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W.A.Nos.532 & 539 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.Nos. 532 & 539 of 2021
and
C.M.P.Nos. 2076, 2078 & 2114 of 2021

W.A.No.532 of 2021

- 1.The Government of Tamil Nadu
Through its Secretary,
School Education Department,
Chennai – 600 009.
- 2.The Director of Public Libraries,
737, Anna Salai, Chennai – 600 002.
- 3.The District Library Officer,
Office of the District Judiciary,
Coimbatore.

.. Appellants

vs

- 1.K.P.Srinivasan
- 2.Revathi
- 3.N.Krishnavani
- 4.S.Jayanthi
- 5.S.Muthukumar
- 6.S.Velumani

.. Respondents

W.A.No.539 of 2021

- 1.The Government of Tamil Nadu
Through its Secretary,
School Education Department,
Chennai – 600 009.
- 2.The Director of Public Libraries,



W.A.Nos.532 & 539 of 2021

737, Anna Salai, Chennai – 600 002.

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3.The District Library Officer,
Office of the District Judiciary,
Coimbatore.

.. Appellants

VS

1.G.Saraswathi
2.T.Malarvizhi
3.G.Umadevi
4.D.Subbulakshmi
5.G.Amutha
6.R.Rajan
7.R.Ravi
8.A.Murugan
9.K.Venkatachalapathi
10.E.Sivaguruganeshaboopathi
11.R.Manickam
12.A.V.Shoba
13.K.Bagyalakshmi
14.S.Sargunam
15.G.Ramalakshmi
16.Karpagam

.. Respondents

Prayer in W.A.No.532 of 2021 : Appeal filed under Clause 15 of Letters Patent against order dated 08.09.2017 made in W.P.No.20201 of 2015.

Prayer in W.A.No.539 of 2021 : Appeal filed under Clause 15 of Letters Patent against order dated 08.09.2017 made in W.P.No.20200 of 2015.

For Appellants : Mr.R.Neethi Perumal
Government Advocate
(in both WAs)

For Respondents : Mrs.Nalini Chidambaram, Senior Counsel
for Mr.N.Umapathy
for R1 to R6
(in W.A.No.532 of 2021)
for R1 to R5, R8 to R16
(in W.A.No.539 of 2021)
Mr.R.Saseetharan, for R6, R7
(in W.A.No.539 of 2021)



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COMMON JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

The challenge is to two orders of the writ court dated 08.09.2017.
The State is in appeal.

2. We have heard Mr.R.Neethi Perumal, learned Government Advocate, for the State and Mrs.Nalini Chidambaram, learned Senior Counsel, for Mr.N.Umapathy and Mr.R.Saseetharan, for respondents/writ petitioners.

3. The writ petitioners had been appointed through employment exchange as Village Librarians on consolidated pay. Their appointment was in terms of G.O.(Ms)No.66, Education, Science and Technology (K1) Department, dated 30.01.1996. From inception, it was their stand that the post of Grade III (Librarians) was well available for their absorption. However, despite their efforts for absorption, the recruitments for the post of Grade III (Librarians) were being made only by way of direct recruitment.

4. This denial triggered O.A.No.2499 of 1998 and batch, wherein the prayer of the writ petitioners was for a direction to the State to fill the posts of Grade III (Librarians) from among the applicants / writ petitioners, who were all working as Village Librarians. The qualifications for the post of Village Librarians and Grade III (Librarians) was one and the same. In addition, the writ petitioners had the requisite and in fact, far



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greater experience, by virtue of their service from various dates between 1990 and 1998 as Village Librarians.

5. The above OA came to be disposed vide order dated 07.06.2000 in favour of the writ petitioners. The Central Administrative Tribunal (CAT/Tribunal) was of the opinion that the Village Librarians had rendered services for many years, and given the fact that there were sufficient vacancies in the post of Grade III (Librarians), there was a legitimate expectation that they would be absorbed in those posts. The CAT also noted that the applicants held the requisite qualifications as well as experience for handling a regular time scale post.

6. As against the order of the Administrative Tribunal, the State had filed a writ petition in W.P.No.6797 of 2005, which came to be disposed on 10.10.2002. The then Special Government Pleader had filed a memo setting out certain parameters for absorption of the Village Librarians and the entirety of the memo, is extracted below:-

"1. As and when the Government decides to fill up Grade III Librarians posts, the present incumbents in the post of Village Librarian will be given preference as per order of seniority over all other categories of persons and be appointed as Grade III Librarians on regular time scale of pay.

