



W.P. No.1151/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.12.2025	18.12.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 1151 OF 2024

S.Sundari

.. Petitioner

- Vs -

1. The State of Tamil Nadu
Rep. By its Principal Secretary
To Government
School Education Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
3. The Principal Accountant General (A&E)
Tamil Nadu, O/o The Principal
Accountant General, 361, Anna Salai
Teynampet, Chennai 600 018.
4. The District Educational Officer (Elementary)
Mayiladuthurai District
Mayiladuthurai.
5. The Block Educational Officer – II
Kollidam Block, Mayiladuthurai District.

.. Respondents



W.P. No.1151/2024

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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 relating to the impugned order issued by the 4th respondent in Na.Ka. No.3005/A6/2023 dated 22.11.2023 and to quash the same and consequently directing the respondents to extend the Old Pension Scheme under General Provident Fund as applicable to the teachers appointed before 01.04.2003 to the petitioner by counting the period of service from the date of initial appointment as Secondary Grade Teacher on 13.11.1997 with all consequential and other attendant benefits within the time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr. G.Sankaran, SC, for
M/s. S.Nedunchezhiyan

For Respondents : Ms. S.Mythreye Chandru,
Spl. GP for RR-1, 2, 4 & 5
Mr.Manorajan for R-3

ORDER

Challenging the impugned order in and by which the claim for old pension scheme was rejected by the 4th respondent, the present writ petition has been filed by the petitioner.

2. It is the case of the petitioner that she was appointed as Secondary Grade Assistant with graduate qualification in Government Aided School,



W.P. No.1151/2024

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Thandavankulam & Post, Kollidam Block, Sirkali Taluk on 13.11.1997. The petitioner was appointed with graduate qualification in the absence of D.T.Ed. qualified hands. It is the further case of the petitioner that while working so, she was selected and appointed as B.T. Assistant in Panchayat Union Middle School, Vettangudi, Kollidam Block, Mayiladuthurai District and joined the service on 21.09.2010 without any break in service. Therefore, the petitioner sought that her services in the erstwhile school be taken into consideration for pensionary benefits.

3. It is the further averment of the petitioner that the State Government issued G.O. Ms. No.559 dated 11.7.1995 ordering that Graduate Teachers will not be appointed as Secondary Grade Teacher in Aided Schools, , but subsequently, vide G.O. Ms. No.394 dated 12.09.1997, the Government approved the appointment of B.T. Assistant/Tamil Pandit as Secondary Grade Teacher in Aided Schools till 10.07.1995 if the appointment was made as per rules.

4. It is the further averment of the petitioner that the Government issued G.O. Ms. No.155 dated 3.10.2002 directing that B.T. Assistants/Tamil Pandit having B.Ed. qualification and appointed in regular post of Secondary Grade Teacher in Private Aided Schools from 11.07.1995 to 19.05.1998 shall undergo

3



W.P. No.1151/2024

WEB COPY

one month Child Psychology Training through District Institute of Education and Training and as on date of completion of training the appointment shall be approved and salary shall be paid with effect from the date of approval of appointment.

5. It is the further averment of the petitioner various persons working as Secondary Grade Teachers having B.Ed. qualification and appointed during the period from 11.07.1995 to 19.05.1998, who were regularised in service after 1.4.2003, requested for counting the period of service rendered by them from the date of appointment for pensionary benefits, which were not considered, which culminated in the orders being passed in W.A. No.249/2000, etc., directing to count the past services rendered by Secondary Grade Teachers for pensionary benefits, which order has since been confirmed by the Apex Court in Civil Appeal No.5012 of 2006 dated 15.2.2006.

6. It is the further averment of the petitioner that vide G.O. Ms. No.430, Finance Department dated 6.8.2004, the Government introduced Contributory Pension Scheme for all the employees, who were recruited on or after 1.4.2003. In view of the said Government Order, the Secondary Grade Teachers, who were appointed prior to 1.4.2003, but completed Child Psychology Training after



W.P. No.1151/2024

WEB COPY

1.4.2003 and obtained approval of appointment as on the date of completion of training were deprived of GPF and regular pension under the Tamil Nadu Pension Rules.

7. It is the further averment of the petitioner that W.P. No.26933/2007, etc. batch of cases were filed in which this Court directed that the petitioners are to be extended the pension scheme applicable to the teachers appointed prior to 1.4.2003. In compliance of the said directions, the Government issued G.O. Ms. No.413, Finance Department dated 4.11.2010 directing that B.T. Assistant/Tamil Pandit having B.Ed. qualification and appointed as Secondary Grade Teacher in the sanctioned post in Primary Aided Schools during the period from 11.7.1995 to 19.5.1998 and got their services regularised as per G.O. Ms. No.155, School Education Department dated 3.10.2002 would be extended the old pension scheme.

