



W.P.(MD).No.16262 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16262 of 2023

Ramkumar

... Petitioner

Vs

1. The District Collector,
(Development Section), Collectorate,
Pudukkottai 622 005.
2. The Commissioner,
CPS Cell, Government Data Centre,
Integrated Office Complex For Finance Department,
5th Floor, No.571, Anna Salai, Nandanam, Chennai 35.
3. The Accountant General (A And E),
Teynampet, Chennai 18.
4. The Secretary, *
Finance (Pension) Department,
Secretariat, Chennai.
5. The Director of Rural Development, *
Panagal Building,
Saidapet, Chennai – 600 015.

**Suo-motu impleaded as per order of this Court, dated 25.09.2023*

... Respondents



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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 the petitioner considering his appointment under the Old Pension Scheme which was forwarded to the first Respondent on 12.03.2015, vide Na.Ka.A1.533/2015 (Development).

For Petitioner : Mr. Vairava Subramanian

For Respondents : Mr.P.Thambidurai (R1, R2)
Government Advocate

Ms.S.Mahalakshmi (R3)
Standing Counsel

ORDER

The present writ petition has been filed seeking direction to the directing the respondents to consider the representation of the petitioner considering his appointment under the Old Pension Scheme, which was forwarded to the first Respondent on 12.03.2015, vide Na.Ka.A1.533/2015 (Development).

2.Heard, Mr.Vairava Subramanian, learned counsel appearing for the petitioner, Mr.P.Thambidurai, learned Government Advocate appearing for the first and second respondents and Ms.S.Mahalakshmi, learned Standing Counsel appearing for the third respondent. Perused the materials on record.



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3.The learned counsels for the respondents seek permission to implead the Secretary, Finance (Pension) Department, Secretariat, Chennai and the Director of Rural Development, Panagal Building, Saidapet, Chennai – 600 015 as fourth and fifth respondents respectively in the writ petition, since they are necessary parties. Hence, this Court is inclined to *suo-motu* implead the aforesaid persons as fourth and fifth respondents in the writ petition. Before issuing the order copy, Registry is directed to make necessary amendment by impleading the aforesaid persons as fourth and fifth respondents in the writ petition.

4.(i).The petitioner was appointed as Junior Assistant on compassionate ground, vide order, dated 19.07.2001. In view of the ban on appointment, vide G.O.Ms.No.212, Department of Personnel and Administrative Reforms (P), dated 29.11.2001, the first respondent ousted the petitionoer from service, for want of regular vacancy and the petitioner was relieved from service on 08.01.2002.

(ii).The petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.3398 of 2005, in which, the Tribunal was pleased to pass



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an order, dated 15.10.2003, directing the Authorities to provide posting to the petitioner, as and when the ban is lifted without any delay. The relevant portion is as follows:

“3) The applicant was appointed on compassionate ground and even if there is no vacancy, Government has passed orders to create supernumerary posts to accommodate the appointees under compassionate appointment scheme. I am not in a position to understand as to why the applicant was terminated from service and why supernumerary post was not created to accommodate him. In fact, there was some communication between the Director of Rural Development and the Assistant Director, Pudukottai with regard to providing a supernumerary post in the Panchayat Union Office. Under such circumstances, the order of ousting has been issued stating that the applicant has to be terminated because of want of vacancy. Now, the department would refuse re-appointment on the plea that Government has brought in a ban of all fresh appointments including the case of compassionate appointment.

4) Therefore, a direction is given to the respondents to provide postings to the applicant as and when the ban is lifted and without any delay. The application is ordered accordingly.”



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(iii).Even after that the petitioner was not appointed and hence the petitioner approached this Court in W.P.No.1571 of 2004, in which, this Court directed the Authorities as follows:

“2.It is pointed out by the learned counsel for the petitioner that the Government had issued an order in Letter Ms.No. 20/G/2002, dated 01.03.2002, wherein, it is stated inter alia thus:-

“Filling up of posts through appointments on compassionate grounds shall be permitted in the essential category posts, subject to satisfaction of necessary qualifications and after placing the proposals in the Staff Committee for approval explaining the essentiality in filing of those posts”

3.The petitioner had been appointed on compassionate grounds but was subsequently ousted from service. The Tribunal has directed that as and when the ban is lifted the case of the applicant before it may be considered.

4.While making that order, the Tribunal has not kept in view the G.O. Now brought to our notice. The authorities are, therefore, directed to act according to that G.O and consider the case of the petitioner in accordance therewith. The writ petition is disposed of accordingly. The miscellaneous petition is closed.”

(iv).Pursuant to the order of this Court, a letter was sent to the Authorities to consider his representation. Accordingly, the office of the



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District Collector issued a letter, dated 18.03.2004 intimating that the re-appointment shall be considered after recalling of the G.O., by the Government of Tamil Nadu.

