



W.P.(MD).No.22337 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.22337 of 2023

K.Vimala Devi

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Finance (Pension Department),
Fort St. George, Chennai.
- 2.The Secretary to Government,
Education Department,
Fort St. George, Chennai.
- 3.The Accountant General (A&E),
Tamil Nadu General Provident Fund,
Chennai.
- 4.The Joint Director,
School Education Department,
DPI Campus, Chennai-6.
- 5.The Chief Educational Officer,
Hakim Ajmal Khan Road,
Chinna Chokkikulam,
Madurai.

... Respondents



W.P.(MD).No.22337 of 2023

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 relating to the impugned order passed by the fifth respondent in proceedings number OM Number 6645/A1/2023, dated 28.08.2023 and to quash the same and consequently direct the respondents to include the petitioner in the old pension scheme by adjusting the amount paid in the contributory pension scheme.

For Petitioner : Mr.M.Thirunavukkarasu

For R-1, R-2,
R-4 & R-5 : Mr.V.Om Prakash
Government Advocate

For R-3 : Mr.P.Gunasekaran
Standing Counsel

ORDER

The present writ petition has been filed by the Headmaster P.G Assistant (Botany) in Government Girls Higher Secondary School, Peraiyur challenging the order passed by the fifth respondent herein on 28.08.2023 rejecting the request of the petitioner to place her under the Old Pension Scheme.

2. The petitioner has participated in the selection process for the post of P.G Assistant, which was conducted by the Teachers Recruitment Board and



W.P.(MD).No.22337 of 2023

she was successful. She was called for certificate verification on 24.10.2002. A provisional selection order was issued by the Teacher's Recruitment Board on 28.03.2003. However, the appointment orders were withheld awaiting whether the U.G and P.G degree obtained by the writ petitioner are equal to the degree of the Madras University.

3. After evaluation, the Madras University issued an equivalent certificate on 25.03.2003 and the TRB declared the result of the writ petitioner on 28.03.2003. However, the order of appointment was issued only on 08.04.2003, directing the writ petitioner to join duty on 02.06.2003.

4. In the meantime, the Government of Tamil Nadu has issued G.O(Ms)No.259, dated 06.08.2003, fixing the crucial date as 01.04.2003 to join in the Old Pension Scheme. Those who have joined in service after 01.04.2003, would cannot become a member of the Old Pension Scheme and they will be governed by the Contributory Pension Scheme.

5. In view of the appointment order of the petitioner, dated 08.04.2003, the petitioner was considered to have been appointed afresh only on 08.04.2003



W.P.(MD).No.22337 of 2023

and she was governed only by the Contributory Pension Scheme. Based upon the said observations, the request of the writ petitioner for considering her membership under the Old Pension Scheme was rejecting under the order impugned in the writ petition.

6. According to the writ petitioner, she had passed the examination in the year 2002 and she was called for a certificate verification on 24.10.2002 and all other candidates, who participated in the same selection process were appointed on 21.11.2002 itself. However, the result of the petitioner was withheld only for verification of the equivalent certificate. Even the equivalent certificate was issued by the Madras University on 25.03.2003, the Teacher's Recruitment Board has declared the results of the writ petitioner on 28.03.2003 itself much prior to the crucial date of 01.04.2003. There is no fault on the part of the writ petitioner in the delay caused due to the selection process.

7. The learned Counsel appearing for the writ petitioner relied upon the judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos.3176 and 3177 of 2022 (P.Ranjitharaj Vs. The State of Tamil Nadu and Others)***, dated



W.P.(MD).No.22337 of 2023

25.04.2022. The Hon'ble Supreme Court while considering the similar situation has passed the order and paragraph No.13 has held as follows:

"13. In the given circumstances, when all other candidates who had participated along with the appellants pursuant to advertisement, dated 09.11.2001, on the recommendations made by the Commission were appointed on 24.09.2002 including those who are lower in the order of merit, there appears no reason for withholding the names of the present appellants and merely because they were appointed at a later point of time, would not deprive them from claiming to become a member of Tamil Nadu Pension Rules, 1978, which is applicable to the employees who were appointed on or before 01.04.2003."

8. A learned Single Judge of this Court in a batch of writ petitions in ***W.P.Nos.8584 of 2021 etc., (S.Sudhakar and Others Vs. The Government of Tamil Nadu, Represented by its Secretary to Government and Others)***, dated **10.02.2023** had followed the judgment of the Hon'ble Supreme Court and passed an order that the concerned Teacher cannot be deprived of the benefit of the Old Pension Scheme, since the process of selection had commenced through a notification, dated 25.05.2002. Even in the present case, the notification has been issued on 18.08.2002.



W.P.(MD).No.22337 of 2023

WEB COPY

9. In view of the above said facts, it is clear that the notification for selection process was initiated on 18.08.2002 and the other candidates, who participated in the same selection process were appointed on 21.11.2002 itself. The result of the writ petitioner alone was withheld for verifying the equivalence certificate from Madras University. Even in the present case, the TRB has chosen to declare the results on 28.03.2003 before the crucial date, namely, 01.04.2003. In view of the judgment of the Hon'ble Supreme Court and the judgment of the learned Single Judge of this Court, this Court is of the considered opinion that the petitioner shall not be deprived of the benefits of the Old Pension Scheme and just because the appointment order were issued belatedly on 08.04.2003, the petitioner cannot be compelled to be a member of the Contributory Pension Scheme.

10. In view of the above said facts, the order impugned in the writ petition is set aside and the respondents are directed to include the petitioner in the Old Pension Scheme by adjusting the amount already paid towards the Contributory Pension Scheme.



W.P.(MD).No.22337 of 2023

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11. With the above said observation, this writ petition stands allowed.

There shall be no order as to costs.

11.10.2023

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

To

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- 2.The Secretary to Government,
Education Department,
Fort St. George, Chennai.
- 3.The Accountant General (A&E),
Tamil Nadu General Provident Fund,
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W.P.(MD).No.22337 of 2023

R.VIJAYAKUMAR, J.

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W.P.(MD).No.22337 of 2023

11.10.2023