



W.P.(MD).No.16030 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16030 of 2023

Saravana Bose

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Finance (Pension) Department,
Fort St. George,
Chennai-9.

2.The Secretary to Government,
Home (Police-III) Department,
Fort St. George,
Chennai-9.

3.The Director General of Police,
Mylapore, Chennai.

4.The Chairman,
Tamil Nadu Uniformed Service Recruitment Board,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to consider the representation of petitioner, dated 05.06.2023 and bring the



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petitioner under old pension scheme prevailed prior to implementation of contributory pension scheme (CPS) vide G.O.No.259 Finance (pension) department, dated 06.08.2023 and transfer the pension contribution collected already from the petitioner to Old Pension Scheme.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.P.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed seeking direction to the respondents to consider the representation of petitioner, dated 05.06.2023 and bring the petitioner under Old Pension Scheme prevailed prior to implementation of contributory pension scheme (CPS) vide G.O.No.259 Finance (Pension) Department, dated 06.08.2023 and transfer the pension contribution collected already from the petitioner to Old Pension Scheme.

2. Heard the learned Counsel for the petitioner and the learned Additional Advocate General, who is assisted by the learned Special



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Government Pleader for the respondents and carefully perused the materials available on record.

3. The petitioner joined as a Police Constable (Grade – II) on 27.02.2004. The said selection was made pursuant to the notification issued by the fourth respondent, where applications were invited for filling up 3,500 posts of Police Constable (Grade – II) during the year 2000-2001. Based on the said notification, the petitioner applied for the said post and he got selected and was duly appointed on 27.02.2004. The first respondent issued a New Pension Scheme namely, Contributory Pension Scheme vide G.O(Ms)No.259 of the Finance (Pension) Department, dated 06.08.2003 with effect from 01.04.2003. During the petitioner's tenure, Pension Contribution was deducted from his salary. The petitioner ought to have been brought under the Old Pension Scheme, since his selection process had commenced much prior to 01.04.2003 and there was a delay in completing the selection process and as a result, appointment orders were given to the petitioner only on 27.02.2004, that is, atleast after a period of 3 ½ years from the date of commencement of the selection process. Since the petitioner's selection process took place by notifying a vacancy of 3,500 posts much before the crucial date for fixing the



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Pension Scheme, that is, on 01.04.2003, the petitioner claiming him to be entitled to the benefit of Old Pension Scheme has made a representation, dated 05.06.2023 to the respondents to extend him with a benefit of Old Pension Scheme. However, the said representation was not considered and hence, this writ petition came to be filed.

4. The learned Counsel for the petitioner relying upon the order passed by the *Hon'ble High Court of New Delhi in a batch of similar writ petitions in the case of W.P(C)Nos.8208 of 2020 etc., dated 15.01.2021*, wherein the Hon'ble High Court of New Delhi has passed favourable order to the petitioner and pressed for allowing this writ petition. The relevant portion of the said order is extracted as follows:

“13. Having regard to the fact that in the present batch of cases also the advertisement / notification was issued in September, 2003 and June, 2003 i.e. prior to coming into force of the present contributory pension scheme on 22nd December, 2003, this Court is of the view that petitioners cannot be deprived of the benefit of the Old Pension Scheme.



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14. *This is more so when the batchmates of the petitioners are getting this benefit under various judgments passed by this Court.*

15. *For the above reasons, the petitions are allowed. Respondents are directed to extend the benefit of Old Pension Scheme to each of these petitioners.”*

5. The learned Counsel for the petitioner drew my attention to the ***Special Leave to Appeal (C) No(s).15312-15321 of 2021 of the Hon'ble Supreme Court of India***, which was preferred as against the order of the Hon'ble High Court of New Delhi in the aforesaid matter, which was also later dismissed on 03.01.2022. Another order passed by this Court in a batch of writ petitions in ***W.P.Nos.8584 of 2021 etc., dated 10.02.2023*** following the verdict of the Hon'ble High Court of New Delhi in the aforesaid matter is also placed before me, wherein this Court has passed favourable order. The relevant portion of which is extracted as follows:

“15. The language in G.O.No.259, dated 06.08.2003 is quite clear that the old Pensions Scheme will not apply to the Government servants appointed on or after 01.04.2003. The appointment is a continuous process starting from the date of issuance of the notification and ending with issuing the



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appointment orders. Whenever a beneficial Pension Scheme is applied, particularly to the employees, a wider interpretation must be given so as to benefit a large section of the employees. The Court should not adopt a strict interpretation and thereby deprive an employee of a beneficial Pension Scheme.

16. In this case, the process of selection started with the issuance of Notification dated 25.05.2002, which is nearly 11 months before the new Pension Scheme was brought into force through G.O.No.259, dated 06.08.2003. This Government Order fixed the cut-off date as 01.04.2003. If the selection process of the petitioners had been competed with the very same speed with which it was done for the women Constables, the petitioners would have had the benefit of the old Pension Scheme. However, there was a delay in completing the selection process and it is nobody's case that the delay is attributable to the petitioners. Hence, even though the appointment order was issued to the petitioners during November 2003, that will not in any way deprive the petitioners the benefit of the old Pension Scheme since the process of selection had commenced through Notification, dated 25.05.2002. This Court is in complete agreement with the judgment of the Delhi High Court that has been extracted supra. Those judgments were also confirmed by the Apex Court. The reasoning that has been given in the above judgments perfectly falls in line with regard to interpreting a beneficial Scheme. In view of the same, this Court comes to the conclusion that the petitioners cannot be deprived of the benefit of the old Pension Scheme.”



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6. Per contra, the learned Additional Advocate General, assisted by the learned Special Government Pleader for the respondents had filed counter and he also vehemently submitted that the petitioner is not entitled to seek the benefit of Old Pension Scheme by claiming that the selection process commenced as early as during the period between 2000 and 2001. But the date of his appointment on 27.02.2004 has to be taken into consideration for the purpose of deciding as to which Pension Scheme he is entitled to. According to the relevant pension rules, only the date of appointment has to be consider for extending the benefit of Pension Scheme and as a result of which, the petitioner would be covered only under the New Contributory Pension Scheme and benefit of Old Pension Scheme cannot be extended in favour of the petitioner and on that basis, he pressed for dismissal of the said writ petition. He also submitted that very soon a writ appeal will be filed as against the order passed by this Court in a batch of writ petitions in W.P.Nos.8584 of 2021 etc.

7. This Court is fully in consonance with the order passed by the ***Hon'ble High Court of New Delhi in a batch of similar writ petitions in the case of W.P(C)Nos.8208 of 2020 etc., dated 15.01.2021*** and in a similar case by this Court in a batch of writ petitions in ***W.P.Nos.8584 of 2021 etc., dated***



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10.02.2023. In this case, the process of selection started with the issuance of notification during the year 2000-2001. The New Pension Scheme was brought into force through G.O(Ms)No.259 of the Finance (Pension) Department on 06.08.2003. The cut-off date which was fixed by the aforesaid G.O is 01.04.2003. If the selection process of the petitioner has been completed swiftly, the petitioner would have had the benefit of Old Pension Scheme. However, the delay in completion of the selection process cannot be attributed to the petitioner. Even though the appointment order was issued after a period of at least 3 ½ years on 27.02.2004 that will not in anyway deprive the petitioner with the benefit of the Old Pension Scheme, since the process of selection had commenced by the notification as early as in the year 2000 itself. Hence, this Court concludes that the petitioner cannot be deprived of the benefit of Old Pension Scheme.

8. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

18.08.2023



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

To

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L.VICTORIA GOWRI, J.

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