



W.P.(MD)No.5620 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)No.5620 of 2019

J.Joseph Dharmaraj

Vs.

... Petitioner

1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai.

2.The Director,
Department of School Education,
DPI Compound, Chennai.

3.The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

4.The District Educational Officer,
Tirunelveli District, Tirunelveli.

5.The Block Educational Officer,
Palayamkottai Nagar, Tirunelveli District.

6.The Correspondent,
Hameem Middle School,
Melapalayam, Tirunelveli.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 5th respondent in A.Thi.Mu.No.80/2019, dated 01.03.2019 and quash the same as illegal and consequently, to direct the respondents to shift the petitioner from new pension scheme to old pension scheme by opening GIF, TPF etc., accounts forthwith in petitioner's name.

For Petitioner : Mr.S.Chellapandian
For R1 to R5 : Mr.N.Ramesh Arumugam,
Government Advocate

ORDER

This Writ Petition is filed challenging the order of the 5th respondent dated 01.03.2019, in an by which, the claim of the petitioner to place him under the old pension scheme is rejected.

2.The case of the petitioner is that he was appointed as Secondary Grade Teacher in a sanctioned post in the 6th respondent School with effect from 20.01.2003. As a matter of fact his appointment was approved by order dated 25.10.2004 with effect from the date of his initial appointment ie., on 20.01.2003. Having appointed the petitioner with effect from



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20.01.2003, even though his case comes before the cut of date on 01.04.2023, he is wrongly placed in the Contributory Pension Scheme (New Pension Scheme) and he is not placed under the old pension scheme. Therefore, he has been making continuous representations and by the present impugned order, the representation is rejected and hence, the Writ Petition.

3.The Writ Petition is resisted by the respondents 1 to 5. The 4th respondent has filed counter affidavit. It is essential to extract the relevant contention of the 4th respondent, which is contained in paragraph 6.

“6.It is respectfully submitted that the State Government by way of G.O.Ms.No.430, Finance Department, dated 06.08.2004 had taken the policy decision that the employees who are appointment on or after 01.04.2003 are not entitled for pensionary benefits under Tamil Nadu Pension Rules and such employees are entitled only under the New Pension Scheme called Contributory Pension Scheme. In spite of the fact that the petitioner's appointment was made on consolidated pay on 20.01.2003, specifically not on regular mode of appointment, he was regularized only from 01.06.2006, which is after the crucial date of 01.04.2003. Hence, the petitioner is not eligible



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under old pension scheme and he is eligible only under new pension scheme of contributory pension scheme.”

4.Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 5, pointing out the said counter affidavit, would submit that the regularization of the case of the petitioner was done only on 01.06.2006, by the time new pension scheme had come into force. Therefore, the prayer of the petitioner has rightly been rejected.

5.I am unable to accept the contentions of the learned Government Advocate for the respondents 1 to 5 inasmuch as the counter affidavit states that there was regularization as on 01.06.2006. In this case, there is no question of any regularization, as the petitioner was appointed in a sanctioned post and approval is granted by the order dated 25.10.2004.

6.The approval order categorically states that the approval is granted from the date of his initial appointment ie., on 20.01.2003. Therefore, the said statement cannot be true and it is factually proved to be



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incorrect by the petitioner. Further, there is no any document, which is produced on behalf of the official respondents to support that the petitioner entered into regular service only on 01.06.2006. Therefore, the petitioner is entitled to succeed. As a matter of fact, the issue is no longer *res-integra* and is covered by the Division Bench of this Court in W.A.(MD)No.307 of 2019 and it is appropriate to extract the relevant portion of the paragraph 10, which reads thus”-

“10..... for this purpose, the date of approval of appointment is not relevant factor and on the other hand, it is only the date of appointment that matters. In other words, if the writ petitioner is entitled to count her service period from the date of her appointment for the purpose of pension, she must be placed only under the Old Pension Scheme, since her appointment was admittedly, earlier to the introduction of the New Pension Scheme.”

7.In the result, this Writ Petition is allowed on the following terms:-

(i)the impugned order dated 01.03.2019 passed by the 5th respondent shall stand quashed; and



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(ii)The official respondents are directed to shift the petitioner from new pension scheme to the old pension scheme by opening GIF., TPF. Etc., accounts in the name of the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

05.07.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No

Yuva

To

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D.BHARATHA CHAKRAVARTHY, J.

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