8. It is the further averment of the petitioner that since the petitioner was appointed as Secondary Grade Teacher on 13.11.1997 in Government Aided School and her appointment was made within the cut off date as prescribed in G.O. Ms. No.413, she is entitled for the benefits of the old pension scheme, but after her appointment as B.T. Assistant, no contribution was deducted from her

5



W.P. No.1151/2024

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salary and, therefore, the petitioner submitted a representation to the respondents to provide her the benefits of the old pension scheme, but the 4th respondent insisted that she cannot draw salary without accepting the CPS since her appointment was approved only with effect from 2.6.2003 as prescribed under G.O. Ms. No.430 and since salary was not received by the petitioner, the petitioner was forced to accept the CPS Scheme and accordingly contribution was deducted.

9. It is the further averment of the petitioner that since persons similarly placed like the petitioner in other districts were provided with the benefits of the old pension scheme, the petitioner filed W.P. No.25308 of 2023 to give her the benefit of the old pension scheme by considering her representation in which this Court directed the 4th respondent to consider the representation and pass orders, which has resulted in the present impugned order being passed by the 4th respondent holding that there are no entry in the service register of the petitioner relating to her initial date of appointment as 13.11.1997 and further the appointment in the post of Secondary Grade Teacher has been regularised only with effect from 2.6.2003 as per G.O. Ms. No.430 and, therefore, she is entitled only to CPS. Aggrieved by the said impugned order, the present writ petition has been filed.



W.P. No.1151/2024

WEB COPY

10. Learned senior counsel appearing for the petitioner submits that the initial appointment of the petitioner was on 13.11.1997 when she was appointed in the aided school as Secondary Grade Teacher with graduate qualification and, therefore, for all purposes, the date of initial appointment of the petitioner has to be reckoned as 13.11.1997 and on such reckoning, the petitioner would be entitled to the benefits of the old pension scheme.

11. It is the further submission of the learned senior counsel that the reasoning in the impugned order that there is no entry in the service register of the petitioner as to her initial appointment as 13.11.1997 is contrary to the facts and records as page Nos.6 and 9 of the service register clearly evidence that there is entry with regard to the petitioner being appointed as Secondary Grade Teacher with B.Ed. qualification on 13.11.1997.

12. It is the further submission of the learned senior counsel that the petitioner was allowed to undergo Child Psychology Training consequent to G.O. ms. No.155 dated 3.10.2002 only on the premise that she was already appointed as Secondary Grade Teacher with effect from 13.11.1997 and, therefore, the services of the petitioner has to be reckoned from 13.11.1997 and the services of

7



W.P. No.1151/2024

the petitioner would be falling under the pensionable service. Further Child Psychology Training was given to the petitioner only on the basis that the appointment was prior to 1.4.2003.

13. Learned senior counsel for the petitioner placed reliance on the decision of the Madurai Bench of this Court in W.P. (MD) No.1375/2010 dated 3.3.2010 and submitted that the pensionary benefits for the teachers appointed as Secondary Grade Teacher with B.Ed. qualification prior to 1.4.2003 is no longer *res integra* as the petitioner was sent for Child Psychology Training. Other decisions touching the very same issue have also been placed before this Court by the learned senior counsel for the petitioner and he strenuously submitted that the writ petition deserves to be allowed by setting aside the impugned order.

14. In support of the aforesaid plea, learned senior counsel placed reliance on the following decisions :-

- i) *State of TN & Ors. – Vs – R.Arockiamary & Anr. (W.A. (MD) No.1035/207 – Dated 30.08.2024);*
- ii) *N.Baskar – Vs – Director of Elementary Education & Ors. (W.P. No.28154/2011 – Dated 16.7.2014);*



WEB COPY



W.P. No.1151/2024

- iii) *P.Alagarsamy – Vs – The Prl. Secretary to Government & Ors. (W.P. No.21259/2024 – Dated 31.7.2024);*
- iv) *R.Lilly Therasa & Ors. – Vs – The Government of TN & Ors. (W.P. Nos.12804/2023, etc. Batch – Date 14.03.2024);*
- v) *The Secretary to Government & Anr. – Vs – G.Rufus David (W.A. No.3868/2019 – Date 16.10.2020);*
- vi) *The Director of Elementary Education Officer & Ors. – Vs – D.Selvarosebai (W.A. No.3055/2019 – Date 10.07.2023);*
- vii) *E.P.Jayaraman – Vs – The Commissioner of Panchayat Union & Ors. (W.A. No.2183/2018 – Date 14.03.2022);*
- viii) *DBTR National Hr. Sec. School – Vs – The Commissioner & Ors. (W.P. Nos.33725/2022, etc. Batch – Date: 08.09.2023); and*
- ix) *Asger Ibrahim Amin – Vs – LIC of India (2016 (13) SCC 797)*

15. Per contra, learned Special Government Pleader appearing for the 4th respondent submitted that G.O. Ms. No.559, School Education Department dated 11.7.1995, prohibited appointment of graduates in the post of Secondary Grade Teacher and only based on the orders of this Court, the Government took a policy decision for approving the appointment of graduates in the Secondary Grade vacancies, who were appointed between 11.7.1995 and 19.5.1998, with a condition that their services will be regularised from the date of completion of Child Psychology Training for one month and with a further condition that such



W.P. No.1151/2024

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teachers would not be entitled for any preference in promotion as B.T. Assistant or for incentive increments for acquiring higher qualification.

