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W.A.(MD)NO.737 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

W.A.(MD)No.737 of 2021 AND

C.M.P.(MD)No.3279 of 2021

1. The Government of Tamil Nadu,
Rep. By its Secretary, Department of Education,
St. George Fort, Chennai – 600 009.
 2. The Director of School Education Department,
DPI Campus, College Road,
Chennai.
 3. The Chief Educational Officer,
Madurai,
Madurai District.
 4. The District Educational Officer,
Madurai,
Madurai District.
- ... Appellants / Respondents

Vs.

A.Clement Rosy ... Respondent / Writ petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 08.11.2019 in W.P.(MD)No.21052 of 2019 and allow the writ appeal.



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For Appellants : Mr.V.Om.Prakash,
Government Advocate.

For Respondent : Mr.VR.Shanmuganathan
* * *

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2. The writ petitioner was appointed as Secondary Grade Teacher in Holy Family Girls Higher Secondary School, Madurai on 20.02.1998. It is not in dispute that she was over-qualified and that she possessed the qualification of B.T.Assistant. In other words, she did not possess the qualification prescribed for the post of Secondary Grade Teacher. A number of such persons had been appointed between 1995-1998. The department declined to grant approval. Writ petitions were filed. Taking a humanitarian view, the Government of Tamil Nadu issued G.O.Ms.No.155 School Education (D2) Department dated 03.10.2002. It was stipulated that such appointees must undergo one month Child Psychology training course so that their appointments can be duly approved. The petitioner underwent such Child Psychology training course from 02.05.2003 to 31.05.2003. Her appointment was also duly approved with effect from 02.06.2003.



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3. Thereafter, the writ petitioner was appointed as B.T.Assistant by the Teachers Recruitment Board on 27.09.2007. On 03.10.2007 the petitioner resigned and joined the Government Girls Higher Secondary School, T.Vadipatti, Madurai District on 08.10.2007. There was no interruption or break in service. The only question that calls for consideration is whether the writ petitioner was entitled to include the service put in by her in the private aided institution from 1998 to 2007.

4. Since the Department did not consider the petitioner's request, the petitioner filed W.P.(MD)No.21052 of 2019. The writ petition was allowed vide order dated 08.11.2019. Questioning the same, this intra-court appeal has been filed by the Department.

5. The learned Government Advocate appearing for the appellants submitted that since the petitioner's appointment as Secondary Grade Teacher was approved only with effect from 02.06.2003, she cannot seek inclusion of the services put in by her with effect from 20.02.1998.



6. We are not impressed with this contention. As rightly pointed out by the learned counsel appearing for the writ petitioner / first respondent, the issue raised in this writ appeal is no longer *res integra*. He drew our attention to the decision of the Hon'ble Division Bench reported in **2019 4 CTC 865 (V.Vasanthi V. State of Tamil Nadu)**. Paragraph No.10 to 13 of the said decision read as follows:-

“10. Now, the question arises for consideration is as to whether the date of approval of Appointment is the relevant date for considering the claim of the Writ Petitioner under the Old Pension Scheme or the date of Approval of her original Appointment to the said post. Appointment to the post by the School/Management and approval of the same by the Education Department are two different events and thus, relevant dates of those two events are certainly different and distinguishable. Approval of Appointment is granted by the Department for the purpose of extending the Monetary benefits. Therefore, it does not mean that date of Approval itself has to be construed as the date of Appointment for the purpose of considering the applicability of the relevant Pension Scheme. Approval of



such Appointment may be granted either from the date of such Appointment or from any other subsequent date depending upon the facts and circumstances of each case like want of vacancy or sanction, etc. At any event, the date of Appointment remain to be the same. The dispute herein is not with regard to the claim for Salary from the date of the Appointment of the Writ Petitioner. On the other hand, it is in respect of the applicability of relevant Pension Scheme, under which, the Writ Petitioner has to be placed. For this purpose, the date of Approval of Appointment is not relevant factor and on the other hand, it is only the date of Appointment that matters. In other words, if the Writ Petitioner is entitled to count her service period from the date of her appointment for the purpose of Pension, she must be placed only under the Old Pension Scheme, since her appointment was admittedly earlier to the introduction of the New Pension Scheme.

11. At this juncture, the observation made by the Division Bench in 2004 (2) LW 591 (cited supra) at Paragraph 8, is relevant to be quoted:



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"8. Their right to be regarded as persons eligible for confirmation/approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite Diploma or Certificate in child psychology by giving to them training in Child Psychology. We see nothing wrong in the Government directing that their approval/confirmation can only be on and after the date they complete the training. Their past service, however, shall count for Pension."

12. A careful perusal of the above observation made in the said Pallivasal Primary School case would show that even though approval of the Appointment of the Teacher, who has undergone Child Psychology Training, will take effect only on completion of such training, the past service rendered by such Teacher i.e., service rendered before the completion of such training, is bound to be



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counted for Pension. In other words, the service period of such teacher commences from the date of the Appointment and not from the date of approval, even though the Monetary benefits start to accrue only from the date of completion of the training.. Therefore, for all practical purposes, the date of Appointment is not altered and remain to be the same. Therefore, the date of Approval of Appointment of the Writ Petitioner cannot be construed as the date relevant for considering the applicability of the Pension Scheme and on the other hand, it is the original date, on which the Writ Petitioner got appointed that matters for considering as to whether the Writ Petitioner is governed under the Old Pension Scheme or not. At this juncture, it is relevant to note that in G.O. Ms. No. 259, Finance (Pension) Department, dated 6.8.2003, a Proviso to Rule 2 of the Tamil Nadu Pension Rule 1978, was introduced by way of amendment, wherein and whereby, it is contemplated that the Tamil Nadu Pension Rules, 1978 shall not apply to Government Servants "appointed" on or after 1st April 2003 to services and posts. The word



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"appointed" referred in the said Proviso cannot be construed to mean approval of such Appointment.

13. In fact, the very same issue was considered by one of us (KRCBJ) in W.P.(MD) No. 3308 of 2007. The Contributory Pension Scheme was introduced to the newly recruited Employees, who are recruited on or after 1.4.2003. Relevant Clause 3(i) of G.O. Ms. No. 259, dated 6.8.2003, which has introduced the New Contributory Pension Scheme, was taken into consideration in the said case and it was found that the said Government Order introducing New Contributory Pension Scheme, would apply only to persons, who were recruited on or after 1.4.2003 and not in respect of persons, who were recruited earlier to 1.4.2003. In that case, though the Writ Petitioner therein was recruited on 26.3.2003, he joined the duty on 4.4.2003 after obtaining the Medical Certificate from the Medical Board, since he is a physically challenged person. Therefore, it was found therein that the date of joining of such person cannot be considered as date of Appointment as such event of appointment had already taken place well



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before 1.4.2003. We are informed that the above said Order
has been given effect to. ”

7.The above decision squarely governs the issue raised in the writ petition. In this view of the matter, the order impugned in this writ appeal is sustained. This writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)

21st November 2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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