



W.P.No.33780 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.33780 of 2023
W.M.P.No.33624 of 2023

V.Rajamanickam

...Petitioner

-Vs-

- 1.The State of Tamil Nadu
rep. By its Secretary to Government
School Education Department
Fort St. George
Chennai – 9.
- 2.The Director of School Education
DPI Compound, College Road,
Chennai – 6.
- 3.The Branch Officer
The Office of Accountant General (A & E)
Authorization of Revision / Gratuity / Commutation
Teynampet, Chennai.
- 4.The District Educational Officer (Secondary)
Myladuthurai.
- 5.The Secretary
Annai Kathuriba Aided High School,
Natarajapillai Savadi,
Tharagambadi Taluk.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for



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issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 3rd respondent in No.P22/4/12226700/ADK, dated 26.07.2023, signed on 28.07.2023 and quash the same and consequently direct the respondent to disburse gratuity and pension to the petitioner, under old pension scheme bearing TPF.No.337048, along with a statutory interest, within reasonable time frame fixed by this Court.

For petitioner : Mr.S.N.Ravichandran
For respondents 1, 2 & 4 : Mrs.S.Mythreya Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 26.07.2023 thereby rejected the request made by the petitioner for disposal of gratuity and pension to the petitioner, under old pension scheme.

2. The 5th respondent school is an aided non-minority Higher



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Secondary School. The vacancy arose for the post of B.T. Assistant (Science) in the 5th respondent school is due to transfer of incumbent namely Mr.K.Rajkumar to other school on 19.12.2002. In order to fill up the said vacant post i.e., B.T.Assistant (Science), the 5th respondent school had sent a proposal dated 10.01.2003 through 4th respondent. After the recommendation of the 4th respondent, the Chief Educational Officer granted permission to fill up the said vacant post of B.T.Assistant (Science) by its communication dated 03.04.2003. Accordingly, the 5th respondent school invited vacancy in the District Employment Exchange and the petitioner participated in the selection process and he was selected to the post of B.T.Assistant (Science). Thereafter, he was issued order of appointment by the 5th respondent school on 21.04.2003. The petitioner had joined duty as B.T.Assistant (Science). Thereafter, his appointment was also duly approved by the 4th respondent by its proceedings dated 26.09.2003 with effect from 21.04.2003. After the approval of the petitioner's appointment, the petitioner was admitted in the old pension scheme and he was allotted TPF.No.337048 by the Government Data Centre. The contribution towards TPF was duly deducted from the petitioner's salary. Thereafter, the petitioner was retired



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from his service due to attaining age of superannuation on 31.05.2023.

Against which the 5th respondent submitted his pension proposal to the respondents for sanction of pension and other retirement terminal benefits vide proposal dated 31.05.2023. The 4th respondent by its order dated 19.10.2023 sanctioned pension subject to the approval of the 3rd respondent. The petitioner was also sanctioned gratuity amount. However, the 3rd respondent by impugned order dated 26.07.2023 rejected the pension proposal on the ground that the petitioner's appointment was made after 01.04.2003. Therefore, the petitioner was not covered under old pension scheme.

3. The 4th respondent filed counter and revealed that the petitioner was initially appointed as B.T.Assistant(Science) in Annai Kasturibai Aided High School with effect from 21.04.2003 by the School Management. The appointment was duly approved by the 4th respondent vide proceedings Rc.3621/Aa1/2003 dated 26.09.2003. The petitioner has reached the age of retirement on 31.05.2023. The Secretary of the Aided School has sent pension proposal and the same was forwarded to the Accountant General,



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Chennai vide Lr.No.Rc.27108/B2/2023 dated 19.06.2023. The Accountant

General, Chennai has returned the proposal vide

Lr.No.P22/4/12226700/ADK/167 dated 26.07.2023 with the following remarks:

“Sri.V.Rajamanickam has joined service as B.T.Assistant on 21.04.2003 vide P.58/1 as per G.O.390 dated 11.09.2003. Those who are appointed on or after 01.04.2003 are not covered under Pension Scheme. Hence, the proposals and service book are returned herewith.”

