sustain himself/herself and his spouse in his/her old age and that a scheme which does not provide for regular payment of any amount for decent living of a retired employee cannot be called pension scheme.

5. Learned senior counsel for the petitioner contended that the



employees in quasi Government organization like transport, banking and insurance sectors fought and got right to monthly pension. But unfortunately, the impugned order takes away the right to monthly pension by compelling retired employees to take the one-time payment of the lumpsum amount on submitting an undertaking that they would not make any further demands on the Government for pension.

6. Learned senior counsel for the petitioner further contended that as per the contributory pension scheme being operated in the quasi Government organizations, after disbursing the contribution of the employees' contribution in a lumpsum payment, the retired employees are paid pension every month by the Pension Fund Authority by utilizing the management's contribution. The same procedures can be adopted and followed by the Government of Tamil Nadu for the employees including those who joined service after 01.04.2003 and retired from service either on reaching age of superannuation or on voluntary retirement. If the employees, who joined service after 01.04.2003 in the public sector undertaking can be paid monthly pension by the public sector undertakings concerned, there is no reason why



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the Government employees or the employees of the aided educational institutions cannot be paid pension by Government by utilizing the Government contribution.

7. Learned senior counsel for the petitioner further submitted that the employees, who joined the service of the Government and Government aided educational institutions prior to 01.04.2003 have to pay 12% of their salary every month to the General Provident Fund. If the employees, who joined service prior to 01.04.2004 and do not make any contribution towards pension fund can be paid pension, there is no reason, why the petitioner should not be paid monthly pension for her living after retirement merely because she joined service after 01.04.2003. The contributory pension scheme which does not provide for payment of monthly pension cannot be called a pension scheme and it is nothing but a Provident Fund Scheme and that as held by the Hon'ble Supreme Court in Krishena Kumar Vs. Union of India (1990 (4) SCC 207 para 35) pension scheme and Provident Fund scheme are structurally different and that as held by the Hon'ble Supreme Court in the said judgment under a pension scheme the obligation for the



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Government to pay pension commences on the date of retirement of an employee, but under a provident fund scheme, the obligations ends with the retirement of the employee on the payment of provident fund. The monthly pension cannot be denied unless and until pension is abolished by an Act of Legislature.

8. Learned senior counsel for the petitioner further contended that the impugned order does not provide for payment of gratuity to the employees, who joined service after 01.04.2003 under the new Pension scheme. The Central Government by its order dated 26.08.2016 has extended the benefits of payment of gratuity to its employees, who joined service after 01.04.2004. It is unfortunate that the Government of Tamil Nadu, which readily adopted the contributory pension scheme announced by the Central Government should remain quiet over payment of gratuity to those who joined service after 01.04.2004. The employees working in the quasi Government organizations like Transport, banking and insurance are paid gratuity in addition to monthly pension. Therefore, it is fair and just that the State Government also extend the benefits of retirement gratuity to the petitioner



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based on the last drawn salary.

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9. Learned Additional Advocate General appearing for the respondent has filed a counter affidavit dated 18.02.2021 and submitted that G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004, it is ordered that it is mandatory for all employees, who were recruited on or after 01.04.2003 to become member of the CPS and each employee would pay a monthly contribution of 10% of basic pay and D.A. from his/her salary to the CPS and a matching contribution will be made by the State Government, for each employee, who contribute the scheme. It has also been ordered therein that the contribution towards CPS shall be recovered from the salary of the employees every month as it is done now for GPF and the Accountant General will maintain the accounts for the CPS as in the case of GPF. It is clear that the CPS is comparable to the GPF Scheme and now here in the said G.O's, it has been committed that monthly pension will be paid after the retirement of the employees covered under the CPS.

10. Learned Additional Advocate General appearing for the



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respondents further submitted that it is the policy decision of the State Government to settle the CPS contribution of the employees with Government contribution and interest thereon in one lumpsum to the subscribers of CPS and the petitioner is not entitled to question it especially when the Government did not make a promise in the aforesaid G.O's to pay monthly pension to the petitioner. The Public Sector Undertakings are not Government establishments and hence, the petitioner cannot compare the service conditions of PSUs with Government departments. Merely because the nomenclature of the said scheme is "Contributory Pension Scheme", it cannot be constructed that monthly pension will be sanctioned to its subscribers and the Government has not made any promise to that effect in the said G.O.Ms.No.259, 430 and 59. It is open for the petitioner to invest the lumpsum amount received after her retirement in any of the immediate annuity pension plans available, so as to get periodical pension. Moreover, a report of the Committee headed by the Retired I.A.S. Officer Mr.T.S.Sridhar is under the consideration of the Government, regarding to the demands of the employees to revoke the contributory pension scheme.