2. If the Government decides to fill up the Grade III Librarian posts on contract basis then,

a) The present incumbents in the posts of Village Librarians will be given preference over all other persons.

b) The lien of the existing Village Librarian over the post of Village Librarians will be maintained.

c) The resultant vacancies in the post of Village



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Librarians will be filled up on temporary basis by temporary hands.

d) If the Grade III Librarian posts filled up on contract basis are abolished then the services of the Village Librarians appointed in the meanwhile temporarily will be terminated and the existing Village Librarians occupying the post of Grade III Librarians will be reverted to the post of Village Librarians.

5. In response to this Mr.Rajasekaran, learned Special Government Pleader has also very fairly filed an affidavit on behalf of the Government and has in that affidavit reiterated by way of para 4 and 5 as follows:-

4. I state that in the circumstances stated above 40 surplus Junior Inspectors of sericulture working in Sericulture Department have to be absorbed in public Libraries Department and Grade III Librarians in the first instance. As and when the Government decide to fill up the remaining vacant post of Grade III Librarians, the present incumbents in the post of Village Librarians will be considered in the order of seniority without affecting the interest of the existing departmental candidates working in other regular posts with time scale of pay and awaiting for promotion as Grade III Librarians subject to the preference given to 40 Junior Inspector of sericulture and the endeavour of the Government to protect the other persons working in the Department of Public Libraries and also eligible to seek promotion to Grade III Librarians, the Village Librarians shall be considered for appointment as Grade III Librarians as represented in para (i) of the memo filed by the respondents herein.

5. I state that as and when the Government decides to fill up the Grade III Librarians on consolidated pay, the conditions laid down in para 2(a) to (d) of the Memo filed by the respondents herein will be followed."

7. A Division Bench of this Court recorded the statement of the then Special Government Pleader to the effect that there were 1491 posts



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of Grade III (Librarians) out of which 763 posts were vacant. The total number of Village Librarians at that point in time was 625 of which only 368 had approached the Court. Thus, the assurance made was that even if the State proceeded to accommodate persons by way of direct recruitment in pursuance of the relevant Government Orders, additionally all 625 Village Librarians could be accommodated since vacancies were available.

8. In any event, the 368 persons who had approached this Court could certainly be considered for absorption. The Bench recorded the memo filed by the State and closed the writ petition expressing the fond hope that the Village Librarians would obtain justice at the hands of the Government, at the earliest.

9. Their hope was belied by the fact that there was no action taken till 12.05.2006 by issuance of Government Order bearing G.O(Ms) No.64 dated 12.05.2006. It is only in that G.O., that a reference is made to the order passed on 10.10.2002 and the proposal for absorption of 348 Village Librarians. A development in the meantime was that, with effect from 01.04.2003, the Contributory Pension Scheme (CPS Scheme) had been made applicable and hence in that very G.O., the State has made it clear that the persons who had been absorbed under that G.O., would be governed by CPS Scheme only.

10. Orders of appointment came to be issued under proceedings in Na.Ka.6711/A1/2006 dated 26.10.2006 absorbing the writ petitioners



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by way of one-time absorption making it clear that in Clause 6 of their appointment orders, that they all would be governed only under the CPS Scheme.

11. The writ petitioners remained content for nearly a decade thereafter, choosing to file writ petitions only in 2015 assailing Government Order No. 64 dated 12.05.2006. Their prayer was for a writ of certiorari calling for the records in G.O.64 dated 12.05.2006 as well as Clause 6 of order of the appointment dated 26.10.2006, and quash the same. The intention of the writ petitioners is thus very clear. They were only aggrieved by their being brought under the CPS Scheme as they preferred to be governed under the old pension scheme.

12. The writ petitions came to be disposed on 08.09.2017, the learned Judge following the ratio of the orders of the Division Bench that held the field at that juncture, to the effect that the cut-off date for transition for the CPS Scheme as 01.04.2003 was arbitrary, and liable to be quashed. The order relied on by the learned Judge is the case of *Union of India v K.Punniyaoti* [2014 2 CTC 777] and has been elaborately extracted in his order. The conclusion at paragraphs 9 & 10 is as follows:-

"9. Pursuant to the orders passed by the Government in G.O.Ms.No.64 School Education (K1) Department dated 12.05.2006 granted with the Contributory Pension Fund Account Number. However, in view of the orders passed in this writ petition the applicability of the G.O.Ms.No.64 itself is to be reconsidered. In view of the direction granted, thus the impugned orders passed by the third respondent in proceedings dated 26.10.2006 is quashed. The respondents are directed to



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reconsider the case in this order, for the purpose of granting the relief of counting of service of 50% of the services rendered on temporary basis and pass appropriate orders after verifying the service records and based on Rule 11 of the Tamil Nadu Pension Rules, 1978 and communicate the decision taken to the writ petitioners as early as possible, preferably within a period of four months from the date of receipt of a copy of this order.

