



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.31603 of 2018
&
W.M.P.No.36828 of 2018

K.Manju

... Petitioner

Vs.

1. The State of Tamil Nadu rep. By Secretary
School Education Department
Fort St.George, Chennai – 9
2. The Joint Director of School Education
College Road, Chennai – 6
3. The Chief Educational Officer
Vellore
4. The Accountant General
O/o. The Principal Accountant General
No.361, Anna Salai, Chennai – 18

... Respondents

Writ Petition filed under Article 226 of Constitution of India for issuance of writ of mandamus directing the respondents to include the name of the petitioner in the list of Teachers to be brought under the General



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Profit Fund Scheme and to consequently extend the pension scheme, as had been made applicable to the recruits who came to be selected and appointed pursuant to the orders issued by the second respondent on 26.03.2002, subsequent to the selection/written examination held on 21.04.2002 by Teachers Recruitment Board and to extend all benefits of pension under the General Profit Fund Scheme.

For Petitioner : Mr.L.Chandrakumar
For Respondents: Dr.T.Sreenivasan
Special Government Pleader
For respondents 1 to 3

Mr.V.Murali for R4

ORDER

The present writ petition has been filed seeking for a direction to the respondents to include the name of the petitioner in the list of Teachers to be brought under the General Provident Fund Scheme and to consequently extend the pension scheme as had been made applicable to the recruits who came to be selected and appointed pursuant to the orders passed by the 2nd respondent on 26.03.2003 subsequent to the selection/written examination held on 21.04.2002 by the Teachers Recruitment Board and to extend all benefits of pension under the General Provident Fund Scheme.



2. The case of the petitioner in a nutshell is as follows;

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The petitioner was appointed as Block Resources Teacher vide notification of the Teacher Recruitment Board Advertisement No.4/2002 and an appointment order was issued on 26.03.2003 vide proceedings Na.Ka.No.17280/C5/C18/02 posting her at R.V.Pettai School, Thiruvallur District but as the petitioner's husband is a visually handicapped person and was working in Gudiyatham, Vellore District, the petitioner sent a representation to modify her posting to a nearby school where her husband is working. As per her request, the revised posting order was issued on 24.04.2003 and the petitioner reported for duty on 28.04.2003. While so, the fourth respondent communicated to the petitioner that she has to be brought under the Contributory Pension Scheme as she joined the post only on 28.04.2003. According to the petitioner, the same is contrary to the Government orders and clarification issued by the Government. The petitioner submits that the communication of the fourth respondent was brought to her notice only recently and she represented to the concerned authority on 25.10.2018 but the same is yet to be considered and hence, the petitioner seeks for quashing of the impugned order.



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3. Respondents 1 to 3 have filed a counter affidavit refuting the allegations in the writ affidavit. It has been stated by the respondents, the contention of the petitioner that she came to know about the communication of the fourth respondent dated 24.07.2009 only recently cannot be sustained and there is no evidence to substantiate the same. The petitioner joined the service in the year 2003 and only at the fag end of her service, the petitioner has chosen to file the present writ petition and there is a delay and laches on the part of the petitioner. It is stated that as per G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004 on the basis of G.O.Ms.No.259 dated 06.08.2003, all the employees who were recruited on or after 01.04.2003 should be brought under the contributory pension scheme. It is further stated that Government of Tamil Nadu vide letter No.47286/Finance (Allowances) /06-1 dated 7.9.2006 has clarified that the candidates who have been selected by the Tamil Nadu Public Service Commission prior to 01.04.2003 and joined service on or after 01.04.2003 should be brought under CPS only. It is the contention of respondents that the rank obtained by the petitioner in the TNPSC examination or higher educational qualification acquired or unblemished record of service rendered etc., are not factors to decide as to whether a candidate should be brought under the



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new pension scheme or old pension scheme and as the juniors referred by the petitioner have joined in the Government Service prior to 01.04.2023, the crucial date for coming into the new contributory pension scheme, they are legally entitled to come under GPF and pension scheme. Though the petitioner has relied on the order passed in W.P.No.16477 of 2012, wherein the petitioner therein was brought under GPF, the same would not apply to the case of the petitioner since the petitioner therein stood in a different footing, i.e., she was in the advanced stage of pregnancy at the time of joining and the High Court while granting the relief observed that the said order is being passed in the peculiar facts and circumstances of the case and therefore, similar relief cannot be granted to the petitioner.

4. The fourth respondent has filed a separate counter affidavit reiterating the stand taken by respondents 1 to 3 and prays for dismissal of the present writ petition.

