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W.P.No.397 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM :

THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.397 of 2020
and
W.M.P.No.458 of 2020

Tmt. T. Kalavathy

... Petitioner

Versus

1.The Engineer in Chief & Chief Engineer General
Water Resource Organization,
Public Works Department, Chepauk,
Chennai – 600 005.

2.Executive Engineer,
Public Works Department,
Ground Water Division,
Tirunelveli.

3.The Senior Accounts Officer,
GPS 14 CPS Section,
O/o. The Accountant General, (ATE),
361, Anna Salai,
Chennai – 600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the letter vide No.S.5(2)/24060/2016, dated 19.02.2016 issued by the 1st respondent and to quash the same and consecutively direct the



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1st respondent to include the petitioner in the old pension scheme with GPF which was existing prior to the introduction of G.O.Ms.No.259, Finance Dept, dated 06.08.2003, without reference to the same.

For Petitioner : M/s.Malarvizhi Udayakumar
For Respondents : Mr. M. Shahjahan, (for R1 & R2)
Special Govt. Pleader
: M/s. T.S. Selvarani, (for R3)
Government Advocate

ORDER

This Writ Petition has been filed seeking a direction to call for a letter vide No.S.5(2)/24060/2016, dated 19.02.2016 issued by the 1st respondent and to quash the same and consecutively direct the 1st respondent to include the petitioner's name in the old pension scheme with GPF which was existing prior to the introduction of G.O.Ms.No.259, Finance Dept, dated 06.08.2003, without reference to the same.

2.The brief facts leading to filing of the writ petition are that:

(i) According to the petitioner, he was appointed as an Assistant Draughtsman on 30.10.1985 and subsequently ousted from service on 31.05.1987 for want of vacancies along with 24 other persons. Thereafter, the petitioner was re-employed on 30.03.2004 vide G.O.Ms.217, Public



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Works Department, dated 30.03.2004 and joined duty on 19.04.2004.

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(ii) In the meantime, the Contributory Pension Scheme was introduced vide G.O.Ms.No.259, dated 06.08.2003 w.e.f 01.04.2003. Since the petitioner was re-employed only on 30.03.2004 and re-joined on 19.04.2004, the 1st respondent passed an order in the year 2008 that the petitioner is eligible only under the Contributory Pension Scheme and not for the old pension scheme, since, the date of joining of duty and appointment is subsequent to the date of 01.04.2003. Challenging the impugned order passed by the 1st respondent vide letter No.S.5(2)/24060/2016, dated 19.02.2016, the present Writ Petition is filed before this Court.

3. The core contention of the learned Counsel for the petitioner is that the petitioner was appointed as Assistant Draughtsman on 30.10.1985, as per proceeding No.A2/1733/85-36/dated 24.10.1985, issued by Superintendent Engineer, P.W.D, Periyar improvement Circle No.1, Madurai – 2 and his service was regularized subsequently. Hence, the Accountant General had allotted the GPF Account number to the petitioner as 54427/PW, based on the proposal of the then Executive Engineer (the 2nd respondent herein) and the subscription has been regularly deducted from



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the salary of the petitioner and credited to the GPF Account Number 54427/PW. Due to want of vacancy, the petitioner was ousted from service on 31.05.1987 and pursuant to the direction of the Tamil Nadu Administrative Tribunal made in O.A.No.8852/1997 dated 23.11.2001, the petitioner was reemployed vide in G.O.No.217/PW/C1/dept, dated 30.03.2004. Thereafter, the petitioner rejoined duty in the office of the Executive Engineer PWD Kodayar Basin Div. Nagercoil on 19.04.2004 F.N. According to the petitioner, the respondents had issued orders only after a delay of 2 ½ years, which is invalid in the eye of law.

