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W.A.Nos.2255 and 2258 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 18.06.2024
DELIVERED ON: 01.07.2024
CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.2255 and 2258 of 2022
and CMP.Nos.17204, 17205, 17198 & 17202 of 2024

Sendhilnathan

... Appellants in both W.As.

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Tamil Nadu Finance (Pension) Department,
Fort St.George, Chennai-600 009.
- 2.The State of Tamil Nadu,
Rep by its Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.
- 3.The Director of Elementary Education,
EVK Sampath Building,
College Road, Nungambakkam,
Chennai-6.
- 4.The District Elementary Educational Officer,
Thiruvarur, Thiruvarur District.
- 5.The Assistant Elementary Educational Officer,
Thiruthuraipoondi, Thiruvarur District.
- 6.The Secretary,



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Sri Rajagopal Aided Elementary School,
Main Road, Mettupalayam,
Thiruthuraipoondi Block,
Thiruvarur District-614 715.

.. Respondents

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 22.07.2022 made in W.P.Nos.430 and 431 of 2015.

For Appellant : Mr.S.Nedunchezhiyan
in both WAs.

For Respondents : Mr.J.C.Durairaj,
Additional Government Pleader for R1 to R5

Mr.V.Vasanthakumar for R6

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

These intra court appeals are filed challenging the order of the Writ Court dated 22.07.2022 made in W.P.Nos.430 and 431 of 2015.

2. The appellant was appointed as Secondary Grade Teacher in the 6th respondent School on 25.04.2003. The grievance of the appellant is that he was not conferred with the benefit of Old Pension Scheme under the Tamil Nadu Pension Rules, 1978 and contends that the inclusion of the name of the appellant under the Contributory Pension Scheme [New Pension Scheme] is



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erroneous.

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3. The Government issued orders in G.O.Ms.No.259, Finance Department dated 06.08.2003 introducing New Pension Scheme called as Contributory Pension Scheme to the Tamil Nadu State Government employees who are recruited on or before 01.04.2003. As per the Government Order, Tamil Nadu Pension Rules, 1978 amended with an addition of proviso to Rule 2 to the effect that "Tamil Nadu Pension Rules shall not apply to the Government servants appointed on or after 01.04.2003 to the services and posts. Accordingly, Tamil Nadu Pension Scheme is made inapplicable to the Government Servant appointed on or after 01.04.2003. Subsequently, the Government issued orders in G.O.Ms.No.304, Finance Department dated 27.05.2004 amending the General Provident Fund (Tamil Nadu) Rules to the effect that the "Rule shall not apply to the Government servants appointed on or after 01.04.2003 to services and posts in connection with the affairs of the State, either temporarily or permanently."

4. Challenging the aforesaid Government Orders and the impugned order of the fifth respondent dated 13.07.2009 rejecting the request made by



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the appellant, the writ petitions were filed by the appellant and it was dismissed on 22.07.2022, against which the present writ appeals are filed.

5. Mr.S.Nedunchezhiyan, learned counsel for the appellant would contend that the process of selection of appointment of the petitioner as Secondary Grade Teacher was initiated prior to the date of the Government Order and the appellant/petitioner was appointed as Secondary Grade Teacher on 25.04.2003 in accordance with the rules in force as on the date of appointment and therefore, the appellant would come under Old Pension Scheme and not under Contributory Pension Scheme.

6. Mr.J.C.Durairaj, learned Additional Government Pleader appearing for the respondents 1 to 5, has drawn the attention of this Court to the counter affidavit filed by the fourth respondent where it is stated that the appellant has no legal right for coming under the Teachers Provident Fund Scheme, as the appellant/writ petitioner was appointed as Secondary Grade Teacher only on 25.04.2003, which is after the introduction of New Contributory Pension Scheme from 01.04.2003. It is further contended that the New Contributory Pension Scheme has been introduced with effect from



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01.04.2003 and necessary statutory notification under Article 309 of the Constitution of India has been issued to the Tamil Nadu Pension Rules, vide G.O.Ms.No.259, Finance (Pen.) Department dated 06.08.2003, the allotment of TPF Account No. on 23.11.2004 is itself a violation of statutory rules and the appellant/writ petitioner cannot claim it as a vested right and prays for dismissal of this writ appeal.

7. This Court has considered the rival submissions and also perused the materials available on record.

8. The issue involved in these writ appeals is that whether the appellant/writ petitioner, who has been appointed as Secondary Grade Teacher on 25.04.2003, is entitled to get the benefits under Old Pension Scheme or not?

9. The matter relating to pension both under new and old Scheme has been considered by a Full Bench of this Court in a batch of cases, in ***W.A.Nos.158 of 2016, etc., (State Government, rep. by Secretary to Government versus R.Kaliyamoorthy)***, wherein it has been categorically



held as under in paras 44 and 45:

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"44. The aforesaid Judgment of the Honourable Supreme Court (State of Maharashtra v. Digambar [(1995) 4 SCC 683] would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as resjudicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons.

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.

(iii) 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 regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later



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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) Those 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.?

10. Having regard to the decision of the Full Bench of this Court, particularly para 45(1) extracted above, since admittedly, the petitioner was appointed on 25.04.2003, i.e. after 01.04.2003 is 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. Further, in view of para 44 of the decision cited supra, the prayer of the appellant/writ petitioner, cannot be considered. The Writ Court has rightly held that there is no infirmity in respect of the action of the respondents by including the name of the appellant in the Contributory Pension Scheme and this Court, finds no reason to interfere with the order of the Writ Court.

11. In the result, these Writ Appeals stand dismissed. Consequently, connected miscellaneous petitions are closed. No costs.



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(D.K.K.J.) (K.B. J.)
01.07.2024

Jvm

Internet: Yes/No

Index : Yes/No

To

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Common Judgment in
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