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W.P.No.31684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM:

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

W.P.No.31684 of 2023
and W.M.P.No.31313 of 2023

V.K.Kavitha

...Petitioner

-Vs -

1. The Secretary to the Government,
School Education Department,
Fort St. George,
Chennai – 600 009.
2. The Commissioner of School Education,
College Road, Nungambakkam,
Chennai – 600 006.
3. The Commissioner,
Government Information Data Center,
5th Floor, Perasiriyar Anbazhagan Maaligai,
571, Anna Salai,
Nanadanam, Chennai – 600 035.
4. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai – 600 006.
5. The District Educational Officer (Primary)
Nagapattinam,
Nagapattinam District.



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6. The Block Educational Officer,
Vedaranyam,
Vedaranuyam Taluk,
Nagapattinam District.

7. The Secretary,
Sundaram Aided Primary School,
Kodiyakadu,
Vedaranyam Taluk,
Nagapattinam District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent in Na.Ka.No.9499/Oo/2023 dated 22.08.2023 and consequential order issued by the sixth respondent in Na.Ka.No.1327/A1/2023 dated 15.09.2023 and quash the same and consequently direct the respondents to retain the petitioner in the old pension scheme in ASTPF No.339031.

For Petitioner : Mr.V.Kasinatha Bharathi
For Respondents
For R1 to R6 : Mr.S.Mythreye Chandru
Special Government Pleader
For R7 : Mr.C.Prabakaran

ORDER

This writ petition has been filed challenging the proceedings of the third respondent dated 22.08.2023, thereby rejected the case of the petitioner under old pension scheme.



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2. The petitioner was selected and appointed as secondary grade teacher in the seventh respondent school on 29.04.2003. At the time of her appointment, old pension scheme was implemented for all the government employees including the teachers. Therefore, the petitioner was allotted with ASTPF number as 339031 on 08.03.2005. While being so, by the proceeding dated 15.09.2023, the ASTPF number was canceled based on the proceeding dated 22.08.2023 on the file of the third respondent on the ground that the appointments made to the government employees on or after 01.04.2003 were not entitled for the old pension scheme and they were only entitled for contributory pension scheme and directed to cancel the ASTPF number allotted to the petitioner. Aggrieved by the same, the petitioner filed the present writ petition.

3. The sixth respondent filed counter and the learned Special Government Pleader appearing for the respondents submitted that the petitioner was appointed on 29.04.2003 in the seventh respondent school, which is aided school. Further the petitioner was wrongly allotted Teachers Provident Fund Account and subscription was also deducted



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from her salary. The government issued order in G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2003, thereby introduced new Contributory Pension Scheme with effect from 01.04.2003. Therefore, based on the said government order, the petitioner's Teacher Provident Fund Account was canceled and she is included under the Contributory Pension Scheme.

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

5. Admittedly the petitioner was appointed prior to the government order in G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, thereby canceled the old pension scheme and implemented the contributory pension scheme. Further it was issued as retrospective effect from 01.04.2003. This issue already dealt with by this Court in the case of ***B.Vallipavai Vs. The State of Tamilnadu and ors.***, in ***W.P.No.8055 of 2015*** and this Court by an order dated 11.07.2023 held as follows:-

“10. The process of appointment was started from the date of vacancy and ended with the issuance of



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appointment orders. GO.Ms.No.259 (Finance) Pension dated 06.08.2003, which brought in a New Pension Scheme with retrospective operation. Because of the retrospective operation of the New Pension Scheme, no employer and employee would have forethought that appointments made after 01.04.2003 would not be eligible for the Old Pension Scheme. In fact the petitioner had been enrolled for Teacher Provident Fund and she was given TPF No.339415. Therefore, her request was accepted and she had been enrolled under the old pension scheme.

11. That apart, the learned counsel for the petitioner produced office memorandum issued by the Government of India on 03.03.2023, considering the representation submitted from Government servants appointed on or after 01.10.2004 requesting for extending the benefit of the pension scheme under Central Civil Services (Pension) Rules 1972 (now 2021) on the ground that their appointment was made against the post / vacancies advertised/notified for recruitment prior to notification for National Pension System referring to court judgments on various Hon'ble High Courts and Hon'ble Central Administrative Tribunals decided that in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised / notified for recruitment / appointment prior to the date of notification for national pension scheme i.e. 22.12.2003 and is covered



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under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021). The said option may be exercised by the Government servants latest by 31.08.2023. In fact the Government of India also called for list of pending cases of employees seeking conversion from contributory pension scheme to old pension scheme by the letter dated 19.02.2023, in which following details were called for:

(i) The details of employees in your department in Secretariat and under your control viz., Heads of Department, Public Sector Undertakings, Statutory Boards and Government Societies for whom orders have been issued for conversion from Contributory Pension Scheme to Old Pension Scheme with authority (G.O.No. and Date along with a copy along with case history from 2003 to till date.

(ii) The details of employees seeking Old Pension Scheme from Contributory Pension Scheme either under the ambit of Government Orders / Clarifications / Court Orders and pending court cases / pending cases with specific case history may be forwarded for consolidation and taking a final decision in the matter after due examination.

12. Therefore, the retrospective amendment / change affecting the vested or accrued rights of employees, adversely affecting their pension, was declared to be invalid as held by the Hon'ble Supreme Court of India in the case of



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**Chairman, Railway Board and Ors Vs.
C.R.Rangadhamaiah and Ors. reported in 1997 (6) SCC
623.”**

6. The above judgment is squarely applicable to the case on hand and the impugned order passed by the third respondent cannot be sustained and liable to be dismissed. Accordingly, the impugned order passed by the third respondent in Na.Ka.No.9499/Oo/2023 dated 22.08.2023 and consequential order issued by the sixth respondent in Na.Ka.No.1327/A1/2023 dated 15.09.2023, are hereby quashed. The respondents 4 to 6 are directed to continue the petitioner under ASTPF No.339031 in the old pension scheme.

7. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts



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G.K.ILANTHIRAIYAN. J.

rts

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