



W.P(MD)No.16510 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16510 of 2020

N.Murugeswari

... Petitioner

Vs.

1.The Principal,
Government Medical College (Sidda),
Murugankurichi, Palayamkottai.

2.The Director,
Directorate of Indian Medicine and Homeopathy,
Arumpackam, Chennai -106.

3.The Secretary to Government,
Health and Family Welfare IM 2 (2) Department,
Chennai-9.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.18149/Ni 2/1/2010 dated 28.09.2020 quash the same and consequently direct the respondents to Regularize the service of the petitioner on 13.07.2000 instead of 10.07.2007 with Time Scale of pay on completion of 10 years of service from the initial date of



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appointment on 13.07.1990 in terms of G.O.Ms.No.22 Personnel and Administrative Reforms (F) Department dated 28.02.2006 notionally without Back Wages and to extend the benefit of Old Pension Scheme instead of New Pension Scheme which takes effect from 01.04.2003 in view of the appointment of the petitioner on 13.07.1990 prior to the cut of date of 01.04.2003 in the basic service as Hospital Worker through Employment Exchange in the sanctioned post on full time basis in the light of the Division Bench Judgment of this Court reported in 2019 (4) CTC 865 dated 02.08.2019.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.T.Vilavangothi,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The petitioner was appointed as a Hospital Worker in Siddha Rural Dispensary in Theni District on 13.07.1990. She was originally paid only a meagre amount as consolidated pay to the tune of Rs.200/- per month. It was increased to Rs.600/- per month in the year 2007.



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The petitioner was absorbed as Pharmacy Attendant vide G.O.(2D)No. 80, Health and Family Welfare Department, dated 10.07.2007. The petitioner reached the age of superannuation on 30.09.2022. During her service, she represented for placing her under the old pension scheme. The case of the petitioner is that since she was appointed as Hospital Worker on consolidated pay basis in the year 1990, she ought to have been regularized after ten years of said service and in that event, she would have come under old pension scheme. The petitioner's request was rejected vide order dated 28.09.2020 by the second respondent herein. Challenging the said decision, the present writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for. The learned counsel placed reliance on a catena of decisions. Many of them have been enclosed in the typed set of papers. He also placed particular reliance on the decision of the Hon'ble Division Bench reported in **2023-I-LLJ-696 (M.Shanmugam and Others Vs.**



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Government of Tamil Nadu and Others) and the order of the Hon'ble Supreme Court dated 18.02.2022 dismissing S.L.P.(C)No.1109 of 2022. He pointed out that those cases also arose from similar factual matrix.

4.The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. The stand of the respondents is that there is no merit in the petitioner's request. Reliance is placed by the respondents on the decision of the Hon'ble Supreme Court reported in **2017 (4) SCC 113 (The Secretary to Governemnt, Commercial Taxes and Registration Department and Another vs. A.Singamuthu)**. The learned Additional Government Pleader pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is true that the petitioner was appointed as a Hospital Worker way back in the year 1990. The fact remains that she was appointed as a Pharmacy Attendant only vide G.O.(2D)No.80, Health and Family Welfare Department, dated 10.07.2007. The petitioner on such appointment came under what is known as



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Contribution Pension Scheme. For the petitioner to come under the old pension, the cut off date is 01.04.2003. In other words, if the petitioner had been appointed as a regular government employee prior to the cut off date, she would come under the old pension scheme. The fact remains that the petitioner was working on consolidated pay basis from year 1990 till 2007. The petitioner has not questioned G.O.(2D)No.80, dated 10.07.2007. In other words, the petitioner accepted her appointment as Pharmacy Attendant with effect from 10.07.2007. The Hon'ble Supreme Court in the decision reported in **2017 (4) SCC 113 (The Secretary to Governemnt, Commercial Taxes and Registration Department and Another vs. A.Singamuthu)** had held that the benefit of service under G.O.(Ms)No.22, Personal and Administrative Reforms Department, 28.02.2006 can be given only from the date of regularization and not from a date anterior to the date of regularization. The very same approach has to be adopted in the present case also. When the petitioner's appointment as Pharmacy Attendant is only with effect from 10.07.2007, I do not know as to how the petitioner's appointment on regular basis can be pushed back so as to enable the petitioner to come under the old pension scheme. The petitioner had come under the new



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pension scheme and with the knowledge of the petitioner, deductions have been made from her salary. The petitioner had since retired also. I do not find any ground to interfere with the impugned order. The writ petition stands dismissed. No costs.

30.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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