



W.P.No.30148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.04.2025

Coram:

THE HONOURABLE Mrs.V.BHAVANI SUBBAROYAN

W.P.No. 30148 of 2023

1. S.Kanakavalli
Superintendent
O/o The Assistant Director,
District Surveying Office,
Namakka District
2. L.Vijaya
Office Assistant
Block Development Office
Vennanthur
Namakkal District
3. S.Loganathan
Junior Revenue Inspector,
Distillery Office,
Salem Co-operative Sugarmill Mohanur
Namakkal District
4. M.Murugesan
Junior Revenue Inspector,
Rasipuram Taluk Office,
Namakkal District
5. R.Madheswaran
Junior Assistant
District Industrial Centre,
Namakkal District



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6. Masilamani

Junior Revenue Inspector,
Senthamangalam Taluk Office,
Namakkal District

7. P.P.Saroja

Assistant,
Block Development Office,
Namagiripettai, Namakkal District

8. P.Neduncheralathan

Junior Revenue Inspector,
Senthamangalam Taluk Office,
Namakkal District

9. P.Udhayakumar

Office Assistant
Block Development Office
Kollimalai,
Namakkal District

10. S.Periyanan

Senior Revenue Inspector,
Senthamangalam Taluk Office,
Namakkal District

11. S.Vijaya

Assistant,
O/o Joint Director (Agriculture)
Namakkal District

12. P.Umarani

Assistant
o/o Joint Director of Horticulture,
Collectorate Backside
Krishnagiri – 635 115

13. R.Vengatesh

Lab Assistant



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Government Higher Secondary school,
Ulagapalayam, Tiruchengodu
Namakkal District

...Petitioners

Vs.

1. The Secretary to Government,
Personnel and Administrative Department,
Secretariat Fort St. George,
Chennai – 600 009
2. The Secretary to Government,
Finance Department,
Secretariat, Chennai – 600 009
3. The Principal Accountant General
o/o The Principal Accountant General (A&E)
Chennai, Tamilnadu
4. The Director,
O/o The Director and settlement,
Survey House, Chepauk,
Chennai – 600 005
5. The Principal Secretary,
The Director of rural Development,
Panchayatraj
Saidapet, Channi – 600 015
6. The Commissioner,
Chepauk, Prohibition and Excise Department,
Chennai – 600005
7. The Industries Commissioner,
Director of Industrial and Commerce,
2nd and 3rd Floor, SIDCO
Co-operate Building, Guindy,
Chennai- 600 032



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8. The Principal Secretary,
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 600 005

9. The Director,
Agriculture Complex, 3rd floor,
Chepauk, Chennai – 600 005

10. The Director
Horticulture Complex, 3rd Floor,
Chepauk, Chennai – 600 005

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents to include the petitioners' name in the old pension scheme under the Tamilnadu Pension Rules, 1978 and not the new Contributory pension scheme by deeming the date of the appointment of the petitioners as 23.11.2001 (the date of Government Order in G.O.Ms.No.209 (P&AR) Department 23.11.2001) for the purpose of extension of the pensionary benefits alone.

For Petitioner : Mr.G.Munuraj

For Respondents : Mr.R.U.Dinesh Rajkumar for R1,2, 4 to 10
M/s .J.Sreevidya for R3
Standing Counsel

ORDER

The present Writ Petition is filed for an issuance of Writ of Mandamus directing the respondents to include the petitioners' name in the old pension scheme under the Tamilnadu Pension Rules, 1978 and not the new Contributory



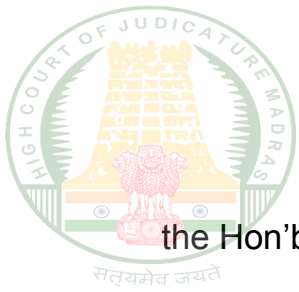
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pension scheme by deeming the date of the appointment of the petitioners as 23.11.2001 (the date of Government Order in G.O.Ms.No.209 (P&AR) Department 23.11.2001) for the purpose of extension of the pensionary benefits alone.

