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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.Nos.1207, 1213 & 1214 of 2021
and
C.M.P.Nos.7685, 7687, 7720, 7733 & 7734 of 2021

1.The Secretary,
Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George,
Secretariat, Chennai – 9.

2.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George,
Secretariat, Chennai – 9.

3.The Director of Elementary Education Officer,
EVK Sambath Building,
College Road,
Nungambakkam, Chennai 6.

4.The District Elementary Education Officer,
Thiruvarur, Thiruvarur District.

5.The Assistant Elementary Education Officer,
Thiruthuraipoondi, Thiruvarur District.

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6.The Additional Assistant Elementary Education Officer,
Thiruthuraipoondi, Thiruvarur District.

... Appellants in all WAs

Vs.

1.B.Bhuvaneswari ... Respondent in WA.No.1207/2021

2.N.Kalaiselvi ... Respondent in WA.No.1213/2021

3.V.Rajendran ... Respondent in WA.No.1214/2021

Prayer in WA.No.1207/2021: Writ Appeal filed under Clause 15 of Letters Patent to set aside the common order dated 17.03.2020 made in W.P.No.14997 of 2009 and allow this writ appeal.

Prayer in WA.No.1213/2021: Writ Appeal filed under Clause 15 of Letters Patent to set aside the common order dated 17.03.2020 made in W.P.No.14996 of 2009 and allow this writ appeal.

Prayer in WA.No.1214/2021: Writ Appeal filed under Clause 15 of Letters Patent to set aside the common order dated 17.03.2020 made in W.P.No.14998 of 2009 and allow this writ appeal.

For Appellants : Mr.E.Sundaram
Government Advocate
(in all WAs)

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For Respondents : Mr.S.Conscious Ilango
For Mr.V.Kasinatha Bharathi
(in all WAs)

COMMON JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

Since the issues are raised in all the three writ appeals on hand are identical, common order has been passed.

2. The respondents in all the writ appeals, admittedly were appointed by the private management in Aided Elementary Schools. An application was submitted to approve the appointment of the respondents, who were appointed by the private management.

3. It is not in dispute between the parties that the appointment of all the respondents were approved by the Competent Educational Authorities of the Government with effect from 02.06.2003 for the two respondents in W.A.Nos.1207 and 1214 of 2021 and the respondent (Smt.N.Kalaiselvi) in W.A.No.1213 of 2021 with effect from 10.01.2004. Admittedly the approval

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of appointment of all the respondents were made after the cut off date i.e., on 01.04.2003, the date on which the new pension scheme i.e., the Contributory Pension Scheme (CPS) came into force.

4. The issue raised in all the writ appeals are, whether the respondents are entitled for the benefit under the old pension scheme i.e., Tamil Nadu Pension Rules, 1978 or under the new pension scheme i.e., Contributory Pension Scheme (CPS).

5. Once the respondents claim that they are entitled for the benefit under the Tamil Nadu Pension Rules, 1978 (old pension scheme), they must be eligible under the provisions of the Tamil Nadu Pension Rules, 1978.

6. The facts regarding date of appointment are not in dispute. Admittedly, all the respondents were appointed by the private management in the aided schools prior to the cut off date of 01.04.2003. However, the approval of appointment was granted with effect from 02.06.2003 in respect of two respondents and in respect of the respondent Smt.N.Kalaiselvi approval of appointment was granted with effect from 10.01.2004.

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7. The learned Government Advocate appearing on behalf of the appellants would submit that the approval of appointment by the Competent Educational Authorities of the Government of Tamil Nadu was granted to the respondents after the cut off date of 01.04.2003. Therefore, they are eligible to avail the benefits under new pension scheme and not entitled to claim benefits under the old pension scheme i.e., Tamil Nadu Pension Rules, 1978.

8. Per contra, Mr.S.Conscious Ilango, learned counsel appearing on behalf of the respondents would oppose by stating that though the initial appointment of the respondents were made by the private management of the aided schools and their approval of appointment was made with effect from 02.06.2003 and 10.01.2004 respectively, the respondents are eligible to avail the benefit under the Tamil Nadu Pension Rules, 1978. To substantiate the claim, the learned counsel for the respondents would submit that the issue was considered with reference to the similar facts. The Government issued G.O.Ms.No.413, Finance (PDC) Department dated 04.11.2010, wherein, the order of this Court has been implemented for extending the benefit of the old pension scheme to a set of Teachers. The benefit of

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Government order issued in G.O.Ms.No.155, Department of School Education dated 03.10.2002 and G.O.Ms.No.413 dated 04.11.2010 was granted to many such similarly placed Teachers and the Courts also passed orders to that effect. Therefore, the case of the respondents ought to have been considered by the Department for extending the benefit of old pension scheme.

