



W.A.No.126 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN**

**W.A.No.126 of 2025
and
C.M.P.No.890 of 2025**

1.The Secretary to Government,
Educational Department,
Government of Tamilnadu,
Fort St.George, Chennai – 9.

2.The Director of School Education,
Office of the Director of School Education,
DPI Campus, College Road, Chennai.

... Appellants

Vs.

1.E.Kumar

2.The State Project Officer,
Teachers Recruitment Board,
Chennai – 6.

3.The Accountant General,
D.M.S Compound,
Nandhanam,
Chennai.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 26.04.2024 passed in W.P.No.1003 of 2019.

For Appellants : Mr.U.M.Ravichandran
Special Government Pleader

For Respondents : Ms.H.Mary Sowmi Rexi

JUDGMENT

(Judgment of the Court was delivered by *R.SURESH KUMAR, J.*)

This intra court appeal has been directed against the writ court order dated 26.04.2024 passed in W.P.No.1003 of 2019.

2. The respondent/writ petitioner namely Mr.E.Kumar was selected and appointed as Block Resource Teacher Educator by appointment order dated 26.03.2003. The relevant portion of the order reads thus:

“The following candidates who have been selected in the Tamil Nadu State and Subordinate Service in the direct examinations held in 2002-03 and allotted for appointment as Block Resource Teacher Educator in the Block Resource Centre under the 'Elementary Education for All' Scheme are appointed as Block Resource Teacher Educator in the Block Resource Centre mentioned against them.



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Rank No. assigned By the Teachers' Recruitment Board	Name and Address	Subject for which selected	Block to which appointed
123	A.Kumar, S/o.Evari Thiruvarmbur Pudur, Ganesapuram Post, (Via) Marudhur, Karur District – 639 107.	Mathematics	Trichy District

The candidate must join the post within a week time on receipt of this appointment order. Otherwise, the order shall be deemed to have been cancelled without prior notice on the ground of unwillingness to join the work.”

3. Pursuant to the said appointment order, when the writ petitioner/respondent went for joining in the place, where he was posted at Trichy District as Mathematics Teacher, he was not permitted to join because during the relevant point of time, since he was pursuing P.G. course, latest Transfer Certificate issued by the institution, where he was undertaking the P.G. course must be produced. Therefore, immediately, he made an application to the concerned authority and he was able to get certificate on 21.04.2003. Therefore, after getting such certificate, he approached the appointees for joining the duty, where he was permitted to join duty by issuing a proceedings dated 21.04.2003, which was issued by the appellant and the same reads thus:

“With reference to the Proceedings cited, order is hereby



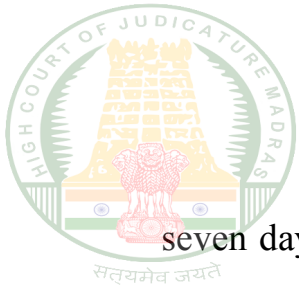
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issued permitting Thiru A. Kumar, who has been appointed as the Block Resource Teacher Educator (Mathematics), Block Resource Centre, Thiruverumbur, Trichy District under the Education for All Programme to join in the Post.”

4. Accordingly, the respondent/writ petitioner joined service and has been working. However, since he had been appointed well prior to 01.04.2003, the date on which, New Contributory Pension Scheme came into effect, had applied for joining in the Old Pension Scheme, which was refused by the Appellant Department. Therefore, questioning the same, he had approached the Writ Court by filing the said writ petition seeking for a writ of mandamus, directing the appellant herein to treat the writ petitioner as an employee covered under the Tamil Nadu Pension Rules, 1978 prior to its amendment dated 01.04.2003 and consequently, to fix the date of service of the petitioner for Old Pension Scheme with effect from 26.03.2003.

5. The said writ petition was heard and allowed by the learned Judge through the impugned order. Assailing the same, Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the Appellant-Department would contend that insofar as the condition that has been imposed in the order of appointment dated 26.03.2003 was that the writ petitioner must join within

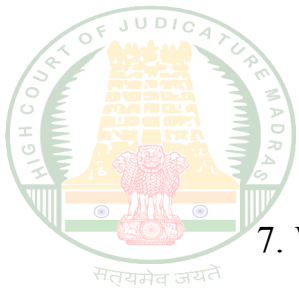


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seven days, failing which, the order of appointment would stand automatically cancelled. Therefore, only by virtue of the subsequent appointment order or a re-appointment order dated 21.04.2003, since the writ petitioner/respondent had joined service, for all practical purposes, his joining of service or appointment must only be taken as 21.04.2003. Therefore, that is well after cut-off date i.e., 01.04.2003. Therefore, the writ petitioner/respondent would not be entitled for benefit under the Old Pension Scheme. This aspect since has not been considered in a proper perspective, the learned Special Government Pleader appearing for the Appellant-Department seeks indulgence of this Court.