2. The brief facts of the case, as averred by the petitioners are as follows:-

(i) On 01.03.1991 the petitioners were appointed as census employees but were retrenched from service after the operation on 30.06.1992. In previous census years i.e., 1971 & 1981, the retrenched employees were absorbed into government posts based on their qualifications. Hence a similar recommendation was made and G.O. Ms. No. 341 dated 13.10.1992 was issued for absorption of retrenched employees in state government offices. Subsequently, another G.O. Ms. No. 444 dated 23.12.1993 was issued which imposed strict conditions, placing them in a priority list under group III through employment exchange sponsorship.

(ii) Aggrieved against the same, the employees approached the Tamil Nadu Administrative Tribunal, which ruled in favor of the petitioners vide order dated 08.04.1996. Against the order of the tribunal, the Government preferred an Appeal in Civil Appeal No. 810 of 1998 before the Hon'ble Supreme Court and



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the Hon'ble Apex Court by an order dated 28.09.1999 directed the Government to consider them as a separate category without employment exchange sponsorship. Despite this, the Government introduced employment exchange sponsorship again in G.O. Ms. No. 30 dated 16.02.2000, leading to a Contempt Petition. The Hon'ble Supreme Court vide order dated 29.08.2001, directed the Government to comply with the earlier orders. In response, the Government vide G.O. Ms. No. 209 dated 23.11.2001 ordered the Departments to absorb retrenched employees via District Collectors, halting new recruitment until the petitioners were placed.

(iii) Again another contempt petition was filed in Contempt Petition No.527 of 2002. Meanwhile, the Government by way of G.O. No. 259 dated 06.08.2003 introduced a new pension scheme for employees recruited after April 1, 2003. Since the petitioners were appointed late due to government delays, they fell under this scheme instead of the Old Pension Scheme, which they would have been eligible for, if the court orders have been implemented in time. Therefore, the petitioners have come up with the present writ petition to include their names in Old Pension Scheme.

3. The learned counsel for the respondents 9 and 10 in their counter, claim that the 11th and 12th petitioners were originally appointed as Office Assistants in



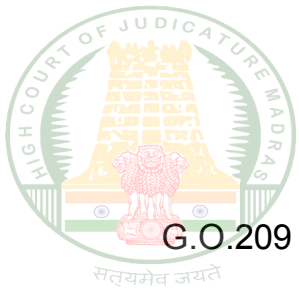
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the year 2006 vide letter of District Collector, Namakkal vide

Lr.No.51347/2003/A3, dated 04.09.2006 and Namakkal Executive Engineer (AE)

Proc.No.A1/1706/2006 dated 25.09.2006. The petitioners claim the benefits under the Government Orders which was issued with respect to the temporary Census employees during the year 1971 and 1981. Further, filing this writ petition after a lapse of 2 decades, i.e., more than 17 years for inclusion of their name in old pension scheme is liable to be dismissed in limine. Hence, prays to dismiss the present writ petition.

4. The learned counsel for the petitioners contends that the respondents during the pendency of the case before the Hon'ble Apex Court, issued G.O.Ms.No.144 dated 11.08.1999 and the Apex Court disposed the Civil Appeal No.810 of 1998 vide order dated 28.09.1999 directing to delete the two conditions in G.O.Ms.No.144 dated 11.08.1999. Then G.O.Ms.No.30 dated 16.02.2000 was issued in which they reintroduced the sponsorship through the Employment Exchange for the purpose of absorption and since such condition violates the order of the Hon'ble Supreme Court, the petitioners preferred Contempt petition. The Hon'ble Supreme Court by order dated 29.08.2001 directed the government to create a separate scheme for census employees and ensure their absorption without Employment Exchange sponsorship. Then the respondents issued



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G.O.209 dated 23.11.2001 in compliance with the Supreme Court order but delayed in implementation led to second contempt petition.

5. The learned counsel for the petitioners further contends that the delay in compliance by the respondents led to the petitioners' appointment only in the year 2004. If the orders have been implemented promptly, the petitioners would have been absorbed in the year 2001 and covered under the Old Pension Scheme. Hence, prays to allow the present writ petition.

