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W.P.No.30073 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

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

W.P.No.30073 of 2022 and
WMP.Nos.29486 of 2022 & 9932 of 2023

A.Pathy Arokkiyamary

... Petitioner

Vs.

1. Government of Tamilnadu,
Rep. By its Secretary,
Finance Department,
Secretariat, Chennai 600 009
2. Government of Tamilnadu,
Rep. By its Principal Panchayat Raj Department,
Rural Development Department,
Chennai-09
3. Government of Tamilnadu,
The Additional Secretary to Government,
Rural Development Department,
Chennai-09
4. Tamilnadu Public Service Commission,
Rep. By its Secretary,
Park Town,
TNPSC Road,
VOC Nagar,
Chennai 600 002
5. The District Collector,
Nagapattinam District

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the entire records which culminated in issuing the Government letter No.12794/U A6(1)/2020-5 dated 03.03.2022 on the file of the second respondent and to quash the same and consequently directing the respondents to extend the benefits to shift from Contributor pension to old Pension Scheme in the light of the order passed by in WP(MD).No.8931 of 2018 dated 23.04.2018 and same was implemented by the second respondent by order in GO.Ms.No.93, Finance(PGC.II) Department dated 26.02.2021 and all consequential benefits including notional promotion on par with immediate junior within the time limit that may be fixed by this Court.

For Petitioner : Mr.S.Mani

For Respondents

For R1 to 3 & 5 : Mr.K.Tamilvendan,
Government Advocate

For R4 : Mr.R.Bharanidharan,
Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 03.03.2022 passed by the second respondent thereby rejected the claim of the petitioner seeking to shift her from contributory pension scheme to old pension scheme.



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2. The petitioner had applied for Group-IV examination conducted by the Tamilnadu Public Service Commission for the post of Junior Assistant cum Typist. The petitioner was selected to the said post on 21.07.2000. However, result was withheld by the fourth respondent on the ground of production of her parents' nativity certificate. The petitioner immediately submitted the said certificate and made representation that she was selected only under BC (Women) category and as such, question of nativity certificate does not arise. Once again, the petitioner submitted representation before the Chief Minister Cell and she was directed to produce nativity certificate and community certificate. Accordingly, the petitioner had submitted the documents on 29.03.2003 itself. Thereafter, the fourth respondent issued allotment order subject to production of original documents. After submitting the documents on 05.01.2004, once again the fourth respondent sought for clarification i.e. ban was imposed for new appointment. The fifth respondent clarified that the petitioner's selection to be treated as prior to the ban order and give appointment as Junior Assistant cum Typist. Accordingly, the petitioner was issued appointment order and she had joined only on 01.03.2004.



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Thereafter, she was promoted to the post of Deputy Block Development Officer and subsequently as Block Development Officer. Therefore, the issuance of appointment order to the petitioner got delayed due to administration reasons. In fact, as per Tamilnadu State and Subordinate Service Rule 39(A)(1), her seniority will come only from the selection and not from the date of joining. Therefore, the petitioner is entitled to come under Old Pension Scheme.

3. The learned counsel for the petitioner submitted that a similarly placed person approached the Madurai Bench of this Court in WP(MD).No.8931 of 2018 for direction to convert into old pension scheme. As directed by the Madurai Bench of this Court, GO.Ms.No.93 Finance (PGC) Department dated 26.02.2021 was passed. Accordingly, the petitioner therein was enrolled in the old pension scheme.

4. On perusal of the counter filed by the respondents revealed that the petitioner had joined duty in Government service only on 01.03.2004. She had applied for enrolment in contributory pension



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scheme and she was allotted CPS Account No.7010384/GA and she is continuing under the contributory pension scheme. Therefore, the case of the petitioner cannot be considered, that too after very long years.

5. Heard, the learned counsel appearing on either side.

6. It is relevant to extract the order passed by the Madurai Bench of this Court in WP.No.8931 of 2018 dated 23.04.2018 in the case of *N.Malarkuzhali Vs. State of Tamilnadu rep. by its Principal Secretary* hereunder:

4.I have heard the learned Additional Government Pleader appearing for the respondents 1 to 3 and 5 and the learned standing counsel appearing for the fourth respondent in this regard.

5.When a similar issue came up before this Court, this Court passed an order with the following direction:

It is seen from the pleadings that the petitioner was selected the fourth respondent by Memorandum dated 24.08.2001. He was allotted Thanjavur District on 14.02.2002. Due to the post was surrendered by District Collector, he was not given appointment. After certain



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legal proceedings, the petitioner was allotted to Salem District by fourth respondent by Memorandum dated 16.07.2004 and the petitioner joined duty on 24.07.2004. The petitioner was selected in the year 2001 itself. Due to no fault of his, he was not given appointment till 16.07.2004. The persons who were selected along with the petitioner joined duty before 01.04.2003 and they were admitted in Tamil Nadu General Provident Fund Account. The seniority of the petitioner also restored along with the persons who were selected in the year 2001. Taking into account that the petitioner was selected in the year 2001 and was allotted in Thanjavur District in the year 2002. But was given posting only on 16.07.2004 and the persons who were selected along with petitioner were admitted in Tamil Nadu General Provident Fund Account, the petitioner is also entitled to the same benefit.

6.This Court feels that the petitioner also can be considered similarly and therefore, a direction can be given to the first respondent to that effect.

7.In the circumstances, the first respondent is directed to consider the representation of the petitioner dated 01.07.2017 as forwarded by the fifth respondent dated 28.07.2017, in the light of the aforementioned



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judgment extracted above and pass orders thereon, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

8. With this direction, this writ petition is disposed of. No costs.

4. In view of the said order, the learned counsel appearing for the petitioner would submit that similar indulgence can be shown to the case of the petitioner as the petitioner also is similarly placed.

5. I have heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents 1 to 3 and 5 and Mr.K.K.Senthil, learned counsel appearing for the fourth respondent.

6. The request of the petitioner has already been forwarded by the fifth respondent to the first respondent for consideration and the same is still pending with the first respondent.

7. In view of the said decision that a similar issue has already been considered, when a direction was given to consider such a request in the aforementioned writ petition, this Court is inclined to dispose of this writ petition, in the same line with the following direction:

The petitioner's request, to permit her to shift from



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new pension scheme to old pension scheme taking into account the date of selection and posting order given at Thanjavur unit by the selection authority, shall be considered on merits and in accordance with law, on the basis of the forwarding report made by the fifth respondent dated 07.03.2018 and in the light of the judgment mentioned therein as well as judgment cited above and an order to that effect shall be passed by the first respondent, within a period of 12 weeks from the date of receipt of a copy of this order.

7. Admittedly, the petitioner got selected in the Group-IV Examination in the year 2001 itself. Unfortunately for no fault of the petitioner, she was not given appointment order. Therefore, the petitioner is also entitled to have benefit under old pension scheme.

8. In view of the above, the impugned order cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order dated 03.03.2022 of the second respondent is quashed. The second respondent is directed to extend the benefits to the petitioner under the old pension scheme within a period of eight weeks from the



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date of receipt of copy of this order.

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9. With the above direction, this writ petition is allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.03.2024

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. Secretary,
Government of Tamilnadu,
Finance Department,
Secretariat, Chennai 600 009
2. Principal Panchayat Raj Department,
Government of Tamilnadu,
Rural Development Department,
Chennai-09
3. Government of Tamilnadu,
The Additional Secretary to Government,
Rural Development Department,
Chennai-09
4. Secretary,
Tamilnadu Public Service Commission,
Park Town,
TNPSC Road,
VOC Nagar,
Chennai 600 002
5. The District Collector,
Nagapattinam District

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