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W.P.No.35376 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.35376 of 2023

S.Santhi

... Petitioner

Vs.

1.The Registrar General,
High Court,
Madras.

2.Principal District Judge,
Salem.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring that the service rendered by the petitioner from 26.09.1997 till her retirement on 31.05.2022 is a continuous service and therefore she is entitled for Pension under the Tamil Nadu Old Pension Scheme and that that the respondents will have to sanction pension and submit the pension proposals to the Accountant General (Tamil Nadu), Chennai in order to pay pension from 01.06.2022 and continue to pay pension, commuted value of pension and all other benefits arising thereof and consequently direct the respondents to pay pension for the entire service rendered from 26.09.1997 to 31.05.2022, pay pension arrears from 01.06.2022

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and continue to pay pension every month, pay the commuted value of pension and all other monetary benefits along with interest at the rate of 8% from the date when the dues became payable.

For Petitioner : Mr.Balan Haridoss,
for M/s.S.Surya Devi

For Respondents : Mr.M.Santhana Raman

ORDER

(Order of this Court was made by S.M.SUBRAMANIAM,J.)

The writ of declaration has been instituted to declare the services rendered by the petitioner from 26.09.1997 till her retirement on 31.05.2022 as a continuous service and pay Pension under the Tamil Nadu Old Pension Scheme and further to direct the respondents to pay pension for the entire service rendered from 26.09.1997 to 31.05.2022 and pay pension arrears from 01.06.2022 along with interest at the rate of 8% from the date, when the dues became payable.

2. The only issue raised regarding the applicability of Old Pension Scheme i.e, Tamil Nadu Pension Rules, 1978 is that the petitioner was appointed by the learned Principal District Judge, Dharmapuri at Krishnagiri



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in proceeding in Roc.No.9/2003-A dated 26.03.2003.

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3. Since the appointment order was issued prior to the cut off date i.e., 01.04.2003 for implementation of New Pension Scheme (CPS), Mr.Balan Haridoss, learned Counsel for the petitioner would contend that the petitioner is entitled to avail the benefit of Tamil Nadu Pension Rules, 1978. He mainly contended that the probation was declared on completion of two years of service. The petitioner was continuing as temporary employee [10 (a) (i)] from the year 1997 onwards. She was relieved on 31.03.2003 and joined in the Regular Post on 03.04.2003. Since the appointment order was issued in proceeding dated 26.03.2003, the petitioner is entitled to get the benefit of Old Pension Scheme.

4. Mr.M.Santhana Raman, learned Counsel for the respondents would oppose by stating that the proceeding alone was issued by the learned Principal District Judge on 26.03.2003. But the appointment was given only with effect from 03.04.2003, which is indicated in the proceedings itself. That being so, for all purposes the petitioner was appointed with effect from 03.04.2003 after the cut off date of 01.04.2003. Thus, the petitioner is eligible



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to avail the benefit under the Contributory Pension Scheme. Further, he drew the attention of this Court with reference to the proceedings of the learned Principal District Judge dated 26.03.2003 stating that the temporary services of the petitioner from the post of Typist was ousted on the afternoon of 31.03.2003. Therefore, the petitioner served as temporary employee till 31.03.2003. Therefore, she is not entitled to avail the benefit of Old Pension Scheme.

5. Pertinently, the order of ousting and the order of appointment were issued on the same day i.e. on 26.03.2003. Though the proceedings were issued on the same day i.e., on 26.03.2003, the date of effects of ousting and appointment were mentioned separately in both the orders. As far as the ousting order in R.O.C.No.8/2003-A dated 26.03.2003 is concerned the temporary service of the petitioner in the post of Typist was ousted on the afternoon of 31.03.2003. Though the proceeding was issued on 26.03.2003, the petitioner was not ousted on the same day. But she was ousted only on 31.03.2003. Therefore, the order of ousting and the order of appointment issued on the same day is to be read together for the purpose of determining the date of appointment of the petitioner into the regular service.



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6. The date of appointment was issued in the proceeding R.O.C.No.9/2003-A dated 26.03.2003. In the said order, the Appointing Authority has clearly stated that the individuals are ordered to be joined in the new post on 03.04.2003 F.N. Therefore, the validity of appointment and joining were clearly mentioned in proceedings dated 26.03.2003. For all purposes, the petitioner was appointed in to regular service with effect from 03.04.2003 F.N. Thus, the petitioner is not entitled for the Old Pension Scheme but eligible to avail the benefit under the Contributory Pension Scheme.

7. With these clarification, this Writ Petition stands dismissed. No costs.

[K.R.S.J.]

[S.M.S.J.]

18.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1.The Registrar General,
High Court,
Madras.

2.Principal District Judge,
Salem.

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AND
K.RAJASEKAR,J.

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