



W.P.No.23874 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.23874 of 2021

1. M.Srinivasan
2. G.N.Boopathi Ramanujam
3. C.G.Anandan
4. R.Ravi Kumar

...

Petitioners

/vs/

1. The Secretary to Government,
Human Resources Development Department,
Secretariat, Chennai.
2. The Secretary to Government,
Finance Department,
Secretariat.
3. The Commissioner,
Treasuries and Accounts Department,
Nandanam, Chennai – 600 035.
4. The Commissioner,
School Education Department,
DPI Campus,
Chennai – 600 006.
5. The Principal Accountant General,
Tamil Nadu,
O/o. The Principal Accountant General (A &E),
Chennai, Tamil Nadu.

...

Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondents to include the petitioners' names in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978 and not the new Contributory Pension Scheme by deeming the date of appointment of the petitioners as 23.11.2001 (the date of Government Order in G.O.Ms.No.209(P&AR) Department 23.11.2001) for the purpose of extension of the pensionary benefits alone.

For Petitioners ... Ms.Dakshayani Reddy
Senior Counsel
for Ms.Suneetha

For Respondents ... Mr.T.Chezhiyan
Additional Govt. Pleader for R1 to R4

Mr.Vijayshankar for R5

ORDER

The petitioner has filed this Writ Petition for issuance of a writ of mandamus to direct the respondents to include the petitioners' names in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978 by deeming the date of appointment of the petitioners as 23.11.2001, for the purpose of extension of the pensionary benefits alone.



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2. Ms.Dakshayani Reddy, the learned Senior Counsel for the petitioners, submitted that the petitioners were appointed as 'Census Employees' on contract basis for the purpose of conducting census operations during the year 1991 and they were terminated from service with effect from 13.10.1992; subsequently a Government Order was passed in G.O.(Ms.)No.30, Personnel and Administrative Reforms (P) Department dated 16.02.2000 to provide appointment to the petitioners in Government Departments; the said Government Order has been passed subsequent to the order of the Hon'ble Supreme Court made in Civil Appeal No.810 of 1998 on 11.03.1999 and 28.08.1999; in pursuant to the same, a Contempt Application has been filed for non-implementing the orders of the Hon'ble Supreme Court in Contempt Application No.103 of 2000 in C.A.No.810 of 1998 and the Hon'ble Supreme Court vide its order dated 29.08.2001 granted 3 months time to the Government to absorb the census employees; however, another Government Order has been passed in G.O.(Ms.)No.209 Personnel and Administrative Reforms (P) Department dated 23.11.2001 to absorb the census employees by maintaining seniority list.



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2.1 Subsequently, the Government issued the appointment order in Re.A3.60929/2003 dated 31.12.2003 for absorbing the retrenched Census employees and the petitioners are one among the same and they have been appointed as Junior Assistant in Treasuries and Accounts Department; the order of the Hon'ble Supreme Court in C.A.No.810 of 1998 has only given directions to the petitioners for absorption and others in Government Departments; since the above order has not been complied, the Contempt Application was filed in Contempt Application No.103 of 2000 and in which, an order has been passed on 29.08.2001 by giving 3 months time. However, the appointment has not been made within the period of 3 months but only on 31.12.2003.

2.2. Reliance was placed on the judgment of this Court rendered in *W.P.Nos.3733, 1404 and 3433 of 2020 dated 10.08.2021 [T.Balu Vs. State of Tamil Nadu and others]*. In the said judgment, reference has been made to the Full Bench of this Court made in *State of Tamil Nadu Vs. R.Kaliyamoorthy* reported in *2019 6 CTC 705*. The said case is said to have dealt with the plight of Government servants who were absorbed into service after 01.04.2003. In an identical situation, this Court *vide* order dated 21.11.2007 in



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W.P.No.9208 of 2012, has allowed the petition filed by a similarly placed person. The Writ Appeal challenging the above order in W.A.No.2708 of 2013 was dismissed on 11.12.2018. Hence the learned single Judge had chosen to grant the relief sought in W.P.Nos.3733, 1404 and 3433 of 2020 by extending the pensionary benefits, even though the absorption was made subsequent to 31.03.2003.

3. Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents 1 to 4, submitted that the judgment in W.P.Nos.3733, 1404 and 3433 of 2020 has been challenged and the order is stayed and the Writ Appeal is still pending. He further submitted that the petitioners have challenged the impugned order after 17 years; the Division Bench of this Court in ***V.Sahadevan Vs. State of Tamil Nadu in W.A.(MD) No.217/2011 dated 19.06.2014*** has held as under:

“54. Till a person is actually appointed to a service, he cannot require any status and no promise is held out to such a person. As a matter of fact, on the date of their actual appointment, the only promise held out by the Government to the writ petitioners and the appellant is reflected in the rules that came into effect on 01.04.2003.



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The rules that were in existence before 01.04.2003 did not constitute any promise to persons who had not been appointed till then.”

Hence, the rules which were in existence before 01.04.2003 could not constitute any promise to a person who have not been appointed till then.

4. According to the submission of the learned Additional Government Pleader every case has to be decided on its own merits and hence the petitioner cannot be given with the benefit of old pension scheme. However a similarly placed person who has filed a writ petition in the year 2012 itself in W.P.No.9208/2012. In the said writ petition this Court has passed an order as under:

“ 17. Therefore, in the above circumstances, the petitioner is entitled to be covered under the old pension scheme reckoning his date of appointment from 07.01.2003, where the Government had granted him the benefit vide G.O(2D) No.2, School Education (M1) Department. The other orders passed by the second and fourth respondent herein, merely a consequential orders and therefore, in all fairness, the date of appointment of the petitioner ought to be taken as 07.01.2003, i.e., prior to coming into force of the new pension scheme with effect from 01.04.2003. The rejection letter dated 10.05.2010 rejecting the claim of the petitioner is only on the ground that the petitioner joined the post only on 16.04.2003 and hence, within the mischief of the new pension



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scheme cannot stand the test of judicial scrutiny.”

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5. The above order has been followed in various subsequent cases of this Court including the order passed in W.P.Nos.3733, 1404 & 3433/2020 dated 10.08.2021. In the said order, reliance was placed on the judgment of the Full Bench of this Court in ***State of Tamilnadu Vs. R.Kaliyamoorthy reported in (2019) 6 CTC 705*** and in which it is held as under:

“45. In the light of the above, we answer the reference as follows:-

I.Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.o.Ms.No.259, dated 06.08.2003.

II. Those government servants / employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

?I?. In case, a government employee / servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.



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IV. Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

V. These government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension”

6. Whereas, the case on hand is different and hence excluded from the general applications of the above dictum in view of the fact that the order of the Hon'ble Supreme Court was already in force. Despite the direction was given by the Hon'ble Supreme Court, an outer limit of three months time was fixed and it was not complied. Hence there was a delay in absorbing the petitioner subsequent to 01.04.2003. Only on this aspect the plight of the petitioners and others have been considered by giving a slight consideration in W.P.No.9208/2012 and held that the petitioners are entitled to be covered in the old pension scheme reckoning the date of appointment on 07.01.2003 from which date the Government has granted



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the petitioner the benefit vide G.O(2D) No.2, School Education (M1) Department dated 07.01.2003. However in the subsequent order in W.P.Nos.3733, 1404 & 3433 of 2020 dated 10.08.2021, the entitlement of the petitioner to be absorbed before the date of issuance of G.O.249 dated 29.08.2003.

7. In the present case, the learned Senior Counsel for the petitioner submitted that for the purpose of pensionary benefits the date of appointment of the petitioner should be treated as 23.11.2001 on which date the Government Order in G.O.Ms.No.209, Personnel & Administrative Reforms (P) Department dated 23.11.2001, has been issued to escape from the clutches of the contempt action initiated before the Supreme Court.

8. The entitlement for appointment itself arises after 01.04.2003. The submission of learned Additional Government Pleader in the light of the earlier order in *State of Tamilnadu Vs. R.Kaliyamoorthy reported in 2019 6 CTC 705* is understandable but, the petitioners and like others who have



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their entitlement for appointment even prior to 01.04.2003 or at least from the date of issuance of G.O.Ms.No.209, Personnel & Administrative Reforms (P) Department dated 23.11.2001, have been given appointment by way of implementing the above Government Order in a belated manner. Hence, the petitioner's case cannot be treated on par with others whose entitlement for appointment itself originates after 01.04.2003.

9. In view of the reasons stated above, this Writ Petition is allowed and the respondents are directed to include the petitioners' names in the Old Pension Scheme under the Tamil Nadu Pension Rules, 1978 by deeming the date of appointment of the petitioners as 23.11.2001 for the purpose of extension of the pensionary benefits alone. No costs.

20.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

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R.N.MANJULA ,J.

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