9. Considering the arguments as advanced between the parties to the *lis* on hand, two questions arise;

(1) Whether the Government orders extending the benefit is to be considered in the case of the respondents herein;

(2) Whether the date of approval of appointment by the Educational Authorities of the Government of Tamil Nadu is to be taken or the date of original appointment made by the private management of the aided schools is to be taken into account for extending the benefit of old pension scheme under the Tamil Nadu Pension Rules, 1978.

10. With reference to the first question, the provision of the Tamil Nadu Pension Rules, 1978 would be applicable in the event of claiming

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benefit under the old pension scheme. The Government orders, if any issued cannot supersede the provisions of the Tamil Nadu Pension Rules, 1978. Therefore, the rules will prevail over the Government orders. The old pension scheme came to an end on 01.04.2003.

11. The second question regarding the approval of appointment. It is needless to state that the Government salary is being disbursed only to the Teachers only from the date of approval of appointment. Their initial appointment was made by the private management and they were not paid Government Salary. The salary has been paid by the private management from the school funds and not from the Government funds. Further, the General Provident Fund (GPF) account will be opened to the Teachers only from the date of approval of appointment and not from the date of initial appointment by the private management.

12. The very purpose and object of approval is to pay Government salary and benefits to the Teachers and approval of appointments are made under the provisions of the Act and Rules. If the appointments are approved by the Competent Authorities of the Education Department of Government

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of Tamil Nadu under the Private School Regulations Laws, then alone the question of payment of Government salary and extending the benefit of pension would arise.

13. It is to be considered whether services rendered as private management teachers can be construed as qualifying service under the pensionable establishment under the provisions of the Tamil Nadu Pension Rules, 1978 or not?

14. Rule 3 of the Tamil Nadu Pension Rules, 1978 provides definition. Rule 3(1)(j) defines "Qualifying Service" means "Permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment".

15. Rule 11 speaks about the qualifying services, the qualifying services in a pensionable establishment should be reckoned for the purpose of settling benefits under the old pension schemes.

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16. What is relevant is the qualifying services in a pensionable establishment.

17. Let us consider, whether the respondents have served in a pensionable establishment or not, if so, from which date.

18. The respondents have admittedly appointed by the private management in an aided school with effect from 06.08.1997 in sanctioned post. However, they were not possessing the requisite qualification of Child Psychology Training. Child Psychology Training is a requisite qualification for appointment to the post of Secondary Grade Teachers. Their appointments were not initially approved by the Department in the year 1997. On completion of the mandatory qualification of Child Psychology Training, the school management submitted a proposal for approval of appointment. Thereafter, the Education Department has approved the appointment of the respondents with effect from 02.06.2003 and 10.01.2004 respectively. Therefore, on the date of appointment of the respondents by the management in the aided school, they were not possessing the requisite qualification of the Child Psychology Training.

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19. The Hon'ble Supreme Court of India held that Child Psychology Training is a mandatory qualification for appointment to the post of Secondary Grade Teachers. The Division Bench order of this Court passed in this context was up-held by the Hon'ble Supreme Court. Therefore, the date of approval of appointment of the respondents is to be taken into consideration for the purpose of extending the pensionary benefits.

20. Mr.S.Conscious Ilango, learned counsel for the respondents would submit that similar such cases were considered by this Court and Government also passed an order in G.O.No.413 dated 04.11.2010 implementing the orders of this Court.

21. With reference to the G.O.Ms.No.413, paragraph 8 of the Government order states that the Secondary Grade Teachers appointed in a sanctioned regular post in private aided schools during the period from 11.07.1995 to 19.05.1998 and whose services were regularised as per G.O.Ms.No.155, School Education (D2) Department dated 03.10.2002 are to be extended the old pension scheme and General Provident Fund as

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applicable to the Teachers appointed before 01.04.2003.

22. The said Government order cannot be applied in view of the fact that the approval of appointment was granted after completion of the requisite qualification of the Child Psychology Training. However, the fact remains that the approval of appointment of the respondents herein were made after the cut off date of 01.04.2003. The qualifying services as defined under the Tamil Nadu Pension Rules, 1978 would reveal that the qualifying services must be in the pensionable establishment for securing the benefit under the Tamil Nadu Pension Rules, 1978. When the respondents were not having the qualifying services within the meaning of Rule 3(1)(j) of the Tamil Nadu Pension Rules, 1978, they cannot seek the benefits under the Tamil Nadu Pension Rules, 1978, since their qualifying services in a pensionable establishment commences from the date of approval of appointment on 02.06.2003 and 10.01.2004 respectively. Thus, the respondents are not entitled for the benefit under the old pension scheme, but entitled to get the benefit under the new pension scheme i.e., Contributory Pension Scheme (CPS) for the qualifying services rendered by them in accordance with the new pension scheme.

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23. Hence, the impugned order passed in W.P.Nos.14996 to 14998 of 2009 is set aside and the Writ Appeal stands allowed. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
10.06.2024

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Index : Yes
Speaking order
Neutral Citation : Yes

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and
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Jeni

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10.06.2024

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