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W.P.No.33857 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

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

W.P.No.33857 of 2023

Dr.Meenakshi Vijayakumar

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep. By its Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai 600 009

2.The Director General of Police/
Director, Tamilnadu Fire & Rescue Services,
No.17, Rukmani Lakshmipathy Road,
Egmore, Chennai

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the 1st respondent in Letter No.e-2753 / Police-XVII/2023-1, dated 06.09.2023 and quash the same and consequently direct the respondents to admit the petitioner in the Old Pension Scheme by taking into account of the fact that the



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advertisement, recruitment, selection process was started by the Tamil Nadu Public Service Commission vide Notification No.2/98, dated 16.05.1998, prior to implementation of the Contributory Pension Scheme (CPS) by the Government, vide G.O.Ms.No.259, Finance (Pension) department dated 06.08.2003.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.R.L.Karthika,
Government Advocate

ORDER

This writ petition has been filed to quash the order passed by the first respondent in Letter No.e-2753 / Police-XVII/2023-1, dated 06.09.2023 and consequently to direct the respondents to admit the petitioner in the Old Pension Scheme by taking into account of the fact that the advertisement, recruitment, selection process was started by the Tamil Nadu Public Service Commission vide Notification No.2/98, dated 16.05.1998, prior to implementation of the Contributory Pension Scheme (CPS) by the Government, vide G.O.Ms.No.259, Finance (Pension) department dated 06.08.2003.

2. The case of the petitioner is that the petitioner passed B.A.



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English in the year 1985 and M.A. English in the year 1987. Thereafter, she passed P.G. Diploma in Industrial Relation and Personal Management in the year 1991. While being so, the Tamil Nadu Public Service Commission issued a Notification vide No.2/98, dated 16.05.1998 inviting applications for the vacancies to various Group-I posts that arose during the year 1997-98. The categories of Group I posts were notified and advertised by the TNPSC. The petitioner appeared for the preliminary exam and Main Examination. Thereafter, she appeared for oral interview. The Tamil Nadu Public Service Commission published the Provisional Selection List of all qualified candidates for appointment for Group-I Service (Direct Recruitment) on 03.03.2001. Though the petitioner came out successful in the examination and despite the fact that she was provisionally selected, her results were withheld on the pretext of pending production of physical standard certificate for the post of Divisional Fire Officer. It was the first instance where women candidates have been provisionally selected for the post of Divisional Fire Officer. Hence, some clarifications were sought by the Tamil Nadu Public Service Commission from the 1st and the 2nd respondents herein with regard to



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the Physical Standard Certificate. Out of 84 posts notified by the Tamil Nadu Public Service Commission, the Government issued order of appointment to 81 persons and that their appointment was much prior to 01.04.2003. All the 81 selected candidates, who joined the service prior to 01.04.2003, were placed under the old pension Scheme.

3. The Tamil Nadu Public Service Commission by its letter wrote to the 1st respondent communicating the decision taken by the Selection Committee and thereby recommended for amending the Special Rules for Physical Standard to include Women employees with retrospective effect from 07.01.1998 so as to proceed with appointment of the Selected Candidates to the post of Divisional Fire Officer. The first respondent accepted the request of the TNPSC and thereby issued G.O.Ms.No.1023 Home (Police-XVII) Department dated 12.11.2001 prescribing the minimum physical standard for the women candidates for the post of Divisional Fire Officer. However, no suitable amendments were made in the Service Rule with retrospective effect as suggested by the Tamil Nadu Public Service Commission. After a lapse of more than one and a half year, the first respondent issued G.O.Ms.No.52,



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Home (Police-XVII) Department dated 14.01.2003 amending the Tamil Nadu Fire & Rescue Service Rules retrospectively with effect 07.01.1998. While so, based on the aforesaid amendment, the Tamil Nadu Public Service Commission issued an order of provisional selection to the post of Divisional Fire Officer. However, the petitioner was not issued with the order of appointment. The petitioner appeared before the Medical Board and her Medical Certificate was duly forwarded by the Medical Board on 28.03.2003 itself to the 2nd respondent herein. After a lapse of more than five months, the first respondent issued G.O.Ms.No.625 appointing the petitioner and her co-appointee one, N.Priya as Divisional Fire Officer and the petitioner was posted as Teller Engineer (in the capacity of Divisional Officer). The petitioner joined the service on 01.08.2003. Now, the petitioner is working as Joint Director from 19.02.2021.

