



W.P.(MD).No.18608 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.18608 of 2021

S.Josephine Mangayarkarasi

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-9.
- 2.The Commissioner of School
Education,
DPI Campus,
Chennai-6.
- 3.The Principal Accountant General (A&E),
O/o. the Principal Accountant
General (A&E),
361, Anna Salai,
Chennai-600 018.
- 4.The Chief Educational Officer,
Theni,
Theni District.



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5.The Headmaster,
Government Higher Secondary School,
Pannaipuram,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in Na.Ka.No.23272/R1/E3/2019 dated 23.08.2021 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the respondents to include the petitioner under Old Pension Scheme and disburse the retirement benefits of the petitioner with effect from 30.04.2016 including gratuity and other monetary benefits along with arrears within the time period stipulated by this Court.

For Petitioner : Mr.Aswin Rajasimman,
For M/s. Lajapathi Roy Associates

For R-1,R-2, R-4 & R-5 : Mr.M.Sarangan,
Additional Government Pleader

For R-3 : M/s.S.Mahalakshmi



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ORDER

The prayer of the writ petition is as follows:

To call for the records pertaining to the impugned order in Na.Ka.No. 23272/R1/E3/2019 dated 23.08.2021 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to include the petitioner under old pension scheme and disburse the retirement benefits of the petitioner with effect from 30.04.2016 including gratuity and other monetary benefits along with arrears within a period stipulated by this Court.

2. The crux of the petitioner's case is as follows:

2.1. The petitioner was appointed in the post of Block Resource Teacher (Educator) which is equivalent cadre to B.T.Assistant by way of direct recruitment on 26.03.2003. The petitioner joined duty in the post of Block Resource Teacher (Educator) on 31.03.2003 at Block Resource Centre, Cumbum, Theni District. Her joining report was also forwarded by the Supervisor of the Block Resource Centre Office, vide proceedings dated 04.04.2003 to the District Planning Organizer of Theni. Further her services



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were duly regularized by the proceedings of the Chief Educational Officer with effect from 31.03.2003 itself. Further she was promoted to the post of PG Assistant in the year 2008 and thereafter retired from service on 30.04.2016. Though GPF Account was maintained and she was provided with the General Provident Fund, other benefits such as pension and gratuity were not disbursed to her as per the Tamil Nadu Pension Rules.

2.2. In view of the same, she is entitled for inclusion in the Old Pension Scheme since she was appointed and regularized well before the cut off date i.e. 01.04.2003. Therefore, there cannot be any iota of doubt in the minds of the authorities regarding inclusion of her services under old pension scheme. But the Respondent No.3 has returned her pension proposal on the ground, that her pay was fixed only on 01.04.2003 and therefore she is not eligible for old pension scheme and insisted for relaxation order. The benefit of old pension was initially even extended to those employees who were appointed temporarily before 01.04.2003 and regularized thereafter by taking into account their date of initial appointment. This Court in W.A.(MD).No.1026 of 2015, dated 30.09.2015 in categorical terms has held that the contributory pension



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scheme i.e. the new scheme is applicable only to the employees appointed on or after 01.04.2003 and the appointment of employee before 01.04.2003 and regularization thereafter cannot be treated as new appointment. Therefore, the petitioner sent a detailed representation dated 28.09.2020 to the respondents seeking for inclusion under Old pension scheme. But the same has not been considered till date.

2.3. The Respondent No.3 vide his proceedings, dated 09.10.2020 has replied that so far clarification has not been received from the department in this regard and only upon receiving the clarification from the department further action can be taken. Though she was appointed and regularized well before the cut off date i.e. 01.04.2003, without any valid reasons, she is deprived of monthly pension and other benefits. Hence, she filed a writ petition in W.P.(MD)No.15781 of 2020 before this Court and on 10.11.2020, this Court was pleased to pass an order directing the Respondent No.2 to pass orders considering her representation. Pursuant to the same, the Respondent No.2 has issued the Impugned Order dated 23.08.2021 in which her claim seeking old pension has been rejected on the ground that previous service cannot be



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included for the purpose of calculation of pension as she had resigned from the said service and resignation would forfeit the earlier service in view of Rule 23 of the Tamil Nadu Pension Rules, 1978. As far as her entitlement for pension in view of her date of appointment and joining in the service on 31.03.2003, the same was rejected by referring to FR 17(3) of the Fundamental Rules, which provides that, “a Government servant will begin to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that Post if the charge is transferred before noon of that date. If the charge is transferred afternoon, he commences to draw them from the following day”. Challenging the aforesaid impugned order, this writ petition came to be filed.