16. It is the further submission of the learned Special Government Pleader that the petitioner, upon being selected for the post of Secondary Grade Teacher and, therefore, the petitioner, upon resigning her post in the erstwhile school, had been appointed and joined the Panchayat Union Middle School, Vettangudi, Kollidam Block, Mayiladuthurai District, vide orders of the District Educational Officer and has joined duty as B.T. Assistant (Maths) on 29.1.2010.

17. It is the further submission of the learned Special Government Pleader that the petitioner had also applied for enrolment to the New Contributory Pension Scheme and CPS number has also been allotted and whileso, the petitioner, vide her application on 1.6.2021, sought for extending the old pension scheme and consequently filed W.P. No.25308/2023 and pursuant to the orders of this Court dated 28.8.2023, the representation of the petitioner was rejected.

18. It is the submission of the learned Special Government Pleader that the post of the petitioner in the erstwhile school as Secondary Grade Teacher had not been approved and her appointment was not regularised. Further, the

10



W.P. No.1151/2024

petitioner, upon being selected and appointed as Secondary Grade Teacher, had resigned the earlier post and joined the new post in Panchayat Union Middle School on 29.01.2010 and, therefore, the petitioner has no lien over the earlier post and the earlier services of the petitioner cannot be counted for the purpose of any benefit, moreso, when the petitioner has resigned the said post and that her appointment was neither approved nor regularised. Therefore, the claim for old pension scheme as sought for by the petitioner is grossly erroneous and misconceived and rightly appreciating the aforesaid facts, the impugned order has come to be passed and, therefore, it is prayed that the said order does not requires interference at the hands of this Court.

19. In support of the aforesaid submissions, learned Special Government Pleader relied on the following decisions :-

- 1) *Sendhilnathan – Vs – State of TN & Ors. (W.A. Nos.2255 & 2258 of 2022 – Dated 01.07.2024);*
- 2) *The Secretary to Government, Govt. Of TN & Ors. – Vs – B.Bhuvaneswari & Ors. (W.A. Nos.1207/2021, etc. – Dated 10.06.2024); and*
- 3) *Rajula – Vs – State of TN & Ors. (W.P. No.23420/2014 – Dated 05.07.2023)*



W.P. No.1151/2024

WEB COPY

20. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the various decisions relied on by the parties.

21. Before proceeding to analyse the case of the petitioner, it would be apt to refer to the decision of the Larger Bench of this Court in the case of ***The Government of TN & Ors. – Vs – R.Kaliyamoorthy (MANU/TN/9051/2019)*** where the Full Bench has answered the reference in the following manner :-

“45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O. Ms. No. 259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.



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W.P. No.1151/2024

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

22. The situations where entitlement would arise and the employees who would be entitled for the old pension scheme have been succinctly spelt out in the reference, which has been quoted above. Therefore, this Court has to look at the facts of the case of the petitioner to determine whether the petitioner will fall under any of the conditions, which provide for provision of old pension scheme.

23. The cut-off date for getting the benefit of the old pension scheme is 01.04.2003 and any person appointed on or after 1.4.2003 would not be entitled for old pension scheme. Likewise any appointees under rule 10 (a)(1) of the



W.P. No.1151/2024

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Tamil Nadu State and Subordinate Service Rules appointed before 1.4.2003 but absorbed into regular service after 1.4.2003 will not be entitled to count half their past service for the purpose of determination of qualifying service for pension and persons, who have been appointed in categories (i) to (iv) of the said decision, but absorbed in regular service after 1.4.2003 would not be entitled to count half of their past service for the purpose of determination of qualifying service.

24. Government servants, who were appointed prior to 1.4.2003, whether on temporary or permanent basis in terms of Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules and in case of government employees, who had rendered service in non-provincialised service or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 1.4.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

25. From the above, only fulfilment of conditions (ii) and (iii) of the reference would entitle a Government servant to pension and all other Government servants would not be entitled for availing the old pension scheme.



W.P. No.1151/2024

WEB COPY

26. In the present case, it is the case of the petitioner that she was appointed initially as Secondary Grade Teacher with Graduate qualification in the Government Aided School, Thandavankulam & Post, Kollidam Block, Sirkali Taluk on 13.11.1997. The said fact is not disputed by the respondents, however, it is not the case of the petitioner that her appointment was approved by the Government and her services were regularised prior to 1.4.2003, which is the cut-off date for availing the old pension scheme.