4. Further, it is pointed out by the learned Counsel for the petitioner that the GPF subscription had been recovered regularly from the month 05/2004 onwards, but, to the petitioner's shock and surprise, she came to know that the 2nd respondent had sent a proposal to the Accountant General, in letter No.E33/4308/07 dated 02.01.2008, addressed to the Senior Officer Accountant General's Office vide GPF/14/CPS/Section/Chennai, requesting the allotment of CPS index number to the petitioner with effect from month 01/2008 and was compelled to sign in a printed form. The learned Counsel for the petitioner also brought to the notice of this Court that the petitioner submitted a detailed representation raising her objection to the above



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conversion of her GPF Account into CPS contribution before the 2nd respondent. The 2nd respondent by his proceedings in GPF 36/IV/2008-09/24 dated 01.08.2008, has replied stating that CPS Account Number has been allotted as 7036778/CPS. A further letter was also issued by giving details by the 2nd respondent dated 05.05.2009. An order was pronounced by the Tamil Nadu Administrative Tribunal in O.A.No.8852/97 on 23.11.2001 and the 1st respondent has also made it clear, that the appointment order has also been given by Letter No. S4(5)78108/97 dated 31.12.2001. However, G.O.Ms.No.217 PW(C1) Department dated 30.03.2004. Only on 30.03.2004 and thereafter, the petitioner was allowed to rejoin only on 19.04.2004. Hence, the delay from 2001 to 2004, is due to administrative reasons, which is best known to the respondents. Notwithstanding that, G.O.Ms.No.430 Finance (Pension) Department dated 06.08.2004 was issued, wherein, it is specified that those who have entered into the service subsequent to the date of 01.04.2003 will have to follow the Contributory Pension Scheme [CPS]. From the above, it is clear that the petitioner was wantonly pushed under the Contributory Pension Scheme.

5.The learned counsel for the petitioner would further submits that the petitioner had been forcefully made to convert, from old pension scheme to



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contributory pension scheme, while the petitioner's counterpart

Tmt.Maheswari was made to continue in the old pension scheme alone.

Deciding that this is unreasonable and it deserves rectification, the petitioner preferred a detailed representation on 04.06.2015 to the 1st respondent, for initiating appropriate action and the same was forwarded to the 2nd respondent vide in Lr.No.5(2)/36234/2015 dated 18.06.2015, with a direction to pass appropriate orders in accordance with the rules in force. Since there was no response from the respondents, the petitioner had no other option but to move before this Court by way of W.P.No.28637/2015 and orders were passed on 11.09.2015, directing the first respondent to consider the representation of the petitioner on merits and in accordance with law and pass orders within a further period of six weeks thereafter, and communicate the decision taken on the petitioner.

6.After passing of the above order, a communication in letter No.S.5(2)/36234/2015 dated 31.12.2015 of the 1st respondent, was sent to the petitioner, stating that she would only come under the Contributory Pension Scheme and rejected her claim. Thereafter, the petitioner immediately preferred an appeal on 27.01.2016 to reconsider her request that by letter No. S.5(2) 24060/2016 dated 19.02.2016 the 1st respondent



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had rejected the claim of the petitioner on the ground that the petitioner would be covered only by G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003.

7.Learned Counsel for the petitioner would also further submit that the petitioner was waiting for the order for joining duty from the respondents from 23.11.2001 onwards, and the petitioner was re-employed on 30.03.2004 and was allowed to join in the respective office in Kodayar Basin Division, Nagercoil on 19.04.2004. The delay on the part of the respondents in issuing appointment orders, the petitioner has been severely affected and recently the petitioner has come across a Judgment in W.P.No.9208 of 2012 dated 21.11.2017 wherein, a similar issue has been decided. In paragraph 12 of the said order, the learned Single Judge has categorically mentioned that it should be deemed that the petitioner has to be appointed much prior to the new pension scheme coming into force on 01.04.2003 and the appointment was given by issuing G.O.Ms.217, PWD dated 30.03.2004 and the petitioner joined on 19.04.2004.

