



W.P.No.34100 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**  
**and**

**THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**W.P.No.34100 of 2022**

1. D. Elumalai
2. S. Swaminathan
3. K. Krishnan

...Petitioners

Vs.

1. Union of India  
Rep. by its Secretary, Ministry of Defence,  
New Delhi.
2. The Commandant,  
Officer's Training Academy,  
St. Thomas Mount,  
Chennai 600 016

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ or direction or Order in the nature of Writ more particularly a Writ of Certiorarified Mandamus to call for the records



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relating to the order passed by the Hon'ble Central Administrative Tribunal, Madras Bench, dated 26.08.2022 in O.A.No.125 of 2022 and quash the same and consequently direct the respondents to consider the representation dated 28.07.2021 as a fresh and to extend the Old Pension Scheme to all the applicants those who are appointed prior to the introduction of new pension scheme.

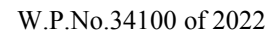
For Petitioners : Mr. K.V. Dhanapalan  
for M/s. T. Fenn Walter Associates  
For R1 : Mr. V. Chandrasekaran, SPC

### **ORDER**

( R.HEMALATHA, J.)

The present petitioners are the unsuccessful applicants before the Central Administrative Tribunal, Chennai Bench, in O.A. No.125 of 2022 and have challenged the orders dated 26.08.2022 in the present petition.

2. The grievance of the petitioners is that though they have been in employment with the 2<sup>nd</sup> respondent since 1998 as general cadre orderlies in Officer's Training Academy, Chennai, selected through



3. Briefly going into the facts essential for considering the present Petition:

- i. All the three petitioners were appointed as General Cadre Orderlies in the year 1992 and since there was a ban on recruitment/appointment by the Government of India, they could not be regularised. During their tenure they were given break in service on and off.
- ii. It was only in the year 2000 the Department started to regularise the services of the temporary employees based on their *inter se* seniority as and when vacancies arose.



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- iii. It appears that some of the juniors of the petitioners were regularised prior to 01.01.2004 thereby making them eligible for pension under the Old Pension Scheme.
- iv. Aggrieved over the non-regularisation, the applicants filed O.A.No.740 of 2002 before the Central Administrative Tribunal, Chennai Bench, which was disposed of by orders dated 02.01.2003 based on the assurance given by the respondents regarding regularisation of the services of the petitioners. They were to be considered in the future release of vacancies in the cadre of General Cadre Orderlies.
- v. However, the petitioners not being satisfied with this order of the Tribunal, approached this Court in W.P. No.20777/2003 praying for quashing the order dated 02.01.2003 in O.A. No.740/2002 passed by the Central Administrative Tribunal, Chennai Bench.
- vi. This Court had, vide an order dated 28.07.2003, ordered status quo and in the meanwhile a few vacancies were filled up appointing the



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petitioners on temporary basis with effect from 09.09.2003 and after completion of 2 years, their services were regularised with effect from 30.11.2005. Therefore, this Court in W.P.No.20777/2003, vide orders dated 21.08.2008, partly allowed the petition for one of the petitioners whose service was yet to be regularised . The said petitioner is not a party in this Writ Petition.

vii.Now, after having got their services regularised from 30.11.2005, the present petitioners once again approached the Central Administrative Tribunal, Chennai Bench, in O.A. No.1266/2015, praying for extending the Old Pension Scheme for them and the same was dismissed vide orders dated 31.03.2017.

viii.Aggrieved over this order, the petitioners filed W.P.No.22336/2017, which was also dismissed vide orders dated 18.12.2017.

ix. Thereafter, the petitioners submitted another representation dated 28.07.2021 to the respondents relying upon the judgment passed by Delhi High Court in a similar matter. However the said



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- x. The petitioners once again filed O.A. No.125/2022 before the Central Administrative Tribunal, Chennai Bench, which was dismissed on 26.08.2022 as not maintainable citing that it was barred by the principles of *Res Judicata*.

Hence this Writ Petition against the said orders.

4. Heard Mr. K.V. Dhanapalan, learned counsel appearing for the petitioners and Mr. V. Chandrasekaran, learned Senior Panel Counsel, appearing for the 1st respondent.