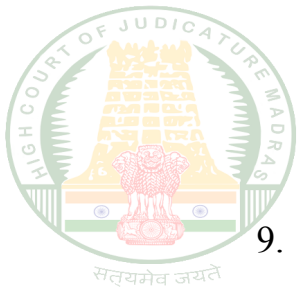
6. We have heard the learned counsel for the first respondent/writ petitioner, who have stated that several orders of this nature have been passed even prior to 01.04.2003 and subsequently, even in respect of those appointments, the pension scheme which was prevailing was directed to be implemented and several judgments have been passed in this regard, which had been taken as a precedent and ultimately, he had allowed the writ petition filed by the writ petitioner/respondent. Therefore, the learned counsel for the respondent/writ petitioner seeks indulgence of this Court to dismiss the intra-court appeal.



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7. We have heard the said rival submissions made by the learned counsel for the appellants and the learned counsel for the respondents and perused the materials placed before this Court.

8. In fact, the entire selection process was over and based on merits, the respondent/writ petitioner had been selected and appointed by appointment order dated 26.03.2003, where, it is made very clear that he has been appointed as Block Resource Teacher Educator in the Block Resource Centre mentioned against them i.e., at Trichy District. When that being the position, at no stretch of imagination, the appointment order dated 21.04.2003 can be treated as an appointment order. Moreover, insofar as the New Contributory Pension Scheme is concerned, as per the Government Order issued in G.O.Ms.No.259 dated 06.08.2023, it has been made clear by virtue of the amendment that the Rule shall not apply to Government servants appointed on or after 01.04.2003 to services and post in connection with the affairs of the State, which are borne on pensionable establishments, whether temporary or permanent. Here in the case in hand, appointment has been made on 26.03.2003 i.e., well prior to 1st April 2003.



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9. Therefore, assuming that the Recruitment Notification dated 25.05.2002 shall not be taken into consideration, since appointment itself is made well prior to 01.04.2003 i.e., on 26.03.2003, question of excluding the writ petitioner from the purview of the Old Pension Scheme cannot be countenanced.

10. Merely because a consequential proceedings issued on 21.04.2003, where the joining period of one week given in the original appointment order dated 26.03.2003 since has been extended and permitted the writ petitioner/respondent to join service on 21.04.2003 that cannot be taken either as a revalidation or reappointment or re-issuance of the earlier appointment as there is no other appointment order, except the one i.e., 26.03.2003. Therefore, to that extent, arguments advanced by the learned Special Government Pleader has to be rejected.

11. However, the learned counsel canvassed further that in Paragraph 13 of the impugned order, the learned Judge, agreeing the learned Single Judge order in W.P.No.8584 of 2021, stated that the very recruitment process if it is started prior to 01.04.2003 that can be taken into account for the purpose of calculating the Old Pension Scheme.



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12. Insofar as the said observation made by the learned Judge in Paragraph 13 of the impugned order dated 10.02.2023 in W.P.No.8584 of 2021 is concerned, we have not expressed any view in endorsing the said view made by the learned Judge in Paragraph 13 of the impugned order.

13. The reason being that even independently or otherwise, this writ petitioner/respondent is entitled to get the benefit under Old Pension Scheme as he was well appointed on 26.03.2003 i.e., prior to 01.04.2003.

14. Therefore, unmindful of the observation made by the learned Judge through Paragraph 13 of the impugned order, such benefits since could be implemented or extended to the writ petitioner/respondent, the said observation would not stand in the way for giving such a benefit to the writ petitioner/respondent.

15. Therefore, this writ appeal naturally has to fail, accordingly, it fails. Hence with the above observations, the writ appeal is dismissed.



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(R.S.K., J.) (C.S.N., J.)
20.01.2025

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

1. The State Project Officer,
Teachers Recruitment Board,
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2. The Accountant General,
D.M.S Compound,
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