4. The Government issued G.O.Ms.No.259 dated 06.08.2003 introducing the contributory pension scheme to the Government employees whose recruitment process were started on or after 01.04.2003. Though the petitioner's selection was completed before the cut-off date i.e. 01.04.2003, she was not placed in the Old Pension Scheme. Hence, the petitioner made an oral request to the 2nd respondent



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soon after her appointment. However, no action was taken. Nevertheless, the petitioner continued making oral requests to the first and second respondents. The second respondent directed the petitioner to give a representation in that regard. Hence, the petitioner made representation, which was positively recommended by the 2nd respondent. However, the first respondent, by the impugned letter dated 06.09.2023, rejected the petitioner's request and refused to admit her in the old pension scheme by citing the decision rendered by the Hon'ble Full Bench of this Court in the case of *The Government of Tamil Nadu & Ors. vs. R.Kaliyamoorthy* rendered in W.A.No.158 of 2016 dated 03.12.2023. However, the said decision does not apply to the facts involved in the instant case as the aforesaid decision is concerned with the issue of counting of 50% of past service to employees who got regularised after 01.04.2003. Hence, challenging the same, the present writ petition has been filed.

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

6. Admittedly, the petitioner came out to be successful in the examination conducted for Group-I Service (Direct Recruitment) and the



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Tamil Nadu Public Service Commission also published the Provisional Selection List of all qualified candidates including the petitioner for appointment for Group-I Service (Direct Recruitment) on 03.03.2001. However, her results were withheld on the pretext of pending production of physical standard certificate for the post of Divisional Fire Officer.

7. The learned counsel for the petitioner relied upon the 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***,



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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 Court 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



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by the Supreme Court vide order dated 02nd September, 2019.

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 27 th 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



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accepting the same, the appointment letter was issued on 14th July, 2005 for joining the Sashastra Seema Bal.

12. Another Coordinate Bench vide judgment dated 06th November, 2020 in W.P.(C) No. 6548 of 2020 as well 6989/2020 was pleased to allow the said petitions for grant of Old Pension Scheme by following the judgment in Shyam Kumar Choudhary (supra).

13. Having regard to the fact that in the present batch of cases also the advertisement/notification was issued in September, 2003 and June, 2003 i.e. prior to coming into force of the present contributory pension scheme on 22nd December, 2003, this Court is of the view that petitioners cannot be deprived of the benefit of the Old Pension Scheme.

8. This Court also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***P.Ranjitharaj Vs. State of Tamilnadu and others*** reported in ***(2022) SCC online SC 508***, wherein it is held as follows:

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 matter of appointment and no justification has been tendered by



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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.

9. In both the judgments, given indication as to how the issue involved in the present writ petition should be dealt with. For 84 posts



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notified by the Tamil Nadu Public Service Commission, the Government issued order of appointment to 81 persons excluding the petitioner and that their appointment was much prior to 01.04.2003. All the 81 selected candidates, who joined the service prior to 01.04.2003, were placed under the old pension Scheme. However, in respect of the petitioner, some clarifications were sought by the Tamil Nadu Public Service Commission from the 1st and the 2nd respondents herein with regard to the Physical Standard Certificate. Though the various stages of the above selection process had completed even prior to 01.04.2003, only after a lapse of more than five months, the first respondent issued G.O.Ms.No.625 appointing the petitioner and her co-appointee one, N.Priya as Divisional Fire Officer, thereby the petitioner joined the service on 01.08.2003.

10. In the result, this Writ Petition stands allowed and the impugned order dated 06.09.2023 passed by the first respondent in Letter No.e-2753 / Police-XVII/2023-1 dated 06.09.2023 is quashed. Consequently, there shall be a direction to the respondents herein, to admit the petitioner in the Old Pension Scheme, by taking into account



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the fact that the recruitment process was started vide Notification No.2/98 dated 16.05.1998 issued by the Tamilnadu Public Service Commission and selection process was over prior to 01.04.2003 and also before the implementation of the Contributory Pension Scheme (CPS) vide G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003, within a period of four weeks from the date of receipt of a copy of this order. In case the deductions have already been made under the Contributory Pension Scheme, the same shall be adjusted towards the contributions of the Old Pension Scheme. No costs.

07.03.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1.Principal Secretary to Government,
The State of Tamilnadu,
Home Department,
Secretariat, Fort St.George,



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Chennai 600 009

2.The Director General of Police/

Director, Tamilnadu Fire & Rescue Services,

No.17, Rukmani Lakshmipathy Road,

Egmore, Chennai

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