5. Heard the learned counsel for the petitioner, learned Special Government Pleader appearing for Respondents 1 to 3 and learned counsel appearing for the fourth respondent.



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6. The learned counsel appearing for the petitioner submitted that the notification was issued by the Government on 09.02.2002, the written examination was conducted on 21.04.2002 and the appointment order was issued to the petitioner on 26.03.2003 and therefore, the selection process commenced prior to 01.04.2003 and therefore, the petitioner is entitled to be brought under General Provident Fund and Pension Scheme. The learned counsel for the petitioner submitted that this Court had an occasion to consider a similar case wherein appointment order has been issued prior to 01.04.2003 and held that those persons who were selected through selection process which commenced prior to 01.04.2003 are eligible to be brought under GPF Scheme. Learned counsel brought to the notice of this Court an order passed by a Hon'ble Division Bench of this Court in W.A.No.933 of 2021 dated 28.04.2021 wherein it was held that if the selection process has commenced prior to 01.04.2003, those persons are eligible to be brought under the pension scheme. It was also submitted by learned counsel for petitioner that the petitioner's batchmates who were selected through the same recruitment process brought under GPF scheme and therefore, the petitioner has to be given the similar benefit by application of doctrine of relation back.



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7. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the contention of the petitioner that communication of the fourth respondent dated 24.07.2009 came to be made known to her only recently is unsustainable as the petitioner entered the service in the year 2003 and only at the fag end of her service, after a lapse of nearly 15 years, the petitioner has chosen to file this writ petition. The learned Special Government Pleader further submitted that the Government through Government Orders in G.O.Ms.No.430, Finance (Pension) Department dated 06.08.2004 on the basis of G.O.Ms.No.259 dated 06.08.2003, made it clear that those employees who were recruited on or after 01.04.2003 should be brought under Contributory Pension Scheme. The learned Government Pleader further submitted that the Government further through Letter No.47286/Finance (Allowances)/06-1 dated 07.09.2006 has categorically clarified that the candidates who have been selected by Tamil Nadu Public Service Commission prior to 01.04.2003 and joined service on or after 01.04.2003 should be brought under CPS scheme and there is no provision in the scheme to treat the date of examination as the criteria for bringing the employees who entered Government Service on or after 01.04.2003. It is the further stand of the respondents that the rank



obtained by the petitioner in the TNPSC examination, her educational qualification and her blemishless service record have no relevance to decide as to whether she should be brought under new pension scheme or old pension scheme and the juniors referred to by the petitioner have joined in Government service prior to 01.04.2003 and they are entitled to come under GPF and pension scheme.

8. I have carefully considered the submissions made on both sides.

9. Admittedly, the fact that notification was issued by the Government on 09.02.2002, the written examination was conducted on 21.04.2002 and the appointment order was issued to the petitioner on 26.03.2003 are not in dispute. The only contention of the respondents is that the petitioner joined the Government Service after 01.04.2003 and therefore, she is not eligible to be brought under General Provident Fund Scheme and Pension Scheme. Undisputedly, when petitioner applied for the post, old pension scheme was in existence, therefore, petitioner had every reasonable expectation that she would be governed by the service conditions prevailing on the date when the posts were advertised and recruitment



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process was commenced. The service conditions prevailing on the date of recruitment process, cannot be permitted to be altered to the disadvantage of the recruitees. The contributory pension scheme was brought into force from 01.04.2003, whereas notification for the post of Block Resources Teacher was issued by the Teachers Recruitment Board as early as on 09.02.2022. This Court is of the view that because of the retrospective operation of the New Pension Scheme, it cannot be expected that no employer and employee would have anticipated that appointments made after April 1, 2003, would not be eligible for the Old Pension Scheme. The process of appointment started from the date of the notification and ended with the issuance of appointment orders. Therefore, as the appointment order was issued on 26.03.2023, the petitioner would be eligible for General Provident Fund and Old Pension Scheme. Therefore, the contention of the respondent that as the petitioner joined the services only on 28.04.2023 i.e., after the crucial date, the old pension scheme will not apply to the petitioner cannot be sustained.

10. In view of the aforesaid discussion and considering the submissions made on either side, this Court is of the view that merely because the petitioner had joined the service after the crucial date i.e. after



01.04.2003, she cannot be denied the benefit as sought for by her since the petitioner was selected and appointment order was issued prior to 01.04.2003.

11. Accordingly, this Writ Petition is allowed and as a consequence, the services of the petitioner is directed to be brought under General Provident Fund and Pension Scheme. The respondents are directed to pass necessary orders in this regard and communicate the same to the petitioner as expeditiously as possible, in any event, within a period of three (3) months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

08.11.2023

gpa



To

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