



W.P. No.1152/2024

**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. 1152 OF 2024**

G.Vijayakumari  
W/o V.Azhagesan (Late)

.. 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



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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 5<sup>th</sup> respondent in Na.Ka. No.1583/2023/A2 dated 20.12.2023 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 09.03.1998 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 5<sup>th</sup> respondent, the present writ petition has been filed by the petitioner.



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2. It is the case of the petitioner that her husband was appointed as Secondary Grade Assistant with graduate qualification in Government Aided School, Panangattangudi, Elathur Post, Sirkali Taluk on 09.03.1998. 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 the school in which the petitioner's husband was employed was taken over by the Government and renamed as Panchayat Union Middle School, Panagattangudi from the year 2006 and the teachers, who were working in the said school have been absorbed into Government service without any break in service. Accordingly, upon the taken over of the school and absorption of the petitioner's husband in the Government service, he joined the service on 02.11.2006 and, therefore, there was no break in service. It is the further averment of the petitioner that since the school was taken over by the Government along with the services of her husband, her husband is entitled to pensionary benefits.

3. It is the further averment of the petitioner that on reaching the age of superannuation, her husband retired from service on 31.05.2019 and, thereafter, her husband suddenly expired on 9.11.2019 leaving the petitioner and her children in lurch.



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4. It is the further averment of the petitioner that the State Government issued orders in 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.

5. 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 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.



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6. 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.

7. 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 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.

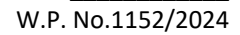


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8. It is the further averment of the petitioner that W.P. No.26933/2007, etc. batch of cases were filed in which this Court directed that the petitioners are to be extended the pension scheme applicable to the teachers appointed prior to 1.4.2003. 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.

9. It is the further averment of the petitioner that since the petitioner was appointed as Secondary Grade Teacher on 09.03.1998 in Government Aided School and his appointment was made within the cut off date as prescribed in G.O. Ms. No.413, he is entitled for the benefits of the old pension scheme, but after his appointment as B.T. Assistant, no contribution was deducted from his salary and, therefore, the petitioner submitted a representation to the respondents to provide her the benefits of the old pension scheme, but the 5<sup>th</sup> respondent insisted that she cannot draw salary without accepting the CPS since



10. 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 new 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 4<sup>th</sup> respondent to consider the representation and pass orders, which has resulted in the present impugned order being passed by the 4<sup>th</sup> 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 that her appointment in the post of Secondary Grade Teacher has been regularised 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.



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11. Learned senior counsel appearing for the petitioner submits that the initial appointment of the petitioner was on 09.03.1998 and, thereafter, the aided school in which the petitioner was working itself was taken over by the Government along with the services of all the staff and he was absorbed in Government service and joined the service on 2.11.2006 and the service of the petitioner was without break in the said school and, therefore, for all purposes, the date of initial appointment of the petitioner has to be reckoned as 09.03.1998 and on such reckoning, the petitioner would be entitled to the benefits of the old pension scheme.

12. It is the further submission of the learned senior counsel that the reasoning in the impugned order that the claim of the petitioner is belated, that too after the superannuation and the death of the Government servant and, therefore, the same is not possible, is grossly incorrect as the error committed by the authorities in not including the Government servant in the pension scheme when there is no severance of service and there was continuity of service and, therefore, the date of entry into service of the petitioner's husband has to be reckoned as 09.03.1998 and, therefore, the petitioner's husband would be entitled to pension under the old pension scheme.



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13. 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 he was already appointed as Secondary Grade Teacher with effect from 09.03.1998 and, therefore, the services of the petitioner has to be reckoned from 09.03.1998 and the services of 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.

14. 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.



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15. 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);*
- 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)*

16. Per contra, learned Special Government Pleader appearing for the respondents submitted that G.O. Ms. No.559, School Education Department dated 11.7.1995, prohibited appointment of graduates in the post of Secondary



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

17. It is the further submission of the learned Special Government Pleader that the petitioner's husband, had joined the service on absorption after take over of the school only on 02.11.2006 and his services were regularised only in the year 2006 and, therefore, the petitioner's husband would not be entitled to pension under the old pension scheme as his appointment is after the cut-off date of 1.4.2003.

18. It is the further submission of the learned Special Government Pleader that the petitioner's husband had also applied for enrolment to the New Contributory Pension Scheme and CPS number has also been allotted and had also superannuated in May, 2019 and had passed away on 9.11.2019 and having



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received all the benefits, the petitioner cannot, by the belated application, seek for pensionary benefits under the old pension scheme. Further, the petitioner's husband as well as the petitioner had made numerous representations stating that the petitioner's husband is eligible for pension under the old pension scheme, had filed W.P. No.25304/2023 seeking extension of the old pension scheme and pursuant to the orders of this Court the representation of the petitioner was rejected.

19. It is the submission of the learned Special Government Pleader that the post of the petitioner's husband in the erstwhile school as Secondary Grade Teacher had not been approved and his appointment was regularised only in the year 2006 and, therefore, the earlier services of the petitioner's husband cannot be counted for the purpose of any benefit, moreso, when the petitioner's husband had since retired and received all the monetary retirement benefits. 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.



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20. 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)*

21. 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.

22. 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*



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*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.*

*(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."*



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23. 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.

24. 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 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.



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25. 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.

26. 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.

27. In the present case, it is the case of the petitioner that her husband was appointed initially as Secondary Grade Teacher with Graduate qualification in the Government Aided School, Panangattangudi, Elathur Post, Sirkali Taluk on 09.03.1998. The said fact is not disputed by the respondents. It is the further case of the petitioner that the said school was taken over by the Government and renamed as Panchayat Union Middle School, Panagattangudi from the year 2006



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and the teachers, who were working there, including the husband of the petitioner were absorbed in Government service without any break in service.