(v).In the meanwhile, the Government has passed an order vide G.O.Ms.No.16, Department of Personnel and Administrative Reforms (P), dated 21.02.2006 by lifting the ban on compassionate appointments. On that basis, the petitioner was reappointed on 16.03.2007 by the order of first respondent, vide letter in Na.Ka.P2/2245/2006, dated 16.03.2007.

(vi).The Government of Tamil Nadu introduced Contributory Pension Scheme, vide G.O.Ms.No.259, dated 06.08.2003, w.e.f., 01.04.2003 to all the employees, who were recruited after 01.04.2003. Since the petitioner entered into service, w.e.f., 19.07.2001, only thereafter, he was ousted from service pursuant to the ban of appointment on compassionate grounds and thereafter, having been reappointed in the same post on 16.03.2007, he made serveral representations to the Authorities to consider his appointment under the ambit of old pension scheme. In all the representations, it was also pointed out that he had appeared for the connected departmental examinations, as early as on 2001 and cleared the same during December, 2001 and March, 2002. Had the G.O.Ms.No.212, Department of Personnel and Administrative Reforms



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(P), dated 29.11.2001 was not issued, the petitioner's appointment would have become permanent before the cut off date ie., 01.04.2003 (date of New Pension Scheme). In view of the same, the petitioner insisted the Authorities to bring him under the ambit of old pension scheme. However, the same was not considered.

(vii).A request letter was also sent to the Block Development Officer, on 11.03.2005 and the same was forwarded to the first respondent on 12.03.2015. However, it was not considered by the first respondent. Hence, this writ petition came to be filed.

5.(i).The first respondent filed a counter affidavit. By relying the counter affidavit the learned Government Advocate appearing for the respondents 1 and 2 submitted that though the petitioner was appointed on compassionate ground, he was appointed under Rule 10(a)(i) of Tamil Nadu State of Subordinate Service Rules (hereinafter referred to as 'the Rule') as Junior Assistant in Pudukottai Union, strictly on a temporary basis by stating the following two conditions:- Primarily vide proceedings, Rc.P2/3872/2001, dated 19.07.2001 of the first respondent, the appointment is strictly temporary until it is regularized by the Tamil Nadu Government and until then the



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petitioner cannot claim any priority in service. Having accepted the same, the petitioner joined in service on 23.07.2001 FN. Now the petitioner cannot claim the benefit under the ambit of old pension scheme.

(ii).As per proviso to Rule 1 of the Tamil Nadu Pension Rules, 1978, it provided that

“...provided that these rules shall not apply to Government Servants appointed on or after the 1st April, 2003, to services and posts in connection with the affairs of the State, which are borne on pensionable establishments, whether temporary or permanent”.

On that basis, the learned Government Advocate reiterated that the old pension rules are applicable only to the Government servants, whose date of appointment was on or before 31.03.2003. Since the date of appointment of the petitioner was on 16.03.2007 and he was regularized w.e.f., 16.03.2007, the petitioner is not eligible under the old pension scheme and on that basis, he pressed for dismissal of the writ petition.

6.The learned Standing Counsel appearing for the third respondent circulated a letter No.12473/Finance (Pension)/2009, dated 27.05.2009, by which, certain clarifications sought for by Accountant General has been



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clarified by the Principal Secretary to Government. As per the clarifications of the Principal Secretary in Paragraph No.4 of the said letter, the point raised is as to whether to allot CPS number or GPF number to the candidates ousted and reinstated into service by the Tamil Nadu Administrative Tribunal orders/ Court orders with retrospective effect, who are classified under two categories namely (i). 10(a)(i) employees, who hold PF number prior to 01.04.2003 and (ii). 10(a)(i) employees, who do not have any PF number. For which, clarification issued is that the candidates regularly appointed before 01.04.2003 are eligible for old pension scheme, if they are regularly appointed on or after 01.04.2003 they will come under Contributory Pension Scheme even though they have been allotted GPF Number temporarily. Relying on paragraph No.4 of said clarification, the learned Standing Counsel submitted that the petitioner was appointed on 16.03.2007, that is clearly after 01.04.2003 and hence his case could be covered only under Contributory Pension Scheme and on that basis, she pressed for dismissal of the writ petition.

7.Now the point to be decided is whether the petitioner was regularly appointed before 01.04.2003 or he was appointed only after 01.04.2003, as submitted by the learned counsels for the respondents.



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8.In this case, the petitioner was appointed on compassionate ground in the post of Junior Assistant, vide proceedings in Na.Ka.P2/3782/2001, dated 19.07.2001, based on six conditions. The first three conditions have already been submitted by the learned Government Advocate in his submission. The fourth condition mandates the petitioner to clear all the departmental examinations, within a period of two years of probation and the fifth condition would categorically reveal that the petitioner was not appointed on consolidated pay under 10(a)(i) of the Rule, but in a regular time scale of pay, ie., Rs.3200-85-4900/-.

9.On critical perusal of the conditions it would be clear that though the appointment of the petitioner was under 10(a)(i) of the Rule, the petitioner has been mandated to clear all the departmental examinations during the probation period of two years.

