



W.P.(MD) No.24557 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.08.2023

ORDERS PRONOUNCED ON : 26.09.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.24557 of 2019

and

W.M.P.(MD) Nos.21186, 21188 and 21190 of 2019

S.Suganya

... Petitioner

Vs.

- 1.The Principal Secretary/Commissioner,
Government Consolidated Information Centre,
Chennai-600 025.
- 2.The Director of Elementary Education,
Office of the Director of Elementary Education,
DPI Campus, Chennai.
- 3.The District Education Officer,
Office of the District Education Officer,
Periyakulam, Theni District.
- 4.The Block Education Officer,
Aundipatti, Theni District.
- 5.The Head Master,
Government Aided Primary School,



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Kuppampatti, Aundipatti Post,
Theni District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent in O.Mu.No.004265/C2/2019 dated 15.03.2019, quash the same and consequently direct the respondents herein to open “ASTPF Account” for giving credit to the General Provident Fund and for payment of contribution of pension under the Tamil Nadu Pension Rules 1978 (Old Pension Scheme) by converting the Contributory Pension Scheme A/c.No.806304/EEA1 of the petitioner commenced from the date of joining her service on 18.10.2002.

For Petitioner	:	Mr.K.Appadurai
For RR1 to 4	:	Mr.V.Nirmal Kumar Government Advocate
For R5	:	No appearance

ORDER

Heard learned counsel for the petitioner and learned Government Advocate appearing for the respondents and perused the record.



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2. The case of the petitioner is that the 4th respondent, *vide* proceedings dated 23.09.2002, directed the 3rd and 5th respondents to fill up the permanent vacancy caused in the 5th respondent-school. She was appointed as Secondary Grade Teacher in the 5th respondent-School on 18.10.2002 in a substantive post which remained vacant for nearly 10 months from 07.11.2001 in view of further promotion to the incumbent in the said post. She belongs to Scheduled Caste community. Thereafter, she was sent for Child Psychology Training. Subsequently, her appointment was approved by the 3rd respondent *vide* proceedings dated 10.04.2004. While making entries in the Service Register, the respondents erroneously opened Account No.806304/EEA1 for General Provident Fund and Contribution of Pension under the Contributory Pension Scheme *citing* order of approval of service of the petitioner by the 3rd respondent on 10.04.2004.

3. Learned counsel for the petitioner submits that as the petitioner was appointed in the substantive post on 18.10.2002, she is entitled to become member of Old Pension Scheme under the Tamil Nadu Pension



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Rules, 1978 (hereinafter referred to as “the 1978 Rules”) and she is entitled for regular pension under the 1978 Rules, which was in force from 01.01.1979 to 31.03.2003. Learned counsel further submits that the petitioner sent representation to the 5th respondent to open “ASTPF Account” under the 1978 Rules converting the account opened under the Contributory Pension Scheme. Respondents No.4 and 5, considering the request of the petitioner, sent recommendation for conversion of Contributory Pension Scheme to the Old Pension Scheme and to open “ASTPF Account”. The 3rd respondent after receipt of the recommendation from the Respondents No.4 and 5 sent a proposal to the 1st respondent *vide* proceedings dated 17.12.2018 recommending for opening of “ASTPF Account” for the Provident Fund and Pension under 1978 Rules, as the petitioner was appointed on 18.10.2002 much prior to the Contributory Pension Scheme came into force on 01.04.2003. The 1st respondent forwarded the said proposal to the 2nd respondent by proceedings dated 04.02.2019 seeking recommendation from the 2nd respondent for opening “ASTPF Account”. But the 2nd respondent passed the order in O.Mu.No. 004265/C2/2019 dated 15.03.2019 stating that G.O.Ms.No.413, dated



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04.11.2010 is not applicable to the petitioner and is applicable only to the Teachers, who filed batch of writ petitions for which the said Government Order in G.O.Ms.No.413, dated 04.10.2011 was passed. Aggrieved by the said order of the 2nd respondent, dated 15.03.2019, the present writ petition is filed.

4. Learned counsel for the petitioner contends that the 2nd respondent failed to see Rule 1(1) of the 1978 Rules, wherein it is clearly stipulated that these rules shall not apply to the Government servants only who were appointed on or after the 1st of April, 2003. As the petitioner was appointed on 18.10.2002, she is eligible and entitled for the benefit of pension under the 1978 Rules. Learned counsel further submits that the 2nd respondent failed to properly consider the recommendations and proposals of the Respondents No.1 and 3 to 5 in its proper perspective and passed the impugned order, which is liable to be set aside.