6. The learned counsel for the petitioners to substantiate his claim produced a judgement of this Court in W.P.No.21155 of 2021 wherein this Court held as follows:

“13. The petitioner were entitled to absorbed into the services before the amendment to the Tamil Nadu Pension Rules, 1987 vide G.O.Ms.No.259, Personal and Administration department, dated 06.08.2003. The petitioners were not absorbed, despite the order of the Hon'ble Supreme Court on 28.09.1999. The order of the Hon'ble Supreme Court was later complied with reluctance and reservation in terms of the G.O.Ms.No.209, dated 23.11.2001. It has to be therefore construed that the petitioners were entitled to be covered under the erstwhile Tamil Nadu Pension Rules 1978 as it stood prior to its amendment, as the delay in the appointment of the petitioners into the service was not on account of their fault, but on account of the attitude of the respondent in not



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absorbing them into the Government service in terms of the Hon'ble Supreme Court and the order passed in the contempt petition of the Hon'ble Supreme Court. Therefore, these writ petition deserves to be allowed as prayed for.

14. Accordingly, these writ petitions are allowed. The respondents are directed to take appropriate steps to enter into the service register of these petitioners as the persons covered by Tamil Nadu Pension Rules, 1978 as it stood prior to amendment vide G.O.Ms.Mo.259, Personal and Administrative Department, dated 06.08.2003 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

7. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that G.O.(Ms).No.341, Personnel and Administrative Reforms Department, dated 13.10.1992 was passed and appointment was not made automatic, the petitioners have to take their chance of sponsorship by the employment exchange. The said G.O. has been modified vide G.O.(Ms).No.444 Personnel and Administrative Reforms (PC) Department, dated 23.12.1993 and against the said G.O. various cases were filed before the Hon'ble Apex court. The Supreme Court vide its order dated 28.09.1999 made in Civil Appeal No.810 of 1998 directed to modify the orders already issued G.O.Ms.No.144, Personnel and Administrative Reforms (P) Department, dated 11.08.1999 and accordingly, the following modifications were issued in G.O.Ms.No.30, Personnel and



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Administrative Reforms (P) Department, dated 16.02 2000:-

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“ I. The concessions referred to in items (ii) and (iii) in a para 7 of the Government orders are deleted.

II. All the Retrenched Employees of census organizations shall be placed in priority.

III. List under Group-IV for employment assistance through Employment Exchange for sponsoring against the vacancies arising in state Government, Local Bodies and Public Sector Undertakings;

IV. The retrenched employees of Census Organization shall be exempted from the age limit prescribed in the relevant service rules governing the posts in which they are to be appointed. This concession shall apply only to the retrenched employees of 1991 Census.”

Against the said order, Contempt Petition was filed before the Hon'ble Supreme Court in C.P.No.103 of 2000, the Hon'ble Apex Court vide its order dated 29.08.2001, ordered that the retrenched employees should be dealt with in separate category and a scheme has to be worked out to fit them with in a separate category and a scheme has to be worked out to fit them against appropriate posts. In compliance with the order of the Supreme Court, the respondents passed G.O.Ms.No.209 Personnel and Administrative Reforms (P) Department, dated 23.11.2001 to fit them in appropriate post in the state government. Subsequently, the government had issued G.O.Ms.No.259, Finance (pension) Department dated 06.08.2003 contributory Pension Scheme was introduced with effect from 01.04.2003. So, after the said G.O. many government Orders were passed and everything was challenged by the petitioners. To comply with the orders of



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the Court all the employees who are absorbed have also been given the proper time scale with effect from 01.06.2006. Hence, the petitioners themselves have contributed for the delay caused in the absorption by filing repeated cases against the G.O.s from time to time. For the said reasons the respondents prays to dismiss the present writ petition.