3. The learned counsel for the petitioner Mr. Ashwin Rajasimman submitted that, the impugned order is thoroughly misconceived and against the provisions of the Tamil Nadu Pension Rules, 1978. Firstly the 2nd respondent admitted that as per Rule 11 of the Tamil Nadu Pension Rules, the service rendered by the petitioner previously from 26.03.2002 to 31.03.2003 at the District Institute of Education and Training can be treated and included for



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calculation of pension, but the same cannot be done in view of Rule 23 of Tamil Nadu Pension Rules which says resignation forfeits the earlier service. However, the second respondent miserably failed to consider the proviso attached to Rule 23 of the Tamil Nadu Pension Rules, which provides categorically that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

4. In the instant case, the learned counsel for the petitioner submitted that duly having applied for permission before the Director of Technical Education Research and Training, the petitioner resigned only for the purpose of joining duty as Block Resource Teacher Educator on 31.03.2003. Her letter seeking permission was duly forwarded by the Principal of the Institution to the Director of Teacher Education. Therefore, in view of the said proviso to Rule 23 of the Tamil Nadu Pension Rules, the learned counsel contended that the petitioner's past service should be counted for the purpose of calculation of



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pension, more particularly as the same is entered in the service register of the petitioner.

5. He further insisted that even if her past service is ignored, even in that case, in view of her appointment on 31.03.2003, the petitioner is entitled for being included in the old pension scheme in view of the amendment brought out in Section 2 of the Tamil Nadu Pension Rules with effect from 01.04.2003. The said amendment category excludes only those employees who were appointed on or after 01.04.2003. The said amendment was brought vide Government Order in G.O.Ms.No. 259 Finance (Pension) Department, dated 06.08.2003 and it provides that the aforesaid amended rules shall not apply to the Government servants who are appointed on or after 01.04.2003 to the services and posts in connection with the affairs of the state which are born on pensionable establishment whether temporary or permanent. On that basis, the learned counsel for the writ petitioner pressed for allowing the writ petition.

6. The 4th respondent has filed a counter affidavit and the learned Additional Government Pleader Mr. M.Sarangan appearing for the respondents



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1, 2, 4 and 5 submitted that the writ petitioner has been appointed to the post only on 01.04.2003, since she had joined duty on the afternoon of 31.03.2003, that is on the cut off date. The terms and conditions of service persons to civil posts and the civil services under the State Government are governed by statutory rules. When the field is governed by statutory rules the question of any promise and the Government going back on the promise would not arise. A mere selectee cannot claim any benefit. The petitioner was only a selectee before 01.04.2003 and actually joined on the afternoon of 31.03.2003 which means her service begins only from 01.04.2003 as per Provision 3 under Fundamental Rules 17. Hence, the learned Additional Government Pleader contended that the request of the petitioner is against the rules and her case is covered by the decision rendered by the Hon'ble Division Bench of this Court in W.A.(MD)No.217 of 2011 batch dated 19.06.2014 and pressed for dismissal of the writ petition on similar lines.

7. Heard the learned counsel for the petitioner Mr. Ashwin Rajasimman, the learned Additional Government Pleader Mr.M.Sarangan for R1, R2, R4 and



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R5 and the learned counsel for the 3rd respondent Mrs.S.Mahalakshmi and carefully perused the materials available on record.

8. The petitioner was working as PG assistant with effect from 12.11.1981 to 07.07.1988 in Fatima Girls Higher Secondary School. Subsequently, she was not in service up to 25.03.2002. With the said break in service, she continued with effect from 26.03.2002 to 31.03.2003 on consolidated pay on contract basis and resigned the post on 31.03.2003. However, the petitioner had duly applied for permission before she resigned from the said post exclusively for the purpose of joining duty as Block Resource Teacher Educator on 31.03.2003 as and when she was directly recruited for the said post. Accordingly, she was appointed as Block Resource Teacher Educator by way of direct recruitment and she joined duty on the afternoon of 31.03.2003. The contention of the respondents is that since she resigned service on 31.03.2003, the question of taking that service into account for any purpose will not arise for the reason that resignation forfeits the earlier service. However, I am of the considered view that the respondents



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submissions are not sustainable. For better appreciation of the legal position

Rule 23 of the Tamil Nadu Pension Rules is extracted as follows:

“23. Forfeiture of service on resignation.- (1) Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonatio to the extent to which the period is not covered by leave due to the Government servant.”

9. A careful reading of the Proviso to Rule 23 of the Tamil Nadu Pension Rules would make it clear that a resignation shall not entail forfeiture of past service, had it been submitted with proper permission to take up another appointment whether temporary or permanent under the Government. In the instant case, obviously, the petitioner had obtained appropriate permission from



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the competent authority to take up the post of Block Resource Teacher Educator before resigning her previous post. Hence, I have no hesitation to hold that in terms of the Proviso to Rule 23 of the Tamil Nadu Pension Rules, the petitioner's past services need not be forfeited. Having contended that the petitioner's past service entail forfeiture in view of the resignation, the learned counsel for the respondent further submitted that Clause(3) under Fundamental Rules 17 makes it clear that if a selectee joins duty actually in the afternoon of any day in that case his / her service begins only from the following day.