11. Heard the learned counsel on either side and perused the materials available on record.

12. In the case on hand, the petitioner joined the service as a Junior Post Graduate Assistant (Tamil) on 06.10.2005 on a consolidated pay of Rs.4,500/- per month. Subsequently, contributory pension scheme was introduced and the same was came into effect on 01.04.2003. Then, the petitioner got retired from service on 31.07.2017, after completion of more than 11 years of continuous service. Later, the petitioner came to know that there is a Government Order in G.O.Ms.No.59 finance (PGC) Department dated 22.02.2016, in which it was informed that the accumulation under the Contributory Pension Scheme in respect of subscribers retired/died will be settled immediately to retired employees and legal heirs of deceased employees. The petitioner is not against the introduction of contributory pension scheme but wanted the pension to be paid on monthly basis instead of lumpsum payment.

13. This Court as early as in 1935 in a case relating to word pension as



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held that “money that is paid regularly by a Government or Company to somebody who has stopped working (retired) because of old age or who cannot work.” It is also further recognized by the Hon'ble Supreme Court and other Courts that pension to a Government servant or to a servant of a Government aided institution is not a bounty but a legal right given under prevailing Pension Act, which has been enjoyed by the Government servants for more than a century.

14. **The main contention of the petitioner is that any pension scheme must provide for payment of regular monthly payment of certain amount to a Government servant to sustain himself/herself and his spouse in his/her old age and that a scheme which does not provide for regular payment of any amount for decent living of a retired employee cannot be called as pension scheme.**

15. Learned counsel for the petitioner drew the attention of this Court to a news published in the paper called Hindu, in which it is mentioned that the Andhra Pradesh Government decides to introduce **Guaranteed Pension**



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Scheme by approving the proposal to replace the Contributory Pension Scheme (CPS) with the Guaranteed Pension Scheme (GPS) for the government employees. Under the GPS, the pensioners would receive 50% of their last drawn salary as pension as against 20.3% of their basic salary under the CPS. Also, the government made certain provisions to adjust the impact of inflation under the GPS. The new pension scheme was being introduced even as the government employees were insisting on scrapping the CPS and **restoring the Old Pension Scheme (OPS)**. The employees, who included teachers, had been seeking restoration of the OPS saying that other State Government too were contemplating reintroducing it.

16. **Based on the above, learned Additional Advocate General appearing for the respondents was directed to get instruction, whether the same can be implemented in the state of Tamil Nadu, for which, written instruction was submitted by the Secretary to Government (Expenditure) vide Letter No.33839/Finance (PGC) Dept./2020, dated 02.08.2023.** For better appreciation, the relevant paragraphs are extracted hereunder:



“6. Now as envisaged in the letter 6th cited to explore the possibility of providing the amount of Pension, from out of the contribution collected from the respective employees of the State Government under CPS on monthly basis, instead of lump sum on attaining the age of Superannuation, the Government after careful consideration, humbly submit that the above request may not be feasible of compliance as it would open up pandora's box and may cause severe financial implications to the Government. It is also informed that there are about 6,28,971 Government aided Educational Institutions including Local Body Employees are being covered under the scheme.

7. With reference to para 8 of your letter 6th cited, it is submitted that, the Hon'ble Chief Minister of Tamil Nadu has made an announcement under Rule 110 of Tamil Nadu Legislative Assembly Rules on 19.02.2016 on the floor of the Assembly that the accumulation under Contributory Pension Scheme in respect of subscribers retired/died will be settled immediately to retired employees and legal heirs of the deceased employees. Based on that CPS settlement for the employees who have been retired from the date of 01.04.2003 under CPS the respective CPS settlement were settled after 22.02.2016 along with accumulated interest to the respective retired employees based on the guidelines issued in the Government order 3rd cited.”

17. This Court in a judgment viz., W.A.No.584 of 2018 dated 24.04.201 has held that,



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“12. When a Government has taken a policy decision to amend the Rules with retrospective effect, it cannot be interfered with. The appellant was appointed on 11.04.2003 and it falls only after 31.03.2003. If it is stated that the persons who are recruited on or after 01.04.2003 are not entitled for the benefits under the Tamil Nadu Pension Rules, as per the amendment made to the Rules retrospectively as a policy decision, the amended Rule will come into play from 01.04.2003. In such circumstances, we are not inclined to interfere with the impugned order passed by the learned Single Judge and accordingly, the writ appeal stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.”

18. In view of the above factual matrix of the case and the ratio laid down by the Division Bench of this Court, this Court is not inclined to quash the G.O.Ms.No.59 Finance (PGC) Department dated 22.02.2016 and grant other relief sought in the writ petition.

19. In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.09.2023

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Index : Yes/No
Speaking Order : Yes/No

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J.SATHYA NARAYANA PRASAD,J.

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