



WP No.32331 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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N.Sankar

: Petitioner

versus

- 1.The Development Commissioner &
Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai 600009
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600003
- 3.The Director,
Agricultural Marketing & Agri Business,
SIPET Road, Thiruvika Industrial Estate,
Guindy, Chennai 32.
- 4.The Secretary,
Vellore Market Committee, Toll Gate,
Officers Line, Vellore 632 001

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the impugned order of New Contributory Scheme in G.O.M.S No.259, Finance (Pension) Department, dated 6.8.2003, and consequential amendment made in respect of G.O.MS.No.304 Finance (Pension) Dept dated



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27.05.2004 of the office of the first respondent and quash the same as illegal and in-applicable insofar as concerned with the petitioner case and consequently direct respondents 1 to 3 to grant regular scheme of pensionary benefits applicable to the petitioner, prior to 01.04.2003.

For Petitioner : Mr.R.Venkatesan

For Respondents 1,3,4 : Mr.P.S.Raman,
Advocate-General,
Mr.T.K.Saravanan,
Government Advocate

No appearance for the second respondent

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.R.Venkatesan, learned counsel for the petitioner and Mr.P.S.Raman, learned Advocate-General, appearing for respondents 1, 3 and 4. None appears for the second respondent.

2. Advertisement was issued inviting applications for the post of Group IV services (in 1999-2000). The said recruitment was conducted by the Tamil Nadu Public Service Commission (hereinafter referred to as 'the TNPSC'). The required qualification for the said post is SSLC. Pursuant to the advertisement, the petitioner appeared for the examination. The petitioner was declared as the successful candidate and eligible for employment on 05.02.2001 by the TNPSC, along with



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1028 other candidates.

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3. The petitioner was issued with an order of appointment on 28.06.2001. The petitioner was directed to join as a Junior Assistant in the office of the Collector, Revenue Unit in Tiruvallur District. The petitioner went to join in the said office. However, he was informed that no vacancy exists and was sent back. On 20.02.2002, the petitioner was intimated that steps are being taken to re-allot him to a different department. Eventually, second appointment order was issued on 23.12.2003 and the petitioner was allowed to join in the third respondent office pursuant to the said appointment order. In the interregnum, on or about 01.04.2003, Contributory Pension Scheme (CPS) came into existence.

4. According to the respondent State, the petitioner would be governed by CPS; whereas according to the petitioner, he ought to be governed by the old pension scheme, having been issued with the first appointment order prior to the cut-off date, i.e. 01.04.2003.



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5. According to the learned Advocate-General, the relevant aspect is the date of appointment. The petitioner is appointed with effect from 23.12.2003 and as such, would be governed by CPS, which came into force from 01.04.2003. The old pension scheme is not applicable to those who are appointed on and after 01.04.2003.

6. It does not appear to be a matter of debate that along with the petitioner, about 1028 candidates were selected and they were issued with appointment orders immediately, in the year 2001 and they were allowed to join in the respective offices because of the availability of vacancy. Even those below the petitioner in the select list were allowed to join, pursuant to the appointment order issued in the year 2001, in view of the vacancy available; and those candidates are governed by the old pension scheme. To the misfortune of the petitioner, though the petitioner was issued with appointment order on 28.06.2001 for the post of Junior Assistant, in the office of the Collector, Tiruvallur District, the petitioner was sent back on account of the non-availability of vacancy. The petitioner was already issued with an appointment order. It is because the office did not permit him to join due to non-availability of vacancy, and was sent back, he could not



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assume office. Even on 20.02.2002, the petitioner was communicated that steps are being taken to re-allot him to some other department. The petitioner was given the second appointment order only on 23.12.2003; however, after the cut-off date of 01.04.2003.

7. The petitioner certainly was not at fault at any material point of time. The petitioner was selected and issued with the appointment order on 28.06.2001, much prior to the cut-off date of the applicability of the CPS. Even those lower in the order of merit to the petitioner were appointed in the year 2001 and are benefited with the old pension scheme.

8. The facts of the present case are squarely covered by the judgment of the Apex Court in the case of *P.Ranjith Raj vs. State of Tamil Nadu*, (2022 SCC Online SC 508). The facts of the said case are identical to the present one. Paragraphs 12 and 13 of the said judgment are relevant and reproduced thus:

“12. In the given circumstances, when those who are lower in order of merit to the appellants were appointed by an order dated 24th September, 2002, the appellants have no right of say in the



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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 3rd September, 2002 and sent to the State Government and finally appointments were made of the appellants on 23rd August, 2005 and 23rd April, 2004 respectively and the delay indeed in making appointments 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 advertisement 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 because they were appointed at a later point of time, would not deprive them from claiming to become a member of Tamil Nadu Pension Rules, 1978, which is applicable to the employees who were appointed on or before 1st April, 2003."



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9. The present case is squarely covered by the judgment of the Apex Court referred to above.

10. In light of that, it is declared that the petitioner shall be governed by the old pension scheme. The respondent State shall treat the petitioner as governed by the old pension scheme and not by CPS.

11. The writ petition stands disposed of. There shall be no order as to costs. Consequently, WMP No.31941 of 2023 is closed.

12. As we have decided the instant writ petition in view of the factual matrix as arising in the present case, we have not dealt with the challenge to the Government Order or any other contentions of the parties.

(S.V.G., CJ.)

(D.B.C., J.)

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Index : Yes/No
Neutral Citation : Yes/No
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