10. In view of the same, in the instant case, the petitioner had joined duty on the afternoon of 31.03.2003 which means her service begins only from 01.04.2003 as per Fundamental Rule 17(3). Hence, the request of the petitioner seeking the benefit of old pension will never arise. Relying upon the judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No. 217 of 2011 batch, dated 19.06.2014, the learned AGP pressed for dismissal of the writ petition on similar lines.



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11. However, this court is of the considered view that the judgment of W.A.(MD)No. 217 of 2011 batch, dated 19.06.2014 is not applicable to the facts and circumstances of this case. That apart, I am of the considered view that Fundamental Rules 17(3) of the Tamil Nadu Government is with respect to the transfer of a Government servant from one post to another and has nothing to do with the facts and circumstances of this case which is not a case of transfer, but appointment. Further even assuming that the petitioner's past service is ignored then, this Court is of the considered view that the petitioner's appointment on 31.03.2003 would make her eligible to be included in the old pension scheme in view of the amendment brought out to Section 2 of the Tamil Nadu Pension Rules, 1978 with effect from 01.04.2003.

12. The said amendment categorically excludes only those employees who are appointed on or after 01.04.2003. The said amendment was brought vide Government Order in G.O.Ms.No.259, Finance (Pension) Department dated 06.08.2003. The amendment reads as follows:

Provided that these rules shall not apply to Government servants who are appointed on or after 01.04.2003 to services and post in



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connection with affairs of the state which are borne on pensionable establishment whether temporary or permanent.

13. That apart, the Hon'ble Full Bench of this Court in the case of ***Government of Tamil Nadu vs. R. Kaliyamurthy reported in 2019 6 CTC 705*** dealing with the cases pertaining to old pension has given categorical finding with respect to the applicability of Rule 2 of Tamil Nadu Pension Rules wherein the Hon'ble Full Court has held that those Government servants / employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per Tamil Nadu Pension Rules, 1978. The Hon'ble Full Bench of this Court in the aforesaid case has also categorically held that in case, a Government employee / servant has also rendered service in non-provisionalized service or on consolidated pay or on honorarium or daily wage basis and if such services were regularized before 01.04.2003 half of such service rendered shall be counted for the purpose of conferment of pensionary benefits. In addition of that the term “qualifying service has been dealt with in Chapter III of the Tamilnadu Pension Rules, 1978, Rule 11(1) is extracted hereunder for better understanding:



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“11. Commencement of qualifying service- (1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a government servant retiring on or after the 1st of October, 1969, [.....] temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.”

14. In the instant case, even according to the respondents the petitioner had served in a consolidated pay on contract basis from 12.11.1981 to 07.07.1988 as PG Assistant and after a break in service she further continued from 26.03.2002 to 31.03.2003 on which date she resigned from the said post after obtaining appropriate permission from the competent authorities to join in the post of block resource teacher. A careful reading of the proviso to Rule 1(2) r/w 11(1) would make it clear that, the aforesaid Tamil Nadu Pension Rules shall not apply to the Government servants appointed on or after 1st April 2003 to the services and posts in connection with the affairs of the state which are borne on pensionable establishments and qualifying service of a Government servant commences from the date on which one takes charge of the post of



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appointment. Nowhere it has been stated that those Government servants whose pay has been fixed on or after 01.04.2003 are not eligible for the benefits of the afore said Rules. Obviously, in the instant case, the writ petitioner has joined the post of Block Resource Teacher Educator on 31.03.2003, vide proceedings of the 4th respondent w.e.f. 31.03.2003 and the aspect whether she joined in the said post in the forenoon or afternoon is immaterial.

15. In view of the same, the impugned orders are quashed and consequently the respondents are directed to include the petitioner under old pension scheme and disburse the retirement benefits of the petitioner with effect from 30.04.2016 including gratuity and other monetary benefits along with arrears within a period of twelve (12) weeks from the date of receipt of a copy of this order. As far as her past services for the period from 26.03.2002 to 31.03.2003 half of her services can be taken into account applying the mandates of the law laid down by the Hon'ble Full Court of this Court in Kaliyamurthy case in W.A.(MD)No. 158 of 2016 batch dated 03.12.2019.



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16. Accordingly this writ petition is allowed. There shall be no order as to costs.

04.06.2024

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

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-9.
- 2.The Commissioner of School
Education,
DPI Campus,
Chennai-6.
- 3.The Chief Educational Officer,
Theni,
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- 4.The Headmaster,
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L.VICTORIA GOWRI, J.

Sml

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