10.The learned petitioner's counsel drew my attention, as mandated in fourth condition of the appointment order, that the petitioner has cleared all the departmental examinations as early as December, 2001 and



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March, 2002 itself. Thereafter, vide G.O.Ms.No.212, Department of Personnel and Administrative Reforms (P), dated 29.11.2001, the first respondent ousted the petitioner from service as per order in Na.Ka.P2/3872/2001, dated 04.01.2002, for want of regular vacancy and the petitioner was relieved from service on 08.01.2002. Pursuant to the said relieving order, the petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.3398 of 2005 and the Tribunal passed favourable orders to the petitioner, vide order, dated 15.10.2003, directing the Authorities to provide posting to the petitioner, as and when the ban is lifted without any delay. Following which, the petitioner filed W.P.No.1571 of 2004 before this Court, seeking to quash the order passed by the Tribunal in O.A.No.3398 of 2005, in which, this Court directed the Authorities to act according to the G.O and consider the case of the petitioner in accordance therewith. While so, on 21.02.2006, vide G.O.Ms.No.16, dated 21.02.2006, Department of Personnel and Administrative Reforms (P), the Government of Tamil Nadu issued orders to lift the ban on appointment on direct recruitment and appointment on compassionate grounds. Pursuant to the same, vide proceedings of the Personal Assistant to the first respondent in Na.Ka.P2/2245/2006, dated 16.03.2007, the petitioner was re-appointed under Rule 10(a)(i) of the Rule under six conditions.



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11. On careful perusal of the appointment order, dated 19.07.2021, which was given by the first respondent at the first instance and the re-appointment order given by the Personal Assistant to the first respondent, dated 16.03.2007 would reveal that all the six conditions set out in both the appointment/re-appointment orders are one and the same. It is significant to mention at this point of time, that the petitioner has been appointed on compassionate ground and even if there is no vacancy, Government had passed orders to create supernumerary posts to accommodate the petitioner under compassionate appointment scheme. The first respondent ought not have ousted the petitioner from service and he should have duly accommodate him, since he has completed all his departmental examinations, within a period of less than six months from the date of appointment, ie., in December 2001 and March 2002, as mandated in condition No.4 of his appointment order. Further, he was not appointed on consolidated pay, but on regular time scale of pay.

12. The learned Standing Counsel appearing for the third respondent would vehemently contend that the petitioner will fall under the category of 10(a)(i) of the Rule, who do not have PF number and ousted and re-



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appointed into service by the Tamil Nadu Administrative Tribunal orders with retrospective effect and as per the clarification, which was provided by the Principal Secretary is that the candidates regularly appointed before 01.04.2003 are eligible for old pension scheme, if they were appointed on regular basis on or after 01.04.2003, they will come under Contributory Pension Scheme even though they have been allotted GPF Number temporarily. Though the petitioner was appointed under 10(a)(i) of the Rule, the nature of the appointment order would reveal that he was appointed on regular time scale and further mandated that within a period of probation of two years, the petitioner should clear all the departmental examinations.

13.The learned Government Advocate appearing for the respondents 1 and 2 vehemently contended that the petitioner is not entitled to be brought under the ambit of old pension scheme and relied upon decision reported in **2019(6) CTC 705**, the relevant portion is as follows:

5. In the light of the above, we answer the reference as follows:-

- i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003*
- (ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of*



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Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

However, in the instant case, the petitioner would be covered by direction No.II, given by Division Bench of this Court, as discussed *supra*.

14.It is clearly stated in direction No.II (*supra*), the Government servants/employees appointed prior to 01.04.2003 whether on temporary or



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permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules would be entitled to get pension as per the Tamil Nadu Pension Rules, 1978. More specifically in direction No.III as discussed *supra*, the Government Servants, those who had rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered could be counted for the purpose of conferment of pensionary benefits. In the instant case, the petitioner neither served in non-provincialised service, nor on consolidated pay nor on honorarium nor daily wage basis, however, he was appointed on regular time scale with a condition that he should clear all his departmental examinations within a period of two years.

15.In view of the above, this Court hereby direct the respondents to consider the representation of the petitioner, which was forwarded by the Block Development Officer to the first respondent in Na.Ka.A1/533/2015, dated 12.03.2015, in light of the observations made by this Court and pass appropriate orders to bring him under the ambit of old pension scheme, within a period of sixteen (16) weeks, from the date of receipt of copy of this order.



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16. Accordingly, this writ petition stands disposed of. There shall

be no order as to costs.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

**Note: Registry is directed to issue order copy,
after making necessary amendment in the cause title.**

PNM

To

1. The District Collector,
(Development Section), Collectorate,
Pudukkottai 622 005.
2. The Commissioner,
CPS Cell, Government Data Centre,
Integrated Office Complex For Finance Department,
5th Floor, No.571, Anna Salai, Nandanam, Chennai 35.
3. The Accountant General (A And E),
Teynampet, Chennai 18.
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L.VICTORIA GOWRI, J.

PNM

ORDER IN
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