4. Further revealed that the Government have taken policy decision and issued G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003 introduced New Contributory Pension Scheme with effect from 01.04.2003. The said Government Order was also up held by this Court. Though, the petitioner was allotted Teachers Provident Fund Scheme and the amount has been deducted from his salary. It has been made by mistake by the 5th respondent. As the petitioner was initially appointed on 21.04.2003 and he is governed by New Contributory Pension Scheme. Therefore, the petitioner cannot take shelter on the basis of enrollment under Teachers Provident Fund Scheme. This Court considered the similar issue in W.P.No.8055 of 2015 dated 11.07.2023. The same was extracted hereunder:

"7. The learned counsel for the petitioner relied upon the



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judgment of the Hon'ble High Court of Uttarakhand at Nainital, wherein the Hon'ble Division Bench in Special Appeal No.330 of 2013 held that undisputedly, when petitioners applied for the post, old pension scheme was in existence, Therefore petitioners had every reasonable expectation that they would be governed by the service conditions prevailing on the date posts were Advertised and recruitment process was commenced. The service. conditions, prevailing on the date recruitment process commenced, cannot be permitted to be altered in disadvantage of the recruits. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Union of India Vs. Tushar Ranjan Mohanty reported in 1994 (5) SCC 450, wherein it is held that Rules under Article 309 of Constitution of India cannot be made retrospectively so as to nullify the right vested in a person under a statute or under the Constitution. He also relied upon the judgment of this Court passed in batch of writ petitions in WP.Nos.8584, 8589, 8592, 8593 and 8595 of 2021 dated 10.02.2023 and this Court had relied upon the judgment of the Delhi High Court in WP(C) 8208 etc., of 2020 dated 15.01.2021, wherein it is held as follows:

8. The issue in the present batch of matters is no longer res integra. Consequently, the request for additional time to file counter affidavit is declined.

9. In the case of certain constables of the BSF, this Co by its judgment dated 12th February, 2019 in Tanaka Ram (supra) allowed the prayer of those Petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension Scheme should be extended to all those who had been selected in the examination conducted in 2003, but were issued call letters only in January or February, 2004. It is also pertinent to mention that the Respondents aggrieved by the said judgment filed an SLP bearing No. 25228/2019 before the Apex Court. The said SLP has been dismissed by the Supreme Court vide order dated 02nd September, 2019.



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10. *This Court in Shyam Kumar Choudhary and Ors. vs. Union of India being W.P.(C) No.1358 of 2017 allowed similar petitions vide judgment dated 09th April, 2019 against which the Respondents had again filed SLP bearing no. 31539/2019 which was again dismissed on 27th September, 2019. The Respondents thereafter chose to file a review petition bearing no.2188/2020 before the Apex Court in the said matter and the said Review petition was also dismissed on merits vide order dated 24th November, 2020.*

11. *Following the judgment of Shyam Kumar Choudhary (supra), the learned predecessor Division Bench in Niraj Kumar Singh & Ors. vs. Union of India & Ors., W.P.(C) No.13129/2019 granted similar benefit to 17 petitioners who had applied to the post of Sub-Inspector in Central Police Organisations pursuant to an advertisement dated 21 st June, 2003 even when the written examination and physical efficiency test were held in November, 2003, medical examination was held in January February, 2004 and final result was declared in May, 2004. The said 17 petitioners were issued offer of appointment on 02nd June, 2005 and on accepting the same, the appointment letter was issued on 14th July, 2005 for joining the Sashastra Seema Bal."*

5. Admittedly, the vacancy arose on 19.12.2002 and the request to fill up the vacant post of B.T.Assistant (Science) was sent by proposal dated 10.01.2003. However, it was considered by the 4th respondent only by the



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proceedings dated 18.03.2003 and recommended by its proceedings dated 18.03.2003. Thereafter, Chief Educational Officer granted permission to fill up the vacant post of B.T.Assistant (Science) on 03.04.2003. Accordingly, the petitioner was appointed by the 5th respondent school on 21.04.2003.

6. In view of the above settled position of law, this Court is of the view that reasoning adopted by the 3rd respondent dated 28.07.2023 cannot be sustained and liable to be quashed. Accordingly, the impugned order passed by the 3rd respondent dated 28.07.2023 is quashed. Further, the 3rd respondent is directed to disburse the gratuity and pension amount to the petitioner under Old Pension Scheme pertaining to TPF.No.337048 with applicable interest if any within a period of twelve weeks from the date of receipt of copy of this order.

7. With the above direction, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.



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