8.In the meanwhile, a new pension policy was retrospectively introduced with effect from 01.04.2003 by G.O. Ms.No.259 dated



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06.08.2003. Therefore, in the instant case, the petitioner cannot be made to suffer for no fault on the petitioner's part, because, her counterparts are all coming under the Old Pension Scheme which is advantageous and the petitioner alone should not be denied from the same benefit, which is *non-est* in the eye of law. Further, it is pointed out by the learned Counsel for the petitioner that the petitioner is going to retire in the year 2025 on attaining the age of superannuation. Therefore, at this juncture, the 1st respondent had issued a letter vide No.S.5(2)/24060/2016 dated 19.02.2016, and the 3rd respondent is the authority of maintaining the accounts of the petitioner under the GPS in and CPS pension scheme which is also in Chennai. Aggrieved by the said order issued by the first respondent, the petitioner has come up with the present Writ Petition. Therefore, he prays for allowing the Writ Petition to secure the ends of justice.

9.The learned Special Government Pleader appearing for the first and second respondent would submit that the petitioner was ousted from service on 31.05.1987 along with several other persons, one person, namely, Tmt.Maheswari, had filed O.A.No.5170 of 1998 and obtained an order dated 01.12.2000 from the Tamil Nadu Administrative Tribunal at Chennai, and by which she was appointed on 01.11.2001, in the list dated 31.05.1987,



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the petitioner therein, Tmt.Maheswari, was in Serial No.15 and the name of the petitioner was in S.No.19, whereas Tmt.Maheswari, was given an appointment order on 11.10.2001. Thereafter, the petitioner filed O.A.No.8852 of 1997 and obtained an order on 23.11.2001 passed by the Tamil Nadu Administrative Tribunal at Chennai, by which the proposal was sent to the Government on 31.12.2001, for reappointment of the petitioner. The appointment order was issued only on 30.03.2004, vide G.O.Ms.No.217, Public Works Department, by which the petitioner was appointed. The reason given by the respondent for not including the petitioner in the old pension scheme is that Tmt.Maheswari, obtained the orders from the Tribunal as early as 01.12.2000 and she was appointed on 01.11.2001 much prior to the introduction of the Contributory Pension Scheme [CPS] by G.O.Ms.No.259 Finance Department, dated 06.08.2003 w.e.f 01.04.2003, hence, Tmt.Maheswari, is entitled for the old pension scheme and since the petitioner was appointed only on 30.03.2004, subsequently to the introduction of the Contributory Pension Scheme, she was denied for the old pension scheme.

10.Further, the learned Special Government Pleader appearing for respondents Nos.1 & 2 would further submit that till the year 2008, the



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petitioner was in the old pension scheme and because of her appointment on 30.03.2004, since after 01.04.2003, the Contributory Pension Scheme came into effect. The Senior Accounts Officer, O/o. Accountant General, the third respondent herein on 31.01.2008 letter No.GPF14/CPS/II/2019/Pt224/185 has stated that though the petitioner was appointed in the year 2004, thereafter, she was reappointed in the government service on 19.04.2004 is considered as a fresh appointment only, therefore, as per G.O.No.430, Finance (Pension) Department, dated 06.08.2004, the petitioner is only eligible for the Contributory Pension Scheme.

11.To press home their contentions, the learned Special Government Pleader appearing for respondents Nos.1, 2 and the learned Government Advocate appearing for respondent No.3, have invited the attention of this Court through paragraphs Nos.4, 5, 7 & 8 of the counter affidavit dated 07.06.2023 filed on behalf of the respondents Nos.1, 2 & 3. At this juncture, it is useful to extract the relevant portion of the counter affidavit paragraphs Nos.4, 5, 7 & 8 hereunder:-

“4. I respectfully submit that the averments made in para 4 of the affidavit is partially agreed. As per the proceeding of Executive Engineer, Kodaiyar Basin Division, Nagercoil letter No.E3/



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4308/ 2004/ dt.25.02.2005 GPF subscription was recovered from 05/2004. Also vide Assistant Accounts Officer, Office of the Principal Accountant General (Accounts & Entitlements) Chennai letter no.GPF14/CPS/II/20919/Pt 224/185/dt.31.01.2008 it was clarified to the petitioner that her reappointment in Government Service on 19.04.2004 is considered as fresh appointment and that she is eligible for CPS only.

The already recovered GPF subscription was returned back to the petitioner and was confirmed that CPS is eligible to her.

