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W.P.No.7398 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE VIVEK KUMAR SINGH

W.P.No.7398 of 2022
and W.M.P.No.7406 of 2022

G.Sumathy

...Petitioner

-Vs-

- 1.The Government of Tamil Nadu rep
by the Government, Finance (Pension) Department,
Fort St. George, Chennai 600 009.
- 2.The Director of School Education,
Chennai 600 006.
- 3.The Chief Educational Officer,
Chennai 600 008.
- 4.The Head Master,
Government Madras I Asam Higher Secondary School,
Annasalai, Chennai 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Na.Mu.No.436/Aa1/2022 dated 25.01.2022 and quash the same and direct the respondents to grant the petitioner's family pension by considering the petitioner's case in the light of the office Memorandum No.38/41/06/P&PW(A) dated 05.05.2009 issued by the Government of India and the orders passed by the Government of India and the Rules notified by its on 30.03.2021 within a



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time limit to be stipulated by this Court.

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For Petitioner : Mr.R.Vijayakumar

For Respondents : Ms.P.Rajarajeswari, GA

ORDER

This writ petition is filed seeking for quashment of the impugned order of the third respondent in Na.Mu.No.436/Aa1/2022 dated 25.01.2022 and consequently, to direct the respondents to grant the petitioner's family pension by considering the petitioner's case in the light of the office Memorandum No.38/41/06/P&PW(A) dated 05.05.2009 issued by the Government of India and the orders passed by the Government of India and the Rules notified by its on 30.03.2021 within a time frame as fixed by this Court.

2. Heard the learned counsel on both sides and perused the materials available on record.

3. The learned counsel for the petitioner submitted that the petitioner is a wife of late V.Baskaran, who worked as Post Graduate Assistant Teacher in the Government Madras I Asam Higher Secondary School, Chennai and died on 18.05.2021, due to Covid-19. The husband of the petitioner was initially appointed as B.T.Assistant on 01.06.2006 and completed his probation on



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31.05.2008 and later, promoted as PG Assistant on 27.05.2017 and during the service period, he died. The husband of the petitioner was covered under the Contributory Pension Scheme and the Contributory Pension Scheme was introduced by the Government of Tamil Nadu by G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003. In the said Government Order, it has been clearly stated that the Contributory Pension Scheme was introduced pursuant to the announcement made by the Government of India in the Budget for 2001-2002 that a new scheme based on defined contributions will be introduced to those who entered Central Government Service after 01.10.2001. Thereafter, the Government of Tamil Nadu made the announcement to introduce New Pension Scheme in respect of the employees recruited in the State Government service after 01.04.2003.

4. He further submitted that the Government of India issued Office Memorandum No.38/41/06/P&PW(A) dated 05.05.2009 and in the said order, the Government noted that the benefit of family pension is not available to the Government servant appointed on or after 01.01.2004 and the Ministry of Finance subsequently clarified that New Pension Scheme is a replacement for pension under normal circumstances and family pension in case of death of employees after retirement only. The Government of India extended the benefit



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of retirement gratuity and death gratuity to the Central Civil Government employees appointed on or after 01.01.2004 on the same terms and conditions as applicable to the employees covered by the Central Civil Service (Pension) Rule, 1972. The State of Punjab immediately followed the same and issued an order dated 08.10.2021 extending the said benefit of family pension to the employees of the Government of Punjab. But in the State of Tamil Nadu, the Government is yet to pass order in accordance with the above mentioned Office Memorandum dated 05.05.2009 and the Rules notified by the Government of India on 30.03.2021. Therefore, the petitioner submitted a representation to the fourth respondent on 27.01.2021 and the same was forwarded to the third respondent. The third respondent has rejected the same on 25.01.2022 stating that the family pension is not applicable to the employees covered under the Contributory Pension Scheme. Hence, the petitioner has filed the present petition seeking to quash the order of rejection passed by the third respondent dated 25.01.2022.

5. The learned Government Advocate appearing for the respondents submitted that New Pension Scheme was implemented by the Government of India with effect from 01.01.2004 and the Government of Tamil Nadu have also implemented the Contributory Pension Scheme vide G.O.Ms.No.259, Finance



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(Pension) Department, dated 06.08.2003 with effect from 01.04.2003. The

husband of the petitioner was appointed in the Government Service on 01.06.2006 and he is only eligible for Contributory Pension Scheme. The claim of the petitioner for sanctioning gratuity is not legally feasible as per the Tamil Nadu Pension Rules 1978. The Hon'ble Full Bench of this Court, by common order dated 03.12.2019 in Appeal Nos.158, 314, 317 of 2016, held that those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of the proviso to Rule 2 of the Tamil Nadu Pension Rules 1978 and the same was also confirmed by the Hon'ble Supreme Court of India in S.L.P.Nos.19744-19751 of 2021, by an order dated 12.08.2022.

6. She further submitted that the actual claim of the petitioner is to grant family pension in the existing New Contributory Pension Scheme, in the light of the Office Memorandum No.38/41/06/P&PW(A), dated 05.05.2009, issued by the Government of India and the said order clearly shows that the memorandum is only applicable to the Central Government employees. The Government took a policy decision to implement the Contributory Pension Scheme to the persons, who joined in Government Service on or after 01.04.2003 vide G.O.Ms.No.259, Finance Department, dated 06.08.2003. This policy decision has been taken by the Government consciously after a prolonged discussion including the decision



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of the Government of India in this regard. Hence, such decision could not be altered for the sake of the petitioner, whose husband joined in Service after 01.04.2003. In support of her contentions, she relied on the following judgments of this Court:

(i) W.P.(MD).No.4445 of 2010 dated 16.12.2013

(ii) W.P.No.2470 of 2013 dated 06.02.2003

7. On perusal of the records and the submissions made by the learned counsel on both sides, this Court finds that the husband of the petitioner was appointed in the Government Service on 01.06.2006 and he is only eligible for Contributory Pension Scheme. The claim of the petitioner for sanctioning gratuity is not legally feasible as per the Tamil Nadu Pension Rules 1978. In the light of the Office Memorandum No.38/41/06/P&PW(A), dated 05.05.2009, issued by the Government of India, it clearly shows that the said Memorandum is only applicable to the Central Government employees not for State Government employees. The Government took a policy decision to implement the Contributory Pension Scheme to the persons who joined in Government Service on or after 01.04.2003 vide G.O.Ms.No.259, Finance Department, dated 06.08.2003 and the said decision has been taken by the Government after a prolonged discussion. Hence, this Court is of the considered opinion that the impugned order of the third respondent in Na.Mu.No.436/Aa1/2022 dated



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25.01.2022 warrants no interference.

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8. With the above observations, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Internet: Yes
Index : Yes/No
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VIVEK KUMAR SINGH. J.

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