27. It is the further case of the petitioner herself that while she was working as Secondary Grade Teacher in the Government Aided School, Thandavankulam, she was selected and appointed as B.T. Assistant in Panchayat Union Middle School, Vettangudi, Kollidam Block, Mayiladuthurai District and she joined the said post on 21.09.2010. Though it is the claim of the petitioner that there was no break in service and that she joined the said post upon her selection and appointment, however, the said contention cannot be accepted for the simple reason that her prior appointment at Government Aided School, Thandavankulam was not an approved and regularised appointment. In such a case, the only course open to the petitioner would have been to resign from the



W.P. No.1151/2024

WEB COPY

said post to take up her new appointment at the Panchayat Union Middle School as B.T. Assistant.

28. Once the petitioner resigns from a post, which she is holding, not only her lien over the said post goes, she loses her continuity of service. In this regard, a perusal of the order in and by which the petitioner had joined the initial post at Government Aided School, Thandavankulam reveals that certain conditions were imposed on the petitioner to which the petitioner has subscribed her acceptance and a freehand translation of the relevant condition, which speaks about the entitlement of old pension scheme is quoted hereunder :-

"i) Date of appointment has to be reckoned as from 02.06.2003.

ii) The period of service prior to 02.06.2003 shall not be counted for the purpose of promotion, pay fixation and pensionary benefits."

29. The approval of the services of the petitioner in Government Aided School, Thandavankulam, was granted on 28.07.2003 with effect from 02.06.2003. Therefore, on the crucial cut-off date, viz., 1.4.2003, the petitioner does not fulfil either criteria (ii) or (iii) of the conditions stipulated by the Full Bench in *Kaliyamoorthy case* which alone would entitle a Government servant to



W.P. No.1151/2024

seek for benefits under the old pension scheme. The petitioner not falling under conditions (ii) and (iii) of *Kaliyamoorthy case* would not be entitled to seek for the benefits under the old pension scheme.

30. Further, as pointed out by the respondents, which has not been disputed by the petitioner, the petitioner had resigned from the post of Secondary Grade Teacher from Government Aided School, Thandavankulam, upon her selection and appointment to the post of B.T. Assistant in Panchayat Union Middle School, Vettangudi and joined the service on 21.09.2010. The resignation of the petitioner severs her ties with the earlier school and no longer she can claim continuity of service and her joining with the new school upon her selection and appointment is a fresh appointment and, therefore, the said appointment being after the cut-off date of 1.4.2003, the petitioner would not be entitled to claim the benefits of pension under the old pension scheme.

31. Though many decisions have been relied on by the learned senior counsel for the petitioner to support the claim that resignation would not sever the relationship and that the erstwhile service should be counted, however, the fact remains that in the said decisions, the appointments were approved by the respondents therein and, therefore, the continuity of service was given.



W.P. No.1151/2024

However, in the present case, the appointment of the petitioner has not been approved and regularised and, therefore, the said decisions would not have any application to the case of the petitioner.

32. Further, it is also to be pointed out that the benefit of G.O. Ms. No.413, Finance cannot be granted to the petitioner as it would be available to persons, who were appointed as Secondary Grade Teacher between 11.7.1995 and 19.5.1998 and who have got their services regularised as per G.O. Ms. No.155, School Education Department dated 3.10.2002. However, the appointment of the petitioner was neither approved nor her services were regularised as per G.O. Ms. No.155, School Education Department dated 3.10.2002 and, therefore, the said G.O. Ms. No.413 would not enure to the benefit of the petitioner.

33. Though the petitioner claims that the ground on which the impugned order has been passed is to the effect that there is no entry in the service register relating to the initial date of appointment as 13.11.1997, however, a perusal of the order reveals that not only there is mention about no entry in the service register, but also there is no material to substantiate that approval of the appointment and regularisation has been granted. In the absence of material

18



W.P. No.1151/2024

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evidencing approval of appointment and grant of regularisation, the stray finding recorded in the impugned order that there is no entry in the service register cannot be a ground to dislodge the impugned order when all other materials conclusively establish that the impugned order has been rightly passed.

34. For the reasons aforesaid, this Court is not inclined to interfere with the order impugned herein and, accordingly, this writ petition fails and the same is dismissed. There shall be no order as to costs.

18.12.2025

Index : Yes / No

GLN



W.P. No.1151/2024

WEB COPY

To

1. The Principal Secretary
School Education Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of Elementary Education
DPI Campus, College Road
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3. The Principal Accountant General (A&E)
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W.P. No.1151/2024

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.1151 OF 2024**

**Pronounced on
18.12.2025**