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W.P.No.28635 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.28635 of 2023

S. Sankar Ganesh

... Petitioner

Vs.

1.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

2.The District Educational Officer,
Nagapattinam Educational District,
Nagapattinam.

3.The Secretary & Correspondent,
National Higher Secondary School,
Neela South Street,
Nagapattinam – 611 001.

4.The Principal Accountant General (A&E) Tamil Nadu,
O/o. The Principal Accountant General (A&E) Tamil Nadu,
361, Anna Salai,
Chennai – 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 1st respondent in Na.Ka.No.4830/A2/2021 dated 02.05.2022 and to quash the same and



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consequently directing the respondents to pass orders for restoration of Teacher Provident Fund No.337086 originally assigned to the petitioner under Tamil Nadu Pension Rules, 1978, by accepting the contribution from the date of appointment, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.

For Petitioner : Mr.G. Sankaran,
Senior Counsel
for Mr.S. Nedunchezhiyan

For R1 & R2 : 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 1 to 3.

2. When a sanctioned vacancy for the post of Art Teacher arose on 11.07.2001, owing to the promotion of a teacher, the third respondent/school had sent a proposal to the first and second respondents on 14.08.2002, seeking permission for filling up the vacancy. The proposal was acted upon by the first respondent herein only on



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04.04.2003 wherein, the school was granted permission to fill up the vacancy by direct recruitment. Accordingly, the petitioner's name was also sponsored by the Employment Exchange on 11.04.2003 and after being successful in the selection process, he was appointed on 21.04.2003. The impugned order challenged in this Writ Petition, is a rejection of the petitioner's claim for continuing under the Old Pension Scheme and not the Contributory Pension Scheme, in accordance with G.O.Ms.No.259, Finance (Pension) Scheme Department, dated 06.08.2003, which is operative from 01.04.2003. The reason assigned in the impugned order dated 02.05.2022, is that since the petitioner herein was appointed after the cut off date of 01.04.2003, he cannot claim the benefits of the Old Pension Scheme.

3. The learned Senior Counsel appearing for the petitioner submitted that the delay in considering the third respondent/school's proposal was on the first and second respondents and though the school had sent a proposal way back on 14.08.2002 itself, the delay in considering the proposal after the cut off date, cannot be considered. The learned Senior Counsel placed reliance on the decision of the Hon'ble



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Supreme Court in the case of '*P.Ranjitharaj Vs. State of Tamil Nadu &*

others' reported in '*(2022) SCC OnLine SC 508*', as well as 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, in which the Court has

considered cases where the appointments were made after 01.04.2003

but the selection process has commenced even prior to the crucial date

and accordingly, had extended the old benefits of the teachers.

4. Per contra, the learned Additional Advocate General appearing for the first and second respondents submitted that earlier, when the petitioner himself had made an application seeking to enroll him in the Contributory Pension Scheme, CPS No.402169 was allotted to him and the deductions were also made with effect from 01.11.2005. Thus, when he later claimed for bringing him under the Old Pension Scheme, his request was rejected on 22.06.2017 itself, by the second respondent herein and since the petitioner has not challenged the earlier order dated 22.06.2017, he is not entitled to challenge the present impugned order dated 02.05.2022. This apart, he submitted that the petitioner was appointed only after the cut off date of 01.04.2003 and in view of



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G.O.Ms.No.259 dated 06.08.2003, he can be put only under the Contributory Pension Scheme.

5. It is not in dispute that the School had sent a proposal seeking for filling up the vacancy of the Art Teacher way back on 14.08.2002 and that the Department had granted permission only on 04.04.2003, which is after the cut off date of 01.04.2003, disabling the employee from coming under the Old Pension Scheme. When such delay had occurred owing to the Department, the Hon'ble Supreme Court, as well as this Court on several occasions have held that the delay of granting permission after the cut off date of 01.04.2003, should not be put against the concerned employee.

6. In ***P. Ranjitharaj's case (supra)***, 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



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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. Following the decision in **P. Ranjitharaj's case** (*supra*), a learned Single Judge of this Court in **B. Vallipavai's case** (*supra*), 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 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



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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 pension scheme.....”

8. The aforesaid extracts are self-explanatory. Thus, when it is not in dispute that the third respondent/school had sent a proposal on 14.08.2002 itself and the permission was granted only after 01.04.2003, by applying the ratio laid down in the aforesaid decisions, this Court is of



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the affirmed view that the reasoning adopted by the first respondent in the impugned order, cannot be sustained.

9. In the result, this Writ Petition stands allowed and the impugned order dated 02.05.2022 passed by the first respondent in Na.Ka.No.4830/A2/2021, is hereby quashed. Consequently, there shall be a direction to the first and second respondents herein, to pass appropriate orders, restoring the Teacher Provident Fund No.337086 originally assigned to the petitioner under the Tamil Nadu Pension Rules, 1978, by accepting the contribution from the date of appointment, with all consequential and other attendant benefits, within a period of eight (8) 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.

14.12.2023

Index:Yes
Speaking order
Neutral Citation: Yes

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M.S.RAMESH,J.

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