5. I respectfully submit that vide Assistant Accounts Officer, Office of the Principal Accountant General (Accounts & Entitlements) Chennai letter no.GPF 14/ CPS/II/20919/Pt 224/ 185/ dt.31.01.2008 it was clarified to the petitioner that her reappointment in Government Service on 19.04.2004 is considered as fresh appointment and hence CPS number was allotted.

.....

7. I respectfully submit the averments made in para 7 is partially true. The petitioner had rejoined duty on 19.04.2004 while her counter part Tmt.Maheswari has rejoined duty on 01.11.2001 before the contribution pension scheme effective date of 01.04.2003. The petitioner had submitted representation to the 1st respondent and the same has been forwarded to the 2nd respondent vide Letter No.S5(2)/ 36234/2015, dated 18.06.2015 to take appropriate action. The 2nd respondent submitted letter to 1st respondent for getting clarification from 3rd respondent regarding contribution pension scheme vide letter no.746/Al/2015, dt.13.11.2015. The 1st respondent sent reply to the petitioner vide letter no.S5(2)/36234/2015/dt.31.12.2015 that the petitioner would only come under contribution



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pension scheme.

8. I respectfully submit the averments made in para 8 is partially true. The Government had issued order to appoint the petitioner as new appointment vide G.O.217/PW(C1)/dept/dt.30.03.2004. Based on that the petitioner has joined duty on 19.04.2004. Hence CPS has been allotted to the petitioner.”

12.The learned Special Government Pleader, further added that there was a ban order on recruitment vide G.O.Ms.No.212, Personnel & Administrative Reforms Department, dated 29.11.2001. Hence, no recruitment was permitted from 29.11.2001 to 2006. Under this backdrop only there was a delay in issuing the appointment order to the petitioner.

13.Heard the learned Counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondents No.1 & 2 and the learned Government Advocate appearing on behalf of the respondent No.3 and perused the entire records of the case.

14.On a perusal of the records, it can be seen that the petitioner was appointed as Assistant Draughtsman on 24.10.1985, but, subsequently, due to want of vacancy, the petitioner was ousted from service on 31.05.1987 along with 24 persons, in which, One Maheswari, was in S.No.14 and the



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petitioner herein was under S.No.19. Tmt.Maheswari approached the Tamil Nadu Administrative Tribunal by way of filing O.A.No.5170 of 1998 and obtained an order of appointment on 01.12.2000 based on which, she was given an appointment order on 01.11.2001. The petitioner approached the Tamil Nadu Administrative Tribunal as like Tmt. Maheswari, by filing O.A.No.8852 of 1997, but obtained the order later to Tmt.Maheswari, i.e., on 23.11.2001. **The proposal/recommendation of the petitioner was sent to the Government on 31.12.2001 by the first respondent to the Government for appointment of the petitioner. The Government issued G.O.No.217, dated 30.03.2004 by the Public Works Department, by appointing the petitioner after a delay of two and half years. Even though the recommendation/ proposal for the appointment of the petitioner was sent to the Government as early as 31.12.2001, there was an inordinate delay on the part of the Government in appointing the petitioner, in the year 2004. In the meantime, G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003 was introduced by which, the Contributory Pension Scheme was introduced, and it came into force with retrospective effect from 01.04.2003.**



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15. Though the recommendation/proposal was sent to the Government on 31.12.2001, the petitioner was appointed on 30.03.2004, which is subsequent to the introduction of the Contributory Pension Scheme w.e.f 01.04.2003. The petitioner was under the old pension scheme till 2008 and the Accountant General issued a letter dated 31.01.2008 by which, it was informed that as per paragraph No.6 in Page No.2 of G.O.No.217, dated 30.03.2004, for which the petitioner was appointed and the reappointment of the petitioner in the government service is on 19.04.2004, was considered as fresh appointment only and as per G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004, the petitioner is eligible under the Contributory Pension Scheme only. The above letter was issued subsequent to the proposal sent by the second respondent to the Accountant General vide in letter No.E33/4308/07, dated 02.01.2008, requesting for the allotment of CPS index number with effect from 01/2008.