8. Besides the above, the learned Additional Government Pleader appearing for the respondents would contend that, the contention of the petitioners that the delay in absorbing the petitioners into Government service is baseless. In fact, consequent to the Orders of the Supreme Court of India, G.O.Ms.No.144, Personnel and Administrative Reforms (P) Department, dated 11.08.1999 was issued, for the absorption of Census employees. It was challenged by the Census employees before the Supreme Court of India by way of filing a Contempt Petition. Then, based on the Orders of the Supreme Court, G.O.Ms.No.30, Personnel and Administrative Reforms Department, dated 16.02.2000, G.O.Ms.No.209, Personnel and Administrative Reforms Department, dated 23.11.2001 and G.O.Ms.No.246, Personnel and Administrative Reforms Department, dated 29.08.2003 were issued. Hence, the Census employees themselves have actually contributed for the delay in their absorption by filing repeated Contempt petitions before the Supreme Court against the G.O.s issued by the Government from time to time. There is no substantial delay on the part of



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the Government since necessary G.O.s were issued in compliance of the Orders of the Supreme Court as early as possible. But, in the meantime, New Contributory Pension Scheme was issued and since the petitioners happened to be appointed after the cutoff date of 01.04.2003 they are not eligible for pension under the Tamil Nadu Pension Rules 1978, which is nothing but operation of rules. It is a matter of policy decision of the Government to absorb all the retrenched Census employees in a staggered manner after obtaining the details such as name, age, qualification, date of birth, residential address etc., from the Director of Census Operation, Chennai. It is not possible to absorb entire retrenched employees of Census operation at a time without gathering the details. Further, it is a policy decision of the Government how to accommodate them by getting all the details from the Government offices, Local Bodies, Corporations etc., there is no inordinate delay as stated by the Petitioners. There is a long process to get the details of retrenched employees of Census 1991 from Director of Census operations, Chennai and to send the Head of Departments, Public Sector undertakings, Autonomous bodies and local bodies under the Government of Tamil Nadu in Chennai as well as in other Districts. The District Collectors shall sponsor the retrenched Census Employees in the year 1991 list by adopting strict procedure with reference to the date of registration in Employment Exchange. The Doctrine of Legitimate expectation is not applicable



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in this case as there is a clear change of policy. The expectation founded on the older policy cannot be a valid ground to invoke the said principle. It is relevant to point out that the Hon'ble Apex Court in its order cited in (1993) 3 SCC 499 at 548 has held that legitimate expectation can at the most be one of the grounds which may give rise to Judicial review but the granting of relief is very much limited. Due to these facts, there was a reasonable time taken for completion of implementation of the Scheme and there was no undue and inordinate delay as alleged in the affidavit.

9. Further, the learned counsel on the side of the respondents would contend that the causal employees happened to be working in government departments from a date antecedent to 01.04.2003 on ad hoc basis, cannot be said to be appointed to the service prior to the said cutoff date as stipulated in the proviso to rule 2 of the Tamil Nadu Pension Rules. The census employees will never fall within the ambit of the said rules unless they have been regularized or absorbed in regular government service before 01.04.2003.

10. Further, it was contended by the learned counsel for the respondents that thousands of retrenched employees of Census Organization are employed in



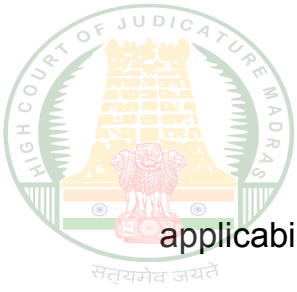
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various Government Departments. Therefore, allowing notional date of appointment from the date of issue of Government order for the purpose of pensionary benefits, will pave way to other retrenched employees of Census Organization employed in various Government Departments including those absorbed in non-pensionable establishments, to claim such benefits, which will cause serious complication apart from financial burden on the Government Exchequer.

11. Heard the learned counsel on either side and perused the documents placed on record.

12. Admittedly, the petitioners are the retrenched census employees, who were absorbed into the government service, based on the directives of the Hon'ble Supreme Court and state policies. However, the petitioners appointments are after 01.04.2003, when the New Contributory Pension Scheme (CPS) came into effect.