5. Learned counsel appearing for the petitioners contended that some of the employees who were juniors to the present petitioners were regularised much prior to their regularisation and therefore became eligible for the Old Pension Scheme and that the undue delay in the regularisation of the petitioners has caused them to lose their eligibility under the Old Pension Scheme. It was also further contended by him that they have been



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in employment since 1998 on adhoc basis with frequent intermittent break in service which was not their fault and therefore when they have earned their regularisation after a long drawn legal battle they very much deserve their inclusion in the Old Pension Scheme giving notional seniority to them. Moreover, he would contend that if there is a new set of facts, the same would not amount to Res Judicata. He relied on the decision of Division Bench of this Court in the case of ***The Secretary to Government, Home (Police) Department, and others vs. A.Eswaramoorthy and others (Writ Appeal Nos. 1719 to 1739 and 1602 to 1636 and 1933 to 1958 of 2010)***, wherein it has been held that there is no scope for application of *rejudicata* if original order sanctified illegality and also based on new material facts.

6. Per contra, Mr. V. Chandrasekaran, learned SPC, appearing for the 1st respondent vehemently argued that the scheme formulated by the Government of India in the name of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993" categorically defined that only such of the employees who were on



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employment on the date of commencement of the scheme and have rendered a continuous service of atleast one year will be conferred with temporary status. According to him, the petitioners, when they were recruited as General Cadre Orderlies were engaged to serve the officers during training period in the Officers' Training Academy, Chennai, and there used to be a break of 20-30 days between each training programme thereby causing break in service. It was also pointed out by him that this issue of including the petitioners under the Old Pension Scheme was already decided in W.P.No.22336/2017 and approaching this Court again with the same prayer is nothing short of abuse of judicial process by the petitioners.

7. This Court has carefully examined the arguments advanced by both the counsels and gone through the relevant records. The petitioners had initially taken to legal recourse for regularisation of their services which was delayed, according to them, due to the ban on recruitment imposed by Government of India. The petitioners have not also claimed



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that they were given temporary status before their regularisation on 09.12.2005 and at the same time it is also clear that the new pension scheme was introduced with effect from 01.01.2004. Therefore, by no stretch of imagination the petitioners who were regularised on 09.12.2005 could be brought into the Old Pension Scheme. This Court in W.P. No.22336/2017 as well as the Central Administrative Tribunal, Chennai Bench in O.A. No.125/2022 have relied on the decision of the Hon'ble Apex Court in *S.L.P. (Civil) 2224/2000 (Union of India & another vs. Mohan Paul, etc.)*, in which it was clearly held that the scheme of 1993 is not an ongoing scheme and the temporary status can be conferred on the casual labourers only if they were on employment on the date of commencement of the scheme and they have rendered continuous service of atleast one year. In fact, this decision clearly closed the doors for the present petitioners. The decision in the ***Secretary to Government, Home (Police) Department, and others vs. A.Eswaramoorthy and others*** (cited supra) would not apply to the facts of the present case because the facts of the present case is entirely different. In that decision after passing of an



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order in Writ Appeal the candidates approached the department under Right to Information Act seeking information regarding questions and answers and came to know that marks were awarded for answering wrong key answers and thereafter they approached the Court seeking a direction to the respondent to add the marks in view of wrong key answers and wrong evaluation and consider them for selection. The Government also admitted that wrong key answers were given for 3 questions and the Division Bench was forced to see whether the said act is a deliberate one warranting interference by the Court. In such circumstances, it was held that the matter would not amount to *resjudicata* in view of the earlier decision passed by the Division Bench in Writ Appeal.

8. Despite the repeated decisions in the Central Administrative Tribunal as well as by this Court against the plea of the petitioners, the petitioners have tried to repeat their justification to be considered under the Old Pension Scheme. The petitioners in no way qualify for the same and such multiple attempts to file cases is a clear abuse of the process of



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law and treated with disfavour. Law of Land is superior and it cannot be twisted or interpreted to suit the convenience of a few like the present petitioners who are fully aware that they are not eligible to be included under the Old Pension Scheme.

9. In the circumstances, we do not find any reason to interfere with the orders dated 26.08.2022 passed in O.A. No.125 of 2022 on the file of the Central Administrative Tribunal, Chennai Bench. Accordingly, the Writ Petition is dismissed. No costs.

(V.M.V.,J.) (R.H.,J.)  
11.01.2023

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
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To

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Chennai Bench,  
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2. The Secretary, Ministry of Defence,  
Union of India,  
New Delhi.
3. The Commandant  
Officer's Training Academy,  
St. Thomas Mount,  
Chennai 600 016



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