



W.A.(MD)No.492 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.08.2024

PRONOUNCED ON : 30.08.2024

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.(MD)No.492 of 2020

and

C.M.P.(MD)No.3541 of 2020

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Finance (Pension),
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
Government Data Centre,
Guindy, Chennai – 600 025.
- 3.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 4.The District Elementary Educational Officer,
Madurai, Madurai District.
- 5.The Assistant Elementary Educational Officer,
Kottampatti at Karunkalakudi, Madurai District.
- 6.The Assistant Elementary Educational Officer,
T.Vadipatti, Madurai District.



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6.The Headmistress,
Panchayat Union Primary School,
Mannadimangalam, T,Vadipatti Union,
Madurai District/

... Appellants

VS

1.S.Sumathi

2.The Correspondent,
Jeya Primary School,
Madurai – 625 009.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 27.01.2020 passed in W.P(MD)No.15123 of 2015.

For Appellants	: Mr.M.Senthil Ayyanar Government Advocate
For R1	: Mr.Xavier Rajini
For R2	:No Appearance

JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The 1st to 6th and 8th respondent in W.P.(MD)No.15123 of 2015 have filed the present Writ Appeal challenging an order dated 27.01.2020 in W.P. (MD)No.15123 of 2015, by which order, a learned Single Judge had



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allowed the Writ Petition.

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2.The Writ Petition had been filed questioning an order refusing to place the Writ Petitioner under the old pension scheme and for a direction to place her under the old pension scheme based on the initial date of appointment as Secondary Grade Teacher on 24.03.2003.

3.In order to facilitate better understanding, the parties would be referred as they were referred in the Writ Petition.

4.The Writ Petitioner, S.Sumathi had joined as Secondary Grade Teacher in Jeya Primary School, Madruai, which is an aided School on 24.03.2003. She was placed under the old pension scheme. She then resigned the said post to join as Secondary Grade Teacher in Panchayat Union Middle School, Mannadimangalam, T.Vadipatti Union, Madurai and was relieved on 31.05.2007. She joined the Panchayat Union School on 06.06.2007. There were intervening holidays between 01.06.2007 and 05.06.2007. Holding that there was a break in service, the respondents in the Writ Petition had placed her under the Contributory Pension Scheme. It



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was under those circumstances that she had filed the Writ Petition seeking continuation under the old pension scheme.

5.The learned Single Judge had relied on the judgment reported in ***(2014) 8 MLJ 341***, in the case of ***N.Baskar -vs- Director of Elementary Education, Chennai- 600 006***, wherein, it had been held that if there is a break in service owing to administrative act, then the said break period should not be considered as a break in service. Rule 25 of the Tamil Nadu Pension Rules 1978, had also been relied on for that proposition.

6.We have heard arguments advanced by Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the appellants and Mr.Xavier Rajini, learned Counsel appearing for the first respondent.

7.The facts as stated above are not in dispute.

8.Rule 25 of the Tamil Nadu Pension Rules 1978, is as follows:

*“25. Condonation of interruption in service.-
(1) In the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of Civil*



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Service rendered by a Government servant shall be treated as automatically condoned and the preinterruption service treated as qualifying service.

(2)Nothing in sub-rule (1)shall apply to interruption caused by resignation, (or)removal from service or for participation in strike.

(3)The period of interruption referred to sub-rule(1) shall not count as qualifying service.”

9.Further, the Government had also issued a clarification letter in letter No.34911/Finance (PGC) Department/2009-1, dated 30.12.2009, which is as follows:

“The Government after careful examination directs that in all cases where an employee working under pensionable service on relief joins a new post on a day after the intervening Government / Public holidays, need not be considered as a break, since the intervening period shall automatically be condoned as per rule 25 of Tamil Nadu Pension Rules, 1978.”

10.It is an admitted fact that there was a declaration of public holiday between 01.06.2006 and 05.06.2006 in Panchayat Union School where the the Writ Petitioner had to join for the purpose of conducting training programme for the Teachers. This fact had not been denied or disputed by the respondents in the Writ Petition. It is thus seen that it was impossible for the Writ Petitioner to have joined the Panchayat Union School and that



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the break in service was beyond her control.

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11.We hold on a conjoint reading of the Government Letter, dated 30.12.2009, extracted above and Rule 25 of the Tamil Nadu Pension Rules, 1978, that the learned Single Judge had correctly applied the ratio of the judgment in **(2014) 8 MLJ 341**, in the case of ***N.Baskar -vs- Director of Elementary Education, Chennai- 600 006***, for the proposition that the intervening period cannot be considered as a break in service, since the break was owing to circumstances beyond the control of the Writ Petitioner. She was not able to join duty owing to the training which was conducted in the Panchayat Union School where she had to join. She could join only after the training programme had concluded and immediately, thereafter, on the next day, she had joined.

12.We had considered a similar issue in W.A.(MD)No.1035 of 2017, wherein we had also applied the same ratio and had dismissed the Writ Appeal therein also. Even in this case, since the break in service was not owing to any cause created by the Writ Petitioner, but only owing to a reason which was beyond her control, we hold that the Writ Petitioner



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deserves to be continued under the old pension scheme. We find no grounds to interfere with the order passed in the Writ Petition.

13.In the result, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[C.V.K., J.] & [J.S.N.P., J.]
30.08.2024

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

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AND

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Judgment made in
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