16. One of the contentions of the respondents is that there was a ban order for appointment vide G.O.No.212 Personnel & Administrative Reforms (B) Department, dated 29.11.2001 and the same was enforced in the year 2006, for which, there is a delay in issuing the appointment order to the petitioner, vide G.O.Ms.No.217,



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dated 30.03.2004 of the Public Works Department. This contention cannot be sustained for the reason, that this is not a fresh recruitment and the petitioner has already been appointed as Assistant Draughtsman on 30.10.1985 and thereupon ousted from service on 31.05.1987 along with the other 24 persons. Based on the Tamil Nadu Administrative Tribunal order, one of the ousted persons, namely, Tmt.Maheswari, appointed on 01.11.2001 and even though the petitioner has obtained a similar order to that of Tmt.Maheswari, on 23.11.2001, which was earlier to the ban order issued vide G.O.Ms.212 P&R Dept, dated 29.11.2001. Hence, it is crystal clear evident that the order obtained by the petitioner from the Tamil Nadu Administrative Tribunal, before the introduction of the ban order. Even tough the recommendation/proposal was sent to the Government as early as 30.12.2001, but the appointment order was issued vide G.O.Ms.No.217, only on 30.03.2004 after the delay of 2^{1/2} years, which is due to administrative reasons and the best reasons known to the respondents. The Government had also issued G.O.Ms.No.430 Finance (Pension) Department, dated 06.08.2004, wherein it was specified that those who entered service subsequent to the date of 01.03.2004 will have to follow the Contributory Pension Scheme [CPS], therefore, the said G.O is not



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applicable to the petitioner, since the proposal/the recommendation for proposal was sent to the Government as early as 31.12.2001 much prior to the ban order dated 29.11.2001. This apart, it is due to the delay on the part of the government in issuing the appointment order after the delay of two and half years i.e., from 31.12.2001 to 30.03.2004, which is merely two years three months. When the similarly placed person, namely, Tmt.Maheswari, was made to continue in the old pension scheme, it is not proper and fair on the part of the first respondent to deny the same benefit to the petitioner for the reason that both of them were ousted on 31.05.1987 and obtained orders from the Tamil Nadu Administrative Tribunal on 01.12.2001 and 30.03.2001 respectively.

17.But, in the case on hand, the petitioner has approached the Tamil Nadu Administrative Tribunal one year before the person, her counter part, namely, Tmt.Maheswari, in the year 1997 itself, and the said Maheswari approached the Tribunal only in the year 1998, but, however, in her counterpart case, the order was passed on 01.12.2000, and in the case of the petitioner, the order was passed only on 23.01.2001, for which, the petitioner could not be found fault with it.



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18. In support of the contention, the learned Counsel for the petitioner has also relied on the order passed by this Court in the case of ***V. Janakiraman Vs. The Government of Tamil nadu, Rep by the Secretary, Finance Department, Secretariat, Chennai 600 009 and 3 others., in*** W.P.No.9208 of 2012, dated 21.11.2017. It is necessary to extract the relevant portion of the order hereunder:-

“17. Therefore, in the above circumstances, the petitioner is entitled to be covered under the old pension scheme reckoning his date of appointment from 07.01.2003, where the Government had granted him the benefit vide G.O.(2D) No.2, School Education (M1) Department. The other orders passed by the second and fourth respondent herein, merely a consequential orders and therefore, in all fairness, the date of appointment of the petitioner ought to be taken as 07.01.2003, i.e., prior to coming into force of the new pension scheme with effect from 01.04.2003. The rejection letter dated 10.05.2010, rejecting the claim of the petitioner is only on the ground that the petitioner joined the post only on 16.04.2003 and hence, within the mischief of the new pension scheme cannot stand the test of judicial scrutiny.

18. In view of the above conclusion, the said rejection letter in Na.ka.No.13272/R1/E1/2010, dated 10.05.2010, cannot be sustained in law. Therefore, the same is set aside and the writ petition is allowed. There shall be a consequential direction to the respondents that the petitioner ought to be treated as an employee covered under the old pension scheme for the purpose of



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pensionary benefits.”

