



W.P. No.21730 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.21730 of 2015

D.Senthilkumar

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Director,
Government Schools Date Centre,
Guindy, Chennai-25.

3.The District Educational Officer,
Erode District, Erode.

4.The CSI Boys Higher Secondary School,
Erode-638 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd Respondent in Na.Ka.No.1699/A4/2015 dated 30.04.2015 and to quash the same and consequently directing the Respondents 1 to 3 to bring the petitioner under the



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purview of Tamil Nadu Pension Rules by continuing the Teachers Provident Fund Account No.328702 based on the contribution made from 12.04.2001 onwards by the petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The writ petition has been filed seeking certiorarified mandamus calling for records relating to the proceedings issued by the 2nd Respondent in Na.Ka.No.1699/A4/2015 dated 30.04.2015 and seeking a consequential direction to the Respondents 1 to 3 to bring the petitioner under the purview of Tamil Nadu Pension Rules by continuing the Teachers Provident Fund Account No.328702 based on the contribution made from 12.04.2001 onwards by the petitioner.

2. Brief facts that are relevant for the disposal of the writ petition are as under:

The petitioner herein was initially appointed as Secondary Grade Teacher in Aided Middle School, Raghupathynaickenpalayam, Erode and his appointment was approved by the 3rd Respondent through proceedings dated 27.04.2001. The



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petitioner continued in the said post till 02.06.2005 on which date the petitioner resigned from the said post. While the petitioner was working as Secondary Grade Teacher, a notification was issued by the 4th Respondent School proposing to fill up the post of P.G.Assistant and accordingly the petitioner was selected for the said post. According to the petitioner, it is pursuant to the said selection as P.G.Assistant, the petitioner resigned the post of Secondary Grade Teacher. However it is only on 31.08.2005 the petitioner was appointed as P.G.Assistant in the 4th Respondent School and accordingly the petitioner joined the post of P.G.Assistant on 01.09.2005 and has been working as such. While working as P.G.Assistant in the 4th Respondent School, the petitioner made a claim for condoning the break in his service i.e., from 02.06.2005 to 01.09.2005 and to continue to collect the Provident Fund under Provident Fund Account Number that was opened while the petitioner was working as Secondary Grade Teacher and also to extend the benefit of old pension scheme instead of contributory pension scheme. The said claim made by the petitioner was rejected by the Respondents by proceeding bearing Na.Ka.No.1699/A4/2015 dated 30.04.2015. It is aggrieved by the said proceedings dated 30.04.2015, the petitioner approached this Court by filing the present writ petition.

3. The learned counsel for the petitioner contended that the petitioner



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resigned from the post of Secondary Grade Teacher only consequent upon his selection and appointment to the post of P.G.Assistant in the 4th Respondent School. Both are aided schools and salary was paid from State fund and therefore the petitioner is entitled to be continued under the old pension scheme as the original appointment of the petitioner was prior to 01.04.2003 and the break in service from 02.06.2005 to 01.09.2005 is liable to be condoned. He relied upon the decision of the learned Division Bench of this Court in W.A.(MD).No.1035 of 2017 dated 30.08.2024.

4. On the other hand, Mr.K.H.Ravikumar, learned Government Advocate appearing for the Respondents contended that, once the petitioner resigned from the post, under proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978, the entire service rendered by the petitioner stands forfeited i.e., only in case the petitioner falls under Rule 23 of the Tamil Nadu Pension Rules, 1978, the past service can be counted. He also placed reliance on the decision of the learned Division Bench of this Court in W.A.(MD).No.627 of 2022 and another decision of the learned Single Judge of this Court in W.P.No.5770 of 2015.

5. This Court has carefully considered the submissions made on either side



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and perused the entire materials on record.

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6. There is no dispute on facts, admittedly, the petitioner resigned from the post of Secondary Grade Teacher on 02.06.2005 and got relieved. Thereafter, it is only on 31.08.2005 the petitioner was appointed as P.G.Assistant in the 4th Respondent School. Admittedly, there is a break in service of the petitioner. Further, the School in which the petitioner was initially appointed as Secondary Grade Teacher and the 4th Respondent School are not under the same management and are different organisations. Therefore, the service rendered by the petitioner as Secondary Grade Teacher in an Aided School under no circumstances can be counted as service in the 4th Respondent School. There is nothing on record to show that the petitioner has resigned from the post of Secondary Grade Teacher consequent upon his selection and appointment as P.G.Assistant in the 4th Respondent School. The petitioner was appointed as P.G.Assistant on 31.08.2005 i.e., almost after a lapse of 3 months since the date of his resignation.

7. As rightly contended by the learned Government Advocate appearing for the Respondents, under Rule 23 of the Tamil Nadu Pension Rules, 1978, the entire service rendered by the petitioner stands forfeited on his resignation to the



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post of Secondary Grade Teacher. It is not even the case of the petitioner that his case will fall under proviso to Rule 23 of the Tamil Nadu Pension Rules, 1978. In the absence of such a claim, allowing the petitioner to count the service rendered by him as Secondary Grade Teacher and to treat the petitioner as one governed by the old pension scheme does not arise. Added to that, the petitioner having been appointed as P.G.Assistant became member of the contributory pension fund scheme and continued as such for almost a decade. A perusal of the said proceedings indicates that the petitioner has made such a claim by submitting a representation only in the year 2015 i.e., after a lapse of a decade after he was appointed as a P.G.Assistant in the 4th Respondent School.

8. The decision relied upon by the learned counsel for the petitioner in W.A.(MD).No.1035 of 2017 dated 30.08.2024 is a case where the case was considered under Rule 25 of the Tamil Nadu Pension Rules, 1978, dealing with the contention of interruption in service. This is not a case falling under Rule 25 of the Tamil Nadu Pension Rule, 1978. The case on hand is a one strictly falling under Rule 23 of the Tamil Nadu Pension Rules, 1978, and the said decision is not applicable to the case on hand. Whereas the decision relied upon by the learned Government Advocate has a direct bearing on the case on hand and has application including the facts of the case.



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9. In W.A.(MD).No.627 of 2022, the learned Division Bench of this Court have considered the claim of a person who was appointed as P.G.Assistant to take into consideration the service rendered by the petitioner therein as B.T.Assistant prior to his appointment as P.G.Assistant was negated on the ground that the petitioner therein has participated in the Direct Recruitment process and got appointment as P.G.Assistant and therefore the service rendered as B.T.Assistant prior to appointment as P.G.Assistant cannot be taken as service on the ground that the same service register has been continued. The case on hand is also a case where the petitioner participated in the Direct Recruitment pursuant to the notification issued by the 4th Respondent for the post of P.G.Assistant and was selected and appointed.

10. Once it is contended that the service rendered by him as Secondary Grade Teacher in some other School prior to his appointment as P.G.Assistant in 4th Respondent School cannot be taken into consideration, the question of extending the old pension scheme to the petitioner on the ground that he was appointed as Secondary Grade Teacher prior to 01.04.2003 does not arise and an identical claim made in W.P.No.5770 of 2015 by an order dated 15.03.2024 was negated by this Court. This Court has gone through the said order dated



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15.03.2024 and finds that the same has direct bearing on the case on hand.

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11. In the light of the above, the petitioner is not entitled for the relief of continuing in the old pension scheme as sought for. This Court does not find any error or illegality in the order passed by the 4th Respondent, accordingly the writ petition is dismissed. No costs.

14.10.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MUMMINENI SUDHEER KUMAR, J.

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