



W.A(MD)Nos.348 & 349 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.01.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

W.A.(MD)Nos.348&349 of 2021
and
C.M.P(MD)Nos.1192 and 1194 of 2021

- 1.The State of Tamil Nadu,
rep by its Secretary to Government,
Education Department, Secretariat,
Chennai-9.
- 2.The Director of Elementary Education,
College Road,
Chennai-600 006.
- 3.The Commissioner,
Government Data Centre,
Guindy,
Chennai-34.
- 4.The District Educational Officer,
Dindigul District.
- 5.The Block Educational Officer,
Dindigul Nagar,
Dindigul District.

.. Appellants/Respondents 1to5
in W.A(MD)No.348 of 2021

Vs.



W.A(MD)Nos.348 & 349 of 2021

1.K.Sulochana(Died)

..1st Respondent/Writ Petitioner
in W.A(MD)No.348/2021

2.A.Rajeswari

..1st Respondent/Writ Petitioner
in W.A(MD)No.349/2021

2.The Secretary,
Gandhiji Middle School,
14th Ward, Dindigul District.

..2nd Respondent/6th Respondent
in Both W.As

3.P.Ayyanar

4.A.Dhiheedev

5.A.Madesh(Minor)

..Respondents in W.A(MD)
No.349 of 2021

*(R3 to R5 are brought on record as LRS of
the deceased R1 vide Court order dated
17.06.2021 in C.M.P(MD)No.3962 of 2021)*

Appeal filed under Clause 15 of the Letters Patent Act, praying this Court, to set aside the order dated 25.11.2019 passed in W.P(MD)Nos. 21803 and 21804 of 2019 on the file of this Court by allowing this Writ Appeal.

For Appellants :Mr.J.Ashok
in both W.As Additional Government Pleader

For R3 to R5 :Mr.S.N.Ravichandran
in W.A(MD)No.348 of 2021

For R1 :Mr.S.N.Ravichandran
in W.A(MD)No.349 of 2021

R1 :Died
in both W.As



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JUDGMENT

DR G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

These appeals filed by the State being aggrieved by the judgment passed by the learned Single Judge in W.P(MD)Nos.21803 and 21804 of 2019.

2.A common order came to be passed, in a batch of three writ petitions, by the learned Single Judge, wherein, the prayer of the writ petitioners to consider them under the old pension scheme was allowed on the ground that their appointments were prior to the implementation of the new pension scheme, though the approval of their appointments subsequent to the implementation of the new pension scheme, which came into effect from 01.04.2003.

3.The learned Single Judge relying upon the judgment of the Division Bench rendered in *State of Tamil Nadu and others-vs-Pallivasal Primary School*, reported in *2004(2)L.W. 591*, allowed the writ petitions and the same is now being challenged by the State in these writ appeals.



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4.The learned counsel appearing for the respondents/writ petitioners at the outset submitted that out of three writ petitions, where the learned Single Judge has passed a common order, in one of the writ petition filed by Shanthi in W.P(MD)No.8154 of 2016, appeal was preferred by the State in W.A(MD)No.1464 of 2021, and came to be dismissed by the Division Bench of this Court, on 28.07.2021 the reasoning for dismissal of this writ appeal squarely applies to these two appeals also and nothing survives in these appeals. Hence, it has to be dismissed by following the order of the Division Bench passed in W.A(MD)No.1464 of 2021.

5.The learned Additional Government Pleader appearing for the appellants would submit that the State has preferred Special Leave Petition before the Hon'ble Supreme Court and it is yet to be numbered.

6.This Court finds that the respondents/writ petitioners, in these cases, were appointed prior to 01.04.2003 and they acquired the requisite certificate in child psychology on 12.01.2004. As per G.O.Ms.No.155, dated 03.10.2002, the Secondary Grade Teachers possessing B.Ed., degree and qualified in child psychology, are entitled for employment as Secondary



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Grade Teachers. Accordingly, the appointments of these two writ petitioners were approved by the authorities on 29.07.2004 with effect from 19.01.2004. As far as their past services is concerned, the Division Bench of this Court in the case of *V.Vasanthi-vs-State of Tamil Nadu*, reported in **(2019) 4 CTC 865**, has categorically held that their past services must be taken into consideration for pensionary benefits. When the Court has already directed the State to consider the past service for pensionary benefits, this Court finds no reason to deprive the pensionary benefits to the respondents/writ petitioners, who are entitled for pension, as per old scheme. This issue is no longer *res integra* and the Division Bench of this Court has gone at length and has upheld the said view in the connected writ appeal in W.A(MD)No.1464 of 2021 arising out of the same common judgment.

