



W.P.(MD)No.22272 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.22272 of 2021
and
W.M.P.(MD)No.18823 of 2021

S.Kavitha

... Petitioner

Vs.

- 1.The Accountant General,
Office of the Accountant General,
Chennai, Tamil Nadu,
261, Annasalai, Chennai- 600018.
- 2.The State of Tamil Nadu,
Rep. By its Secreatry,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 3.The Commissioner,
Government DATA Centre,
Guindy, Chennai – 600 025.
- 4.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 5.The Chief Educational Officer,
Madurai District at Madurai.
- 6.The District Educational Officer,
Madurai, Madurai District.
- 7.The Block Educational Officer,
T.Vadipatti, Madurai District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on G.O.Ms.No.413, (Finance (PGC) Department), dated 04.11.2010.

For Petitioner : Mr.S.Xavier Rajini
For 1st Respondent : Mr.P.Gunasekaran
Standing Counsel
For Respondents 2 to 7 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This Writ Petition has been filed to direct the respondents to place the petitioner under the Old Pension Scheme based on G.O.Ms.No.413, (Finance (PGC) Department), dated 04.11.2010.

2.The facts, which lead to the filing of the Writ Petition in brief is as follows:-

(i)The petitioner was initially appointed as a Secondary Grade Teacher on 15.04.1998 in Chandra Middle School, Mela Anupanadi, Madurai. She possessed a qualification of B.Sc. (Geography) and B.Ed degrees. Her appointment was approved with effect from 15.04.1998, vide proceedings of the District Elementary Educational Officer, Madurai, vide proceedings in Mu.Mu.No.4147/B5/98 dated 28.05.1998. During 2002, the petitioner was placed under suspension along with another Teacher from 14.06.2002 to 31.08.2002 in Chandra Middle



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School, Mela Anupanadi, Madurai. Pursuant to an administrative chaos in the Management committee of the said School, since the secretaryship of the School committee was not duly approved by the District Elementary Education Officer, Madurai, the petitioner and another Teacher, who were suspended, were directed by the District Elementary Educational Officer, Madurai, to discharge their duties in the said School, thereby monetary benefits were directly disbursed by the District Elementary Educational Officer, Madurai, during the suspension period. Due to the internal conflicts of the administrative Committee of the Chandra Middle School, the said School become disfunctional from 01.09.2002. Following which, the Competent Authority gave consent for closure of the School.

(ii)While so, the District Elementary Educational Officer, Madurai, deployed the petitioner from Chandra Middle School, Mela Anupanadi, to Sri Vivekanada Middle School, Melanachikulam, vide proceedings dated 02.06.2003 and the petitioner joined service in the aforesaid School on the same day and the said appointment came to be approved vide proceedings of the District Elementary Educational Officer dated 06.11.2003. In the meanwhile, the State Government issued G.O.Ms.No. 559, Education, Science and Technology Department, dated 11.07.1995, indicating that B.Ed Graduate should not be appointed in Secondary Grade posts. Following which, the Hon'ble Division Bench of this Court upheld the G.O. in judgment reported in **2002 WLR 173**, and further



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directed the Education Department to approve the appointment of Graduate Teachers, who were appointed as Secondary Grade Teachers, made prior to 19.05.1998, after giving one month training in Child Psychology. In compliance of said judgment of Hon'ble Division Bench of this Court, the State Government issued G.O.Ms.No.155, School Education (D2) Department dated 03.10.2002, directing the Teachers, who were appointed between 11.07.1995 to 19.05.1998, to undergo one month training on Child Psychology and further directed the educational authorities to approve the appointments only after completion of Child Psychology training by Graduate Teachers who were appointed in Secondary Grade posts. The said G.O. was challenged before the Principal Seat of this Court and the Hon'ble Division Bench of this Court upheld the aforesaid G.O. in the judgment reported in **2004 (2) LW 591**. In the meanwhile, the petitioner was directed to undergo one month Child Psychology training by the District Elementary Educational Officer, Madurai, vide proceeding dated 22.04.2003 and she duly attended the same from 02.05.2003 to 31.05.2003.

(iii)While so, the second respondent Government issued G.O.Ms.No. 413, Finance (PGC) Department, dated 04.11.2010, indicating that the Graduate Teachers who were appointed as Secondary Grade Teachers in the sanctioned vacancy during the period from 11.07.1995 to 19.05.1998, should be placed under Old Pension Scheme. But the respondents are



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deducting contribution towards Contributory Pension Scheme with respect to the petitioner, for the reason that she joined Secondary Grade Teacher in Sri Vivekanda Middle School, Melanachikulam, Madurai District, on 02.06.2003, that is, after the introduction of Contributory Pension Scheme. The Government introduced the Contributory Pension Scheme with respect from 01.04.2003, indicating that all those who were recruited on 01.04.2003, would fall under the Contributory Pension Scheme. Since the petitioner was appointed as early as on 15.04.1998, as a Secondary Grade Teacher in Chandra Middle School, Mela Anupanadi, Madurai District and thereafter, deployed in Sri Vivekanada Middle School, Melanachikulam, Madurai District, on 02.06.2003, obviously she should have been placed under the Old Pension Scheme. Hence, the petitioner made several representations to the respondents and last of which, were on 07.07.2019, 20.02.2020 and 10.02.2021 in this regard and the same are of no avail. Hence, this Writ Petition came to be filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner was appointed on 15.04.1998 in Chandra Middle School, Mela Anupanadi, Madurai District and her appointment was duly approved on 28.05.1998 with effect from 15.04.1998. Since the School of initial appointment was closed due to initial administrative issues, the District Elementary Educational Officer, Madurai District, deployed the petitioner to Sri Vivekanada Middle School, Melanachikulam, Madurai