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19.Further, the learned counsel has also relied upon the Judgment of the Hon'ble Supreme Court of India, in case of, ***V.Jeeva Vs. State of Tamil Nadu & Ors.***, in Civil Appeal No.3078 of 2015 arising out of SLP.(C).No.28979 of 2014, wherein, he specifically relied on paragraph No.6 of the judgment, which reads as follows:-

“6. In such circumstances, the impugned order is set aside, the appeal is allowed and the respondent is directed to cover the appellant under the earlier Pension Scheme which was prevalent prior to 1st April, 2003. This order is being passed in the peculiar facts and circumstances of this case and it cannot be quoted as a precedent in any other case.”

20.After perusing the impugned order dated 19.02.2016, it is mentioned that the petitioner herein, namely, Tmt.T.Kalavathy was appointed on 31.10.1985 as Assistant Draughtsman and thereupon she was ousted on 31.05.1987, and thereafter, based on the order passed by the Tamil Nadu Administrative Tribunal, she was reappointed as per G.O.No.217 Public Works Department, dated 30.03.2004 and she rejoined duty on 19.04.2004. At this juncture, it is useful to extract the impugned order for better appreciation hereunder:-



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அனுப்புநர்

பெற்றி க. திருமதி, எம்.இ.
முதன்மை துணைமைப் பொறியாளர், திரு. (ம)
துணைமைப் பொறியாளர் (பொது), பொது,
செய்தகம், சென்னை -5.

பெற்றி

செய்தகம், பொது, திரு. (ம)
திரு. கோட்டம்
திரு. கோட்டம் - 627 011.

திரு. என்.என்.5(2)24000(2)19/19/19 19.02.2016

அறிமுகம்,

பெருள்: பரிசீலனையுடைய - திரு.பெ.எ.தி.பெ.எ.தி. - திருமதி
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ousted on 31.05.1987, therefore, the delay only on the part of the respondents in issuing the appointment order, and which has a resulted in passing the impugned order dated 19.02.2016 by the first respondent including the petitioner's name in the Contributory Pension Scheme instead of continuing the old pension scheme, which is unsustainable in law.

22.It is pertinent to note that the petitioner was continuing with the old pension scheme till the date of 01.08.2008 i.e. from the date of her appointment on 30.03.2004 for nearly four years. It is very clear that as per G.O.Ms.No.259 Finance (Pension) Department, dated 06.08.2003 that the new Contribution Scheme shall apply to the employees who are recruited on or after 01.04.2003, and not to the petitioner herein. Hence, the petitioner is eligible for the old pension scheme.

23.In view of the above facts and circumstances of the case, the ratio laid down by the learned Single Judge of this Court in the case of *V.Janakiraman Vs. The Government of Tamil nadu, Rep by the Secretary, Finance Department, Secretariat, Chennai 600 009 and 3 others*, and the Hon'ble Supreme Court of India in the case of *V.Jeeva Vs.*



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State of Tamil Nadu & Ors., as stated supra, this Court is of the considered view that the impugned order vide in letter No.S.5(2)/24060/2016, dated 19.02.2016 issued by the 1st respondent is liable to be quashed and accordingly quashed and as a consequence the 1st respondent is directed to include the petitioner in the old pension scheme with GPF benefits which was existing prior to the introduction of G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, without reference to the same.

24.Accordingly, the Writ Petition is allowed, with the above direction and observations. No costs. Consequently, the connected miscellaneous petition is closed.

21.07.2023

Index : Yes/No
Speaking / Non-Speaking order
Neutral Citation : Yes/No

klt



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W.P.No.397 of 2020

To:

- 1.The Engineer in Chief & Chief Engineer General
Water Resource Organization,
Public Works Department, Chepauk,
Chennai – 600 005.
- 2.The Executive Engineer,
Public Works Department,
Ground Water Division,
Tirunelveli.
- 3.The Senior Accounts Officer,
GPS 14 CPS Section,
O/o. The Accountant General, (ATE),
361, Anna Salai,
Chennai – 600 018.



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W.P.No.397 of 2020

J.SATHYA NARAYANA PRASAD,J.

klt

W.P.No.397 of 2020
and
W.M.P.No.458 of 2020

21.07.2023