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W.P.No.28353 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28353 of 2023

S. Nagarani

... Petitioner

Vs.

1.The Secretary to Government,
Education Department,
Chennai – 600 009.

2.The Joint Director of School Education,
DPI Complex, Chennai – 600 006.

3.The Chief Educational Officer,
Villupuram District.

4.The Headmaster,
Government Higher Secondary School,
Manakuppam – 607 209.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 2nd respondent in O.Mu.No.008833/W.2/E1/2023, dated 18.04.2023 and quash the same, and consequently direct the respondents to admit the petitioner in the Old Pension Scheme by taking into account of the fact



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that the recruitment process was started by the Teachers Recruitment Board, vide Notification No.4/2002/2, dated 09.02.2002, which was issued prior to implementation of the Contributory Pension Scheme (CPS) vide G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003.

For Petitioner : Mr.S.N. Ravichandran

For Respondents : Mr.R. Neelakandan,
Additional Advocate General VIII
assisted by Mr.M. Bindran,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner, as well as the learned Additional Advocate General appearing for the respondents.

2. The petitioner herein had enrolled her name before the District Employment Exchange. The Teachers' Recruitment Board (TRB), Tamil Nadu, had released a notification No.4/2022 dated 09.02.2002 and another notification No.12/2002 dated 25.02.2002, inviting applications for filling up the vacancies for the posts of Block Resource Teacher Educators (BRTE) for various subjects. The last date for receipt of the



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filled in applications was on 11.03.2002. The petitioner, since possessed the required qualifications, had submitted her application. TRB had then conducted the competitive examination on 21.04.2002, in which, the petitioner had successfully passed. On the basis of her marks obtained in the written examination, she was called for certificate verification in the months of May and June, 2002. After verification, her name was included in the final selection list for the post of BRTE by TRB and the same was forwarded to the Director of School Education. Ultimately, the Director of School Education issued the petitioner's appointment order on 02.12.2003 and accordingly, she had joined the post on 04.12.2003 and continues to work till date.

3. On entering the service, the petitioner was admitted in the Contributory Pension Scheme (CPS), since her appointment was after 01.04.2023, which is the cut-off date prescribed for CPS through G.O.Ms.No.259 dated 06.08.2003. When the petitioner herein had given a representation seeking to admit her in the Old Pension Scheme, the same came to be rejected through the impugned order dated 18.04.2023, in which, reliance was placed on a decision of the Hon'ble Full Bench in



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the case of '**Government of Tamil Nadu Vs. R.Kaliyamoorthy**' passed in **W.A.Nos.158 of 2016 etc. batch dated 03.12.2019**, as well as in the case of '**V. Jeeva Vs. State of Tamil Nadu**' passed in **W.A.No.856 of 2014 dated 10.07.2014**, informing that since the High Court has directed that the Government Servants, who are appointed on or before 01.04.2003, are not entitled to pension, in view of the Proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978, the petitioner's request cannot be accepted.

4. The issue, as to whether a Government Servant whose selection process for appointment to the said post, had commenced prior to 01.04.2003 but appointed after 01.04.2003, would be entitled for admission to the Old Pension Scheme, is no more *res integra*. This Court had placed reliance on various decisions of the Hon'ble Supreme Court, as well as this Court and held that when the selection process had commenced prior to 01.04.2003 and the Government Servant had successfully participated in the process but appointed after 01.04.2003, he/she would still be entitled for the benefits of the Old Pension Scheme.

5. In the case of '**P.Ranjitharaj Vs. State of Tamil Nadu & others**'



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reported in '**(2022) SCC OnLine SC 508**', the Hon'ble Supreme Court

had considered this aspect in the following manner:-

..... *“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.....”*

6. Following the decision in ***P. Ranjitharaj's case*** (*supra*), a learned Single Judge of this Court, in the case of '***B.Vallipavai Vs. The State of Tamil Nadu & others***' dated 11.07.2023 passed in WP.No.8055 of 2015, had also taken a similar view and the relevant portion of the order reads as follows:-

..... *“9..... The contributory pension scheme was brought into force from 01.01.2004, whereas vacancy arose for the post of B.T.Assistant as early as on 09.11.2002 itself. After*



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obtaining permission from the third respondent to fill up the vacancy, the fifth respondent requested the District Employment Exchange for list of suitable candidates by letter dated 02.03.2003 itself. After furnishing of the list of candidates, the petitioner was called for interview to be held on 10.04.2003. Therefore, the option to continue the old pension scheme must be extended to all those persons who were participated in the selection prior to the crucial date, but however got appointment letter after crucial date. Though GO.No.259 dated 06.08.2003 with 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.

