



WP(MD)No.15170 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.02.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE MUMMINENI SUDHEER KUMAR**

W.P.(MD)No.15170 of 2021

S.P.Subramanian

... Petitioner

/vs./

- 1.State of Tamil Nadu
represented by its Secretary,
Finance Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.State of Tamil Nadu,
represented by its Secretary,
Labour and Employment (E1) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 3.State of Tamil Nadu,
represented by its Secretary,
Personnel and Administrative Reforms Department,
Fort St.George, Secretariat,
Chennai - 600 009.



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4.The Secretary,
Tamil Nadu Public Service Commission,
Frazar Bridge Road,
VOC Nagar, Park Town,
Chennai -600 003.

5.The Accountant General (A & E),
No.361, Annasalai,
Teynampet, Chennai -08.

6.The Commissioner,
Labour Department,
O/o. the Commissioner of Labour,
DMS Compound, Mount Road,
Teynampet, Chennai - 06.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent No.2 to enroll the petitioner in the General Provident Fund Scheme on par with the other employees recruited along with petitioner by considering the petitioner's representation dated 16.03.2021 within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For R1, R3 & R6 : Mr.D.Sasikumar

For R4 : Mr.J.Anandakumar

For R5 : Mr.P.Gunasekaran
Standing Counsel



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ORDER

The petitioner herein participated in the recruitment process for Grade-IV services, during the years 1999-2000, undertaken by the fourth respondent and he was selected through the Memorandum No.8116/GR-IV MCD-AA/99 dated 28.06.2001. On selection he was also allotted to the Collector (Revenue Unit), Tiruvannamalai. However, when the petitioner went to join there, for want of vacancy, he was surrendered back to the fourth respondent. Consequently, he was allotted to the Labour Department subsequently, wherein he was issued with a posting order dated 05.01.2004. According to the petitioner, after he joined duty on 12.01.2004, he has been working, presently as Assistant Inspector in the Labour Department.

2. The grievance of the petitioner in this writ petition is that though he was selected and allotted to the Revenue Department much prior to 01.04.2003, he was not allowed to be enrolled as a member of the pension scheme governed by the Tamil Nadu Pension Rules and sought to be governed by the Contributory Pension Scheme introduced by the Government by



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issuing a G.O.No.259, Finance (Pension Department), dated 06.08.2003.

Thus claiming that he is entitled to be governed by the erstwhile GPS Scheme, the petitioner approached this Court by filing the present writ petition.

3. It is brought to the notice of this Court by the learned counsel for the petitioner that the very same issue came before this Court for consideration under similar circumstances, in respect of the selectees of the very same batch through the very same proceedings dated 28.06.2001, in W.P.No.4878 of 2010, wherein a learned Single Judge of this Court allowed the writ petition by order dated 04.09.2019, by following a decision of the learned Division Bench of this Court reported in **(2013) 3 MLJ 56 in S.Mary Sherly Vs Secretary to Government, Education Department, Chennai and Others**, directing the respondents therein to grant pension to the petitioner therein and to extend the benefits of erstwhile GPS scheme. The said order of the learned Single Judge was duly implemented by the respondent therein in G.O. (Ms.)No.93, Finance (PGC-II) Department, dated 26.02.2021. Later an another decision of the learned Division Bench of the Principal Seat of this Court in W.P.No.28639 of 2023 also considered the very similar aspect



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concerning the very same recruitment process, wherein under similar circumstances, the petitioner therein was not allowed to join duty prior to 01.04.2003 for want of vacancy but subsequently he was appointed after 01.04.2003 in different department. In the said case, the learned Division Bench, having taken note of the decision of the Hon'ble Apex Court in the case of *P.Ranjith Raj Vs State of Tamil Nadu (2022 SCC Online SC 508)*, has been pleased to allow the said writ petition, declaring that the petitioner therein shall be governed by the old pension scheme and directing the State to consider the petitioner under the GPS scheme and not under the Contributory Pension Scheme.

4. However, it is contended by the learned counsel for the respondents that the learned Division Bench of this Court in a decision reported in *2018-2-Writ L.R. 438, in Joseph Joy & others Vs State of Tamil Nadu*, has been pleased to dismiss the writ petitions under the similar circumstances. Learned counsel for the respondent also placed reliance on the decision of the learned Division Bench of this Court in *W.P.Nos.9027 and 9038 of 2019 dated 10.06.2019*.



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5. This Court has thoroughly gone through both the judgments relied upon by the learned counsel for the respondents. In both the cases, the claim of the petitioners therein was basing upon the fact that the recruitment process has been commenced by the Tamil Nadu Public Service Commission (TNPSC) by issuing a notification much prior to 01.04.2003, i.e., prior to introduction of CPS and therefore they are also entitled to governed by the old pension scheme. The said contention was negated by both the learned Division Benches on the ground that the applicants were not appointed prior to 01.04.2003 before the commencement of the Contributory Pension Scheme, therefore, they are not entitled to claim the benefit of erstwhile pension scheme. The facts of both the said cases are totally different and the claim made by the petitioners therein also totally different. Whereas, the claim of the petitioner in the case on hand is fully covered by the decision of the learned Division Bench of this Court in W.P.No.28639 of 2023 dated 30.01.2024 and also the decision of the another learned Division Bench reported in (2013) 3 MLJ 56 and W.P.No.4878 of 2010, dated 04.09.2019.



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6. In the light of the above, this Court is of the considered view that this issue is fairly covered by the two decisions and accordingly this writ petition is allowed, directing the respondents to treat the petitioner as covered by the old pension scheme and extend all the benefits under the old pension scheme. No costs.

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

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- 4.The Secretary, Tamil Nadu Public Service Commission,
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MUMMINENI SUDHEER KUMAR, J.

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