



W.A.(MD).No.359 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.(MD).No.359 of 2023

K.Balasubramanian

... Appellant/Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Accountant General,
No.361, Anna Salai,
Teynampet, Chennai – 18.
- 3.The Director of School Education,
College Road,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Chief Educational Office,
Kokkirakulam, Tirunelveli.
- 5.The District Educational Officer,
District Educational Office,
Tirunelveli.



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6. The Secretary,
The Madurai Diraviyam Thayumanavar Hindu College,
Higher Secondary School,
Tirunelveli - 627 001.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to allow the Writ Appeal by setting aside the order passed in W.P.(MD).No.11896 of 2020 dated 20.01.2023.

For Appellant : Mr.K.Vadivelu
For R-1 to R-5 : Mr.C.Venkatesh Kumar
Special Government Pleader
For R-6 : No appearance

JUDGMENT

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

Heard both sides.

2. The appellant was appointed as a Secondary Grade Teacher in the sixth respondent School on 06.12.1997. He did not possess the qualification prescribed for the post in question. However, he was a beneficiary of G.O. (Ms).No.155, School Education (D2) Department, dated 03.10.2002. He was sent for Child Psychology Training. His appointment was approved with effect from 02.06.2003. He was also placed under Contributory Pension Scheme. A

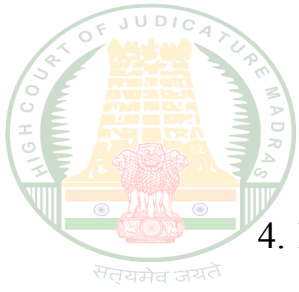


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separate account was opened. 15 years later, the appellant filed W.P.(MD).

No.11896 of 2020 for placing him under the Old Pension Scheme. The learned Single Judge, vide order dated 20.01.2023, dismissed the Writ Petition. Aggrieved by the same, this Writ Appeal has been filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal. He drew our attention to paragraph 8 of the decision of the Division Bench in *the State of Tamil Nadu and others Vs. Pallivasal Primary School, represented by its Correspondent, Mudukulathur* reported in **2004-2-L.W.591**, in which, it has been stated that the past service shall count for pension while they will be entitled to monetary benefits after they acquire the Child Psychology Training. Our attention was also drawn to the order dated 21.03.2018 in W.A.(MD).Nos.74 of 2015 and 957 of 2016. The Hon'ble Division Bench in the said decision had made a distinction between approval and appointment and that the pension service has to be counted from the date of appointment. The learned counsel for the appellant submitted that in many cases, such an approach had been adopted by this Court and the appellant alone cannot be left out. When the appellant was appointed in December 1997, he had to be necessarily placed under the Old Pension Scheme.



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4. Per contra, the learned Special Government Pleader appearing for the respondents 1 to 5 submitted that the issue raised in this Writ Appeal has been recently settled by a coordinate Division Bench vide order dated 10.06.2024 in ***W.A.Nos.1207, 1213 and 1214 of 2021 in the Secretary, Government of Tamil Nadu, Finance (Pension) Department, Fort St. George, Secretariat, Chennai and others Vs. B.Bhuvaneswari and others*** reported in ***2024:MHC:2369***. He pointed out that all the contentions now urged by the learned counsel for the appellant including G.O.No.413, Finance (PGC) Department dated 04.11.2010, had been considered by the coordinate Division Bench. He called upon this Court to sustain the impugned order of the learned Single Judge and dismiss the Writ Appeal.

5. We carefully considered the rival contentions and went through the materials on record.

6. At the very outset, we have to make one observation. The judgment in *Pallivasal Primary School