28. It is not the case of the respondents that the teachers, who were working in the Aided school were absorbed when the school was taken over and renamed as Panchayat Union Middle School. Therefore, it could safely be concluded that the services of the petitioner's husband was continued without any break. It is not the case of the respondents that there was break in service for the teachers of the Aided School when the school was absorbed as Panchayat Union Middle School or that the teachers were not continued. Therefore, it could safely be concluded that the said teachers were absorbed in Government service.

29. The only ground on which the claim for pension under the old pension scheme is rejected by the 5<sup>th</sup> respondent rests on two factors, viz., firstly, regularisation has been granted only on 2.6.2003 and that the petitioner's husband has given an undertaking that he will not claim the benefits of promotion and pension under the old pension scheme.



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30. Once a person resigns from a post or sent out of a post and then reinducted, then definitely there could be no continuity of service. However, in the present case, the petitioner's husband has not resigned from his post to join the new post on 2.11.2006; rather, the whole school was taken over by the Government and converted into Panchayat Union Middle School and all the teachers, who were working in the said school also stood absorbed and there was no break in the continuance of the school or the services of the teachers in the school. Therefore, there is no question of resignation of the petitioner and fresh joining, as his services in the erstwhile school and, thereafter, under the Government continued without any break. Further, the absorption of the petitioner into the folds of the Government gives the petitioner's husband the continuance of his erstwhile service as his absorption by the Government could only be held to be recognition of the service of the petitioner's husband in the aided establishment. Therefore, for all purposes, the petitioner's husband would be holding a lien over the said post and would get continuance in the said post.

31. Once the services of the petitioner's husband is held to be a continuous service without any break, definitely the past services have to be counted for the purposes of pension as the absorption of the teachers, including



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the petitioner's husband, upon take over of the school would only lead to the conclusion that the services of the teachers in the aided school, upon take over, is deemed to have been approved and, therefore, regularisation, granted at a later date, would not wipe out the past services of the petitioner's husband.

32. In this backdrop, the undertaking given by the petitioner's husband for the purpose of absorption would not take away his right to the benefits, which has stood accrued on him by virtue of the take over of the school by the Government and also the absorption of the teachers. When there is no break in service of the petitioner's husband, it could only be held to be deemed continuance with approval of the Government and the conditions, which have been given in the undertaking, which has been signed by the petitioner's husband, would not stand in the way of the petitioner's husband and then the petitioner from seeking the benefits which are available to Government servants, who were appointed prior to 1.4.2003.

33. The services of the petitioner has been regularised on 28.07.2003 with effect from 02.06.2003, on which date the petitioner's husband is alleged to have joined the Panchayat Union Middle School, however, notwithstanding the same,



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as stated above, the petitioner's husband was in the services of the Aided School from 9.3.1998 and his services have not been severed, but was continued upon taking over of the school and on the crucial cut-off date, viz., 1.4.2003, the petitioner fulfils the criteria under clause (ii) and (iii) of the conditions stipulated by the Full Bench in *Kaliyamoorthy case* and, therefore, the petitioner's husband would be entitled to the benefit of the old pension scheme, which is entitled to Government servant's who are in the services of the Government prior to 1.4.2003.

34. The decisions which have been relied on by the learned senior counsel for the petitioner to support the claim for the benefit of old pension scheme would be squarely applicable to the case on hand, as there was no resignation of the petitioner's husband and upon take over of the school, the relationship between the petitioner's husband and the government continued and for all purposes, the date of joining of the petitioner's husband in the services of the school would have to be reckoned back to 9.3.1998 and not 2.11.2006, when the petitioner's husband is alleged by the respondents to have joined the Panchayat Union Middle School.



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35. The petitioner, upon takeover of the school and absorption of the staff of the school by the Government, would be entitled to the benefit of G.O. Ms. No.413, Finance 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. The petitioner's husband's services having absorbed by the Government and continued, would only be taken to mean that the Government have accepted their services and granted deemed approval and, therefore, the formal approval at a later date would not deny the petitioner's husband of his rightful claim to the pensionary benefits under the old pension scheme and, therefore, the said G.O. Ms. No.413 would definitely enure to the benefit of the petitioner's husband.

36. For the reasons aforesaid, this writ petition is allowed with the following directions :-

*i) The retiral benefits computed under the CPS Scheme and paid to the petitioner's husband and which is to be refunded by the petitioner in lieu of payment of pension shall be calculated and informed to the petitioner within a period of four weeks from the date of receipt of a copy of this order and on such calculation being provided, the*



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*petitioner is directed to remit the said amount to the Treasury within a period of four weeks thereafter.*

*ii) The respondents are directed to calculate the pension payable to the petitioner's husband from the date of his superannuation till the date of his death and also the family pension to which the petitioner is entitled to upon the death of the petitioner's husband, viz., the pensioner and pay the same to the petitioner within a period of eight weeks from the date of deposit of the amount received by the petitioner's husband under the CPS Scheme with the Treasury.*

*iii) In view of the peculiar facts and circumstances of the case, there shall be no interest either payable or receivable by the respondents with regard to the amount that is to be paid/received.*

*iv) There shall be no order as to costs.*

**18.12.2025**

Index : Yes / No

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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  
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.



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**M.DHANDAPANI, J.**

**GLN**

**PRE-DELIVERY ORDER IN  
W.P. NO.1152 OF 2024**

**Pronounced on  
18.12.2025**