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District, vide proceedings dated 02.06.2003 and the petitioner joined the said School on the same day. Following which, her appointment was also duly approved on 03.11.2003. However, negating her service from 15.04.1998, only taking into account the date of joining Sri Vivekananda Middle School, Melanachikulam, Madurai District, from 02.06.2003, the respondent commenced deduction of contribution towards Contributory Pension Scheme with respect to the petitioner without bringing her within the ambit of Old Pension Scheme. Drawing my attention to G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010, by which Old Pension Scheme was extended to the Secondary Grade Teacher who were appointed during 1996, 1997 and 1998 in the aided School, the learned counsel submitted that the petitioner's case is squarely covered by the mandates of the said G.O. Hence, the petitioner should have been brought under the Old Pension Scheme rather including her service in the Contributory Pension Scheme, as far as pensionary benefits are concerned. In view of the same, pressed for allowing the Writ Petition.

4.The sixth respondent has filed a counter affidavit and the learned Additional Government Pleader appearing for the respondents submitted that G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010, is applicable only to those who were appointed in regular vacancies from 11.05.1995 to 19.05.1998 and whose services were regularized as per G.O.Ms.No.155, School Education (D2) Department, 03.10.2002, for the



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purpose of extending the benefit of Old Pension Scheme and General Provident Fund as applicable to the Teachers before 01.04.2004. Submitting that it is not disputed that the petitioner was appointed on 15.04.1995, he pointed out that the petitioner herself in para no.3 of her affidavit, has stated that her appointment as a Secondary Grade Teacher was approved by the District Elementary Educational Officer, Madurai, with effect from 01.06.1998, vide proceedings dated 28.05.1998. Since it is not clear as to why appointment was approved with effect from 01.06.1998, it is necessary to get the said aspect clarified. The petitioner has never taken any steps to get rectified this vital mistake at any point of time. That apart, due to the administrative lapses in the erstwhile School where she served at the first instance, even her service book was lost and a duplicate service book was opened. Hence, it is the duty of the petitioner to get the revised orders getting approval of appointment from the date of initial appointment and he insisted that until such time, she cannot claim the benefits of G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010, which restricts such benefits till the appointment with effect from 19.05.1998, came to be rectified. It is open to the petitioner to take steps to rectify the mistake and then apply for inclusion in Old Pension Scheme and as of now, her claim for inclusion in Old Pension Scheme is not sustainable. Relying upon the order passed by the Hon'ble Division Bench of this Court in Writ Appeal in W.A.(MD)No.450 of 2022 dated 22.12.2022, the learned Additional Government Pleader



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categorically contended that a perusal of G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, clearly indicate that the appointment of Graduate Teacher between 11.07.1995 to 19.05.1998 in the sanctioned Secondary Grade Teacher posts would be approved only from the date, on which the Teachers had completed Child Psychology training. However in the instant case, the petitioner has completed Child Psychology training only on 31.05.2003 and even on that grounds, she is not eligible to be included under Old Pension Scheme and pressed for dismissal of the Writ Petition.

5.Heard the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent, the learned Additional Government Pleader for the respondents 2 to 7 and carefully perused the materials available on record.

6.With respect to the submission made by the learned Additional Government Pleader, it is pertinent to note that, the petitioner herself admitted in para no.3 of her affidavit that her appointment was approved from 01.06.1998 vide proceedings of the District Elementary Educational Officer, Madurai, dated 28.05.1998, instead of initial date of appointment on 15.04.1998. Hence, it has become necessary to ascertain as to the actual date of her approval of appointment in Chandra Middle School, Mela Anupanadi, Madurai District. Even the defence taken by the 6th



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respondent in the counter affidavit has stemmed up only on the same aspect that her initial date of appointment has to be rectified in her service records. However, the petitioner has placed her service register bearing service register No.68/1998 before me. On perusing the same, it has become clear that the petitioner's appointment was approved with effect from 15.04.1998 i.e., the date of original appointment and the said factum has been entered into her service register vide proceeding in Na.Ka.No.862/A2/1998, dated 26.05.1998, as endorsed by the Additional Assistant Elementary Educational Officer, Madurai, on 17.05.2010. The said entry in the service book has thrown light to the fact that the petitioner has taken diligent steps to enter the date of her approval of appointment with effect from 15.04.1998, in her service book and the same has been properly effected on 17.05.2010.

7.As far as the judgment of the Hon'ble Division Bench relied upon by the learned Additional Government Pleader is concerned, the same is with respect to the approval of appointment of Graduate Teachers appointed in the sanctioned Secondary Grade posts on completion of Child Psychology training between 11.07.1995 to 19.05.1995. As far as the petitioner in the instant case is concerned, her service has been duly approved and her appointment at the first instant in Chandra Middle School, Mela Anupanadi, Madurai District, on 15.04.1998 was duly approved from 15.04.1998, vide proceeding of the District Elementary



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Educational Officer, dated 28.05.1998 and the same is not applicable to the facts and circumstances of the case. Accordingly, I have no hesitation to hold that the petitioner's case is squarely covered by mandates of G.O.Ms.No.413, Finance (PGC) Department, dated 04.11.2010 and hence, the respondents are directed to place the petitioner under Old Pension Scheme based on the aforesaid G.O. and pass necessary orders to include the petitioner in the Old Pension Scheme.

8.Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.07.2024

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



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L.VICTORIA GOWRI, J.

Mrn

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