5. On the other hand, learned Government Advocate, basing on the averments made in the counter affidavit, submits that the petitioner was



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eligible for appointment as B.T. Assistant as per her qualification. Since no eligible Secondary Grade Teachers were available to be appointed in the sanctioned vacancies, the State Government had taken a policy decision to accommodate such B.T. qualified Teachers as Secondary Grade Teachers in the existing sanctioned vacancy of Secondary Grade Teacher. The petitioner was appointed as Secondary Grade Teacher in the 5th respondent-School on 18.10.2002. Subsequently, the State Government issued G.O.Ms.No.559, Education, School and Technology Department, dated 11.07.1995 and abolished the scheme of appointing B.T. qualified Teachers in the Secondary Grade Teacher post after 11.07.1995.

6. Learned Government Advocate further submits that the petitioner's appointment was made on 08.10.2002 and her appointment is not coming within the crucial period between 11.07.1995 to 19.05.1998. As such, the appointment of the petitioner is totally illegal in the light of G.O.Ms.No.559. Subsequently, the State Government issued Government Order in G.O.(Rt).No.155, School Education Department, dated 03.10.2002, in which it has been stated that the B.T. qualified Teachers, who were



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8. Learned Government Advocate vehemently contends that as the petitioner's appointment was not made between the crucial period from 11.07.1995 to 19.05.1998 and the appointment made was only on 08.10.2002, the benefit of G.O.Ms.No.155, dated 03.10.2002 cannot be granted to bring the petitioner under Old Pension Scheme from Contributory Pension Scheme. In terms of the Government Order in G.O.Ms.No.413, Finance (PGC) Department, dated 06.08.2004, those, who were appointed on or before 01.04.2003 are alone covered under Old Pension Scheme. But as a special circumstance, those who are all covered under G.O.Ms.No.155, dated 03.10.2002 had also been extended the benefit of Old Pension Scheme. But the benefit of Old Pension Scheme cannot be granted to the petitioner, as her service was regularised only on 10.04.2004.

9. Having heard the submissions of the respective counsels and on careful perusal of the material available on record, this Court is of the view that there is no any dispute with regard to the facts of the case.



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10. The only issue to be considered is whether the petitioner is entitled for Old Pension Scheme or not?

11. The contention of the petitioner is that as she was appointed on 08.10.2002 in a substantive post and as such, she is entitled for the Old Pension Scheme under the provisions of the Tamil Nadu Pension Rules, 1978.

12. The contention of the respondents is that the petitioner is not entitled for the benefit extended under G.O.Ms.No.155, dated 03.10.2002, since the petitioner had completed Child Psychology Training only on 09.01.2004 and her service was regularised and approved by the 2nd respondent with effect from 10.04.2004.

13. Learned counsel for the petitioner, to substantiate his case, has placed reliance on the order in *V.Murali and another v. State of Tamil*



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Nadu, Rep., by its Secretary to Government reported in **CDJ 2023 MHC 4627** and a judgment of a Division Bench of this Court in **V.Vasanthi v. State of Tamil Nadu, Rep., by its Secretary** reported in **2019 (4) CTC 865**.

14. In the case of **V.Vasanthi** (*supra*), the Division Bench of this Court, on consideration of the identical issue, held at Paragraph Nos.12, 13 and 14 as extracted hereinunder:

“12.A careful perusal of the above observation made in State of Tamil Nadu v. Pallivasal Primary School 2004 (2) LW 592 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 i.e., 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 purposes, the date of appointment is not altered and



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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



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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 jointed 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.

Accordingly, the Writ Appeal is allowed and



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the order of the Writ Court is set aside. Consequently, the Writ Petition filed by the petitioner/appellant is allowed and the respondents are directed to permit the petitioner to continue under the Old Pension Scheme, namely, Teacher Provident Fund Scheme. No costs.”

15. A learned Single Judge of this Court, in the case of **V.Murali** (*supra*), while dealing with the identical issue and on consideration of several orders passed by this Court in various writ petitions, allowed the writ petition directing the respondents therein to count the past service of the writ petitioners therein from the date of their appointment and admit them under the Old Pension Scheme.

16. After careful consideration of the facts and circumstances of the case and in the light of the orders of this Court stated *supra*, in the considered opinion of this Court, the petitioner is entitled for consideration under the Old Pension Scheme, as she was appointed prior to 01.04.2003 and the petitioner is entitled for the benefit under G.O.Ms.No.413, dated 06.08.2004.



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17. For the above stated reasons, this writ petition is allowed with the following directions:

- i. The order issued by the 2nd respondent in O.Mu.No.004265/C2/2019 dated 15.03.2019, is hereby set aside;
- ii. The respondents are directed to admit the petitioner into Old Pension Scheme by taking the date of appointment of the petitioner as 18.10.2002; and
- iii. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

26.09.2023

Note: Issue order copy by 29.09.2023

NCC : Yes/No

Index : Yes/No

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To

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Chennai-600 025.
- 2.The Director of Elementary Education,
Office of the Director of Elementary Education,
DPI Campus, Chennai.
- 3.The District Education Officer,
Office of the District Education Officer,
Periyakulam, Theni District.
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- 5.The Head Master,
Government Aided Primary School,
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BATTU DEVANAND, J.

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Pre-delivery Order made in
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26.09.2023