13. As per Tamil Nadu Pension Rules, 1978, those appointed on or after 01.04.2003 are ineligible for the old pension scheme. The delay in petitioners absorption was due to administrative procedures, not government inaction and various court rulings, including the Hon'ble Apex Court, have upheld the



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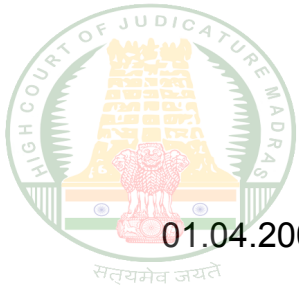
applicability of CPS to them. As per the legal precedents and policy framework, the petitioners claim for pension under the old scheme is untenable.

14. As per the proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978, the Government Servants appointed on or after the 1st April, 2003, to services and posts in connection with the affairs of the state, which are borne on the pensionable establishment, whether temporary or permanent, are not eligible for old pension Scheme. The retrenched census Employees i.e., the petitioners who were appointed on or after 01.04.2003 are covered under Contributory Pension Scheme only. The petitioners were initially appointed on contract basis and such appointments were purely temporary and it shall not confer any rights to claim any preferential treatment for regular appointment as made in the essential posts.

15. That apart, the launch of new Contributory Pension Scheme, the following proviso was incorporated in rule 2 of the said Rules vide G.O.Ms.No.259, Finance (Pension) Department, dated 06-08-2003, wherein it is extracted as follows:-

"Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishment, whether temporary or permanent."

The petitioners who were appointed temporarily under the Central Government census operations were brought into regular timescale of pay only after



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01.04.2003. At the outset, it may be pointed out that Rule 2 of the said Rules

inter-alia states as follows:-

"2. APPLICATION. Save as otherwise provided in these rules, these Rules shall apply-to-all Government Servants appointed to Services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to

a) Persons in casual and daily rated employment;

b) Persons paid from contingencies;

c) Persons employed on contract except when the contract provides otherwise."

16. According to the provisions of the said Rule 2, the Tamil Nadu Pension Rules are not at all applicable to casual, daily wages, contingent employees. The said Rules will be applicable to them only after their regularization or absorption in regular Government service. As such the casual, daily wage employees,



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contingent employees are not at all eligible to claim any pension under the said Rules.

17. It cannot be brushed aside that the petitioners have entered the department for taking census and after completing the census, the petitioners were retrenched. Thereafter, the petitioners / authorities went up to the Hon'ble Supreme Court and as per the directions of the Hon'ble Supreme Court, a scheme was framed in the year 2006 and the petitioners were absorbed, as per the orders of the Hon'ble Supreme Court, Clause 8 of G.O.Ms.No.209 dated 23.11.2001 Personnel & Administrative Reforms Department, wherein it states that *"The candidates absorbed are to be appointed as fresh employees in these departments / organisation."* Hence the petitioners' case for inclusion of their names in the old pension scheme under the Tamilnadu Pension Rules, 1978 cannot be granted and the same is liable to be rejected. Also, the petitioners, only in the year 2023 has sent a representation belatedly for the appointments that took place in the year 2001, as the petitioners have kept quiet for more than two decades, the present Writ Petition is to be dismissed on the ground of laches also.



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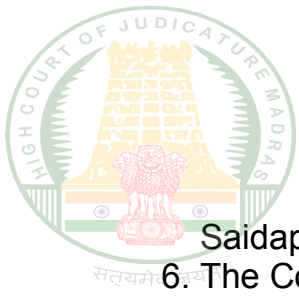
In view of the above, the present Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes / No;
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd

To

1. The Secretary to Government,
Personnel and Administrative Department,
Secretariat Fort St. George,
Chennai – 600 009
2. The Secretary to Government,
Finance Department,
Secretariat, Chennai – 600 009
3. The Principal Accountant General
o/o The Principal Accountant General (A&E)
Chennai, Tamilnadu
4. The Director,
O/o The Director and settlement,
Survey House, Chepauk,
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The Director of rural Development,
Panchayatraj



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