10. The process of appointment was started from the date of vacancy and ended with the issuance of appointment orders. GO.Ms.No.259 (Finance) Pension dated 06.08.2003, which brought in a New Pension Scheme 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. In fact the petitioner had been enrolled for Teacher Provident Fund and she was given TPF No.339415. Therefore, her request was accepted and she had been enrolled under the old



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pension scheme.....”

7. Likewise, in the case of '***S.Sudhakar & others Vs. Government of Tamil Nadu***' passed in ***W.P.No.8584 of 2021 & batch, dated 10.02.2023***, this Court considered the issue threadbare and held as under:-

..... *“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.....”*

8. Apart from the aforesaid decision, there are several other orders of this Court recognizing the entitlement of the Government Servant to seek for admission to the Old Pension Scheme, since their selection



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process had commenced prior to 01.04.2003 but were appointed only after the cut-off date.

9. The learned Additional Advocate General placed reliance on the decision of the Hon'ble Full Bench in ***R.Kaliyamoorthy's case (supra)***, and submitted that since it has been ordered that the Government Servants, who are appointed on or after 01.04.2003, are not entitled to the Old Pension Scheme, the petitioner's claim does not deserve consideration.

10. In ***R.Kaliyamoorthy's case (supra)***, the Hon'ble Full Bench was answering a reference with regard to counting of 50% of the past services rendered by a Government Servant prior to 01.04.2003, when his services were regularized, for the purpose of computing his pension under the Old Pension Scheme. While answering such a reference, it was held that those who are freshly appointed on or after 01.04.2003 are not entitled to Old Pension Scheme, in view of the Proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978, as inserted by G.O.Ms.No.259 dated 06.08.2003, among other findings. Before the Hon'ble Full Bench, the



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situation as to the plight of the Government Servants, who had been successful in the selection process commenced prior to 01.04.2003 but were appointed after the cut-off date, was not the subject matter. Moreover, there were no findings with regard to the entitlement of such Government Servants for the Old Pension Scheme. When such situations arose after the decision in ***R.Kaliyamoorthy's case (supra)***, various orders came to be passed by the Hon'ble Supreme Court, Delhi High Court, as well as this Court, some of which have already been referred to in the preceding paragraphs of this order. Thus, the reasoning attempted to be adduced by the learned Additional Advocate General, does not hold any weightage.

11. Accordingly, the impugned order, placing reliance on ***R.Kaliyamoorthy's case (supra)*** and rejecting the petitioner's request for admitting her in the Old Pension Scheme, cannot be sustained and the petitioner would be entitled to enroll under the Old Pension Scheme, since the selection process under the Notifications dated 09.02.2002 and 25.02.2002 and the various stages of the selection process had completed even prior to 01.04.2003.



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12. In the result, this Writ Petition stands allowed and the impugned order dated 18.04.2023 passed by the second respondent in O.Mu.No.008833/W.2/E1/2023, is quashed. Consequently, there shall be a direction to the respondents herein, to admit the petitioner in the Old Pension Scheme, by taking into account the fact that the recruitment process was started by the Teachers Recruitment Board, vide Notification No.4/2002/2, dated 09.02.2002, which was issued prior to implementation of the Contributory Pension Scheme (CPS) vide G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003, within a period of four (4) weeks from the date of receipt of a copy of this order. In case the deductions have already been made under the Contributory Pension Scheme, the same shall be adjusted towards the contributions of the Old Pension Scheme. No costs.

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Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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M.S.RAMESH,J.

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