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W.P.Nos.19880 & 19882 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.19880 & 19882 of 2022
W.M.P.Nos.19189 & 19191 of 2022

W.P.No.19880 of 2022 :-

Manual Arasu.S

...Petitioner

-Vs -

1. The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government (Court VI) Department,
Chennai – 600 009.

2. The Accountant General
(Accounts and Entitlements),
Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

3. The Director of Prosecution,
No.5, Kamarajar Salai,
Slum Clearance Board Complex,
Chennai.

... Respondents

W.P.No.19882 of 2022 :-

S.Rajan

...Petitioner

-Vs -



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1. The Government of Tamil Nadu
Rep. by its Additional Chief Secretary
to Government (Court VI) Department,
Chennai – 600 009.

2. The Accountant General
(Accounts and Entitlements),
Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

3. The Director of Vigilance and
Anti Corruption,
No.293, M.K.N.Road,
Alandur, Chennai – 600 016.

... Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 & 2 to extend the benefits of old pension scheme under Tamil Nadu Pension Rules 1978 to the petitioners on par with other similarly placed persons as 1998-2002 appointees.

In both W.Ps.

For Petitioner : Mr.R.Subramanian

For Respondents

For R1 & R3 : Mrs.R.L.Karthika
Government Advocate.

For R2 : Mrs.Hema Muralikrishnan
Standing Counsel



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COMMON ORDER

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These writ petitions have been filed for direction directing the respondents 1 & 2, to extend the benefits of old pension scheme under Tamil Nadu Pension Rules 1978 to the petitioners.

2. The case of the petitioners is that the Tamil Nadu Public Service Commission had issued notification for the direct recruitment to the post of Assistant Public Prosecutor Grade II for the year 1998-2002. Both the petitioners had applied for the post of Assistant Public Prosecutor Grade II in the prosecution department. There are totally 53 candidates were selected to the post of Assistant Public Prosecutor and the petitioners were placed in the reservation list. Thereafter, even three selected candidates were failed to join, the petitioners were not appointed in the said vacancies.

3. Therefore, the petitioners and another approached this Court in W.P.Nos. 6085, 9823 and 11234 of 2004 and this Court by the orders dated 27.04.2006 & 21.06.2006, allowed the writ petitions and directed the respondents to appoint the petitioners in the resultant vacancies.

However, it was challenged in the writ appeals in W.A.Nos.891 to 893 of



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2007 and the same were dismissed. It was also confirmed by the Hon'ble Supreme Court of India. In pursuant to that, the first respondent issued order in G.O.(4D)No.104 Home (Courts-VI) Department, dated 05.12.2007, thereby appointed the petitioners to the post of Assistant Public Prosecutor Grade-II, from the panel year from 1998-2002. Accordingly, they had joined and their seniority were fixed in the category of Assistant Public Prosecutors Grade II, vide G.O.(2D).No.634 dated 18.10.2013. Therefore, they are entitled for old pension scheme since they were selected to the post of Assistant Public Prosecutor Grade-II, on par with 1998-2002 appointees.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. On perusal of order dated 27.04.2006, passed by this Court in W.P.Nos.6085 & 9823 of 2004 in the petition filed by the petitioners, as per the communication dated 09.11.2001, the reserve list will be in force for selection in the event of the selected candidates failing to join duty and until the drawal of the next selection by the Tamil Nadu Public Service Commission. Therefore, it can be construed from the said



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communication that the list will operate till the next selection list drawn by the Tamil Nadu Public Service Commission. Therefore, the reserve list has to be opted for appointment in the vacancies which arise due to the non-joining of the candidates till the next selection list is drawn by the Tamil Nadu Public Service Commission. Therefore, the respondents are directed to appoint the petitioners in those two resultant vacancies, within a period of eight weeks.

6. The Hon'ble Division Bench of this Court while dismissing the writ appeals in W.A.Nos.891 to 893 of 2007, by an order dated 28.08.2009, directed the Tamil Nadu Public Service Commission to include the name of the petitioners in 1998-2002 list of candidates selected for appointment as Additional Public Prosecutor Grade II in the Tamil Nadu General Services. Accordingly, they were appointed by an order dated 21.02.2008 and their seniority also fixed along with other persons who were selected for the year 1998-2002 as 53-A3 & 53-A5 respectively.

7. Thereafter, the petitioners were brought under the Contributory Pension Scheme and monthly deductions were made as per



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the rules, in pursuant to the government order in G.O.No.259 Finance (Pension) Department, dated 06.08.2003. As per the said government order, new Contributory Pension Scheme was introduced those who were appointed on or after 01.04.2003. Though the petitioners were appointed after 01.04.2003, their appointment is continuous process started from the issuance of date of notification and not in respect of the issuance of appointment order. Further the Hon'ble Division Bench of this Court specifically directed the Tamil Nadu Public Service Commission to include the names of the petitioners in 1998-2002 list of candidates selected for appointment as Additional Public Prosecutor Grade II in the Tamil Nadu General Services.

8. In this regard, the learned counsel appearing for the petitioners also relied upon the judgment of the Hon'ble Supreme Court of India dated **25.04.2022** in the case of ***P.Ranjitharaj Vs. The State of Tamil Nadu & ors*** in ***Civil Appeal Nos.3176-3177 of 2022***, which held that the person who was appointed in the same order may consider for old pension scheme. The relevant portion of the order is extracted hereunder:-



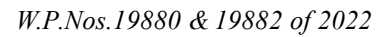
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“12. In the given circumstances, when those who are lower in order of merit to the appellants were appointed by an order dated 24 th September, 2002, the appellants have no right of say in the matter of appointment and no justification has been tendered by the State respondent as to why their names were withheld for two/three years, when their names were cleared by the Commission on 3 rd September, 2002 and sent to the State Government and finally ap pointments were made of the appellants on 23rd August, 2005 and 23rd April, 2004 respectively and the delay indeed in making ap pointments in the case of the present appellants in no manner could be attributable to them.

13. In the given circumstances, when all other candidates who had participated along with the appellants pursuant to advertise ment dated 9th November, 2001, on the recommendations made by the Commission were appointed on 24th September, 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 be cause they were appointed at a later point of time, would not de prive them from claiming to become a member of Tamil Nadu Pen sion Rules, 1978, which is applicable to the



14. *In the facts and circumstances, the finding recorded by the High Court qua the present appellants is not sustainable and de serves to be set aside.*

Therefore, the petitioners also entitled for the said relief since they are also standing in the same footage with the said *Ranjithraj*.

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10. In view of the above, the respondents 1 & 2 are directed to treat the petitioners to be the members of the Tamil Nadu Pension Rules, 1978 for all practical purposes and benefits as members of the Rules, on condition that the petitioners shall refund the employer contribution under the Contributory Pension Scheme with interest at the rate of 12% per annum, within a period of four weeks from the date of receipt of a copy of this Order. Thereafter, the respondents 1 & 2 are directed to disburse the pensionary benefits applicable to the petitioners and pay monthly pension under the old pension scheme.

11. With the above directions, both the Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

01.03.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Additional Chief Secretary,
to Government (Court VI) Department,
Government of Tamil Nadu,
Chennai – 600 009.
2. The Accountant General
(Accounts and Entitlements),
Tamil Nadu,
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