10. In the event of counting 50% of the past services, the GPF Account has to be opened after closing the CPF Account, opened on account of the cut of date of 01.04.2003, since, the cut of date was already quashed by this Court and there was no appeal against the order."

13. Thus, the learned Judge has considered the prayers of the writ petitioners in light of the law as prevailed at that point in time. While so, an attempt is now made to assail the very basis of the appointment of petitioners in 2006, the submission made, albeit tentatively, is that, had they been appointed prior to 31.03.2003, they would still have had the benefit of regular pension.

14. To this end, learned counsel for the writ petitioners would submit that the order of the Division Bench of this Court dated 10.10.2002 had recorded the assurance of the then Special Government Pleader that they would be absorbed at the very earliest. The petitioners also assume that the delay in consideration of their case was on account of a ban on direct recruitment, that was in existence between 29.11.2001 and 07.02.2006 in terms of G.O(Ms).No.292, Personnel and Administrative Department, dated 29.11.2001. The writ petitioners state that that ban could not be made applicable to them seeing as theirs was a



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request for recruitment by absorption and not by direct recruitment.

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15. When it was pointed out to the writ petitioners that there has been significant delay in their approaching the Court for relief qua relief sought in regard to the date of appointment, they would rely on the following decisions (i) *State of Rajasthan and others v O.P.Gupta* [(2022) 18 SCC 382], (ii) *P.Ranjitharaj v State of Tamil Nadu and others* [2022 SCC OnLine SC 508], (iii) *Ramachandra Shankar Deodhar and others v The State of Maharashtra and others* [(1974) 1 SCC 317] and (iv) *State of Madhya Pradesh and others v Yogendra Shrivastava* [(2010) 12 SCC 538], to bolster their point that the right to pension is a fundamental right and a continuing one, at that. Hence there is really no delay in their approaching this Court as the right of persons to seek proper pension would continue so as long the writ petitioners are still in service at the time when the writ petitions were filed.

16. We have perused the writ affidavit carefully and find that the thrust of the writ petitioners was not really to assail the dates of appointment per se. Though there has been incidental reference to the ban between 2001 and 2006 to state that their appointments ought to have been made proximate to the date of the order of the Division Bench, that was not the substratum of the writ petitions.

17. Their attempt was only to ensure that clause 6 of their orders of appointment that brought them under the cover of the CPS Scheme, be quashed. In that they had succeeded, based upon the order of the



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Division Bench that held the field at that point in time. It is only before us that the writ petitioners expand the scope of the relief sought and we are, on a careful consideration of the same, not inclined to entertain the prayer.

18. On a careful reading of the writ affidavits, the prayers and the order of the learned Judge as well as the fact that no appeal has been filed by the writ petitioners as against order of the learned Single Judge dated 08.09.2017, we find that the only grievance expressed by the writ petitioners relates to counting of their service prior to 01.04.2003 for the purposes of pension computation.

19. Thus, the only ground that survives now is their eligibility in terms of the writ prayers, which issue stands decided vide a decision of the Full Bench in the case of *The Government of Tamil Nadu, Rep. by Secretary to Government, Public Works Department, Secretariat, Chennai and others V R.Kaliyamoorthy* [(2019) 6 CTC 705]. The reference in that matter was as follows:-

"Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O. Ms. No.259, Finance (Pension) Department dated 06.08.2003 and G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010."

20. The reference has been answered in paragraph 46 and the relevant portion of the answer is extracted below:-



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"46. In light of the above, we answer the reference as follows:

....

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

21. The subsequent attempt by the State to seek review/re-consideration of the decision of the Full Bench, was negated by the Full Bench in *State of Tamil Nadu, Rep. by the Secretary to Government, Social Welfare & Nutritious Meal Scheme (Sa.U.Thi.2) Department, Secretariat, Chennai – 9 and another v P.Arunachalam and another* (W.A.No.714 of 2014 and batch dated 20.03.2024).

22. With this, the position becomes clear that the services of a government servant regularized post 01.04.2003, cannot be taken into account for computation of pension.

23. These writ appeals are allowed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
11.12.2024

Index:Yes
Neutral Citation:Yes
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and
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