7.For convenience sake, the judgment rendered by the Division bench in W.A(MD)No.1464 of 2021, is extracted below:

“3.The admitted facts are that the respondent-writ petitioner was a graduate teacher, who was appointed in the secondary grade teacher's vacancy pursuant to the order dated 12.11.2002. The issue was whether a graduate teacher would be



eligible to handle primary classes and middle school classes, because, they are required to undergo a Child Psychology Training. Pursuant to the order dated 12.11.2002, the respondent joined service on 13.03.2003 in the secondary grade vacancy, which was caused due to retirement.

4.On 01.04.2003, the contributory pension scheme came into vogue. Admittedly, the respondent-writ petitioner had completed her Child Psychology Training on 09.01.2004 and her appointment as secondary graduate teacher was approved on 10.01.2004.

5.The point for consideration in this appeal is as to how the service of the respondent between the period 13.03.2003 to 10.01.2004 should be reckoned. This issue is no longer res integra and has been decided by the Hon'ble Division Bench in the case of State of Tamil Nadu and other-vs-Pallivasal Primary School, 2004(2) L.W. 591, and in paragraph No.8 of the said judgment, it has been stated that the past service shall be counted for pension.

6.The writ petitioner is a scheduled caste candidate and when a similar issue arose for consideration before the Hon'ble Division Bench in the case of V.Vasanthi-vs-State of Tamil Nadu, (2019) 4 CTC 865, the writ appeal was allowed. The operative portion of the judgment reads as follows:

“12.A careful perusal of the above observation made in the said Pallivasal Primary School case would show that even



though approval of the appointment of the teacher, who has undergone Child Psychology Training, will take effect only on completion of such training, the past service rendered by such teacher ie., service rendered before the completion of such training, is bound to be counted for pension. In other words, the service period of such teacher commences from the date of the appointment and not from the date of approval, even though the monetary benefits start to accrue only from the date of completion of the training. Therefore, for all practical purpose, the date of appointment is not altered and remain to be the same. Therefore, the date of approval of appointment of the writ petitioner cannot be construed as the date relevant for considering the applicability of the pension scheme and on the other hand, it is the original date, on which the writ petitioner got appointed that matters for considering as to whether the writ petitioner is governed under the Old Pension Scheme or not. At this juncture, it is relevant to note that in G.O.Ms.No.259, Finance(Pension)Department, dated 06.08.2003, a proviso to Rule 2 of the Tamil Nadu Pension Rule 1978, was introduced by way of amendment, wherein and whereby, it is contemplated that the Tamil Nadu Pension Rules 1978 shall not apply to Government Servants “appointed” on or after 1st April 2003 to services and posts. The word “appointed” referred in the said proviso cannot be construed to mean approval of such appointment.



13. In fact, the very same issue was considered by one of us (KRCBJ) in W.P(MD)No.3308 of 2007. The Contributory Pension Scheme was introduced to the newly recruited employees, who are recruited on or after 01.04.2003. Relevant clause 3(i) of G.O.Ms.No. 259 dated 06.08.2003, which has introduced the New Contributory Pension Scheme, was taken into consideration in the said case and it was found that the said Government Order introducing New Contributory Pension Scheme, would apply only to persons, who were recruited on or after 01.04.2003 and not in respect of persons, who were recruited earlier to 01.04.2003. In that case, though the writ petitioner therein was recruited on 26.03.2003, he joined the duty on 04.04.2003 after obtaining the medical certificate from the Medical Board, since he is a physically challenged person. Therefore, it was found therein that the date of joining of such person cannot be considered as date of appointment as such event of appointment had already taken place well before 01.04.2003. We are informed that the above said order has been given effect to.

14. Under the above stated facts and circumstances, we find that the Writ Court is not justified in dismissing the writ petition on the reason that the writ petitioner has completed her Child Psychology Course only on 27.10.2004 and therefore, she is not entitled to made claim under the Old Pension Scheme. Thus, the writ petitioner is entitled to succeed."

7. In the light of the above legal position, the relief granted by the learned Writ Court does not call for any interference. Accordingly, this Writ Appeal fails and dismissed. No costs.



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Consequently, connected miscellaneous petition is closed.”

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8.In the light of the above facts, this Court finds no merit in these writ appeals and hence, these writ appeals are dismissed. The pensionary benefits of the respondents/Writ Petitioners shall be calculated from the date of their appointment and the same shall be disbursed within a period of 90 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (S.M.,J.)
04.01.2023

Index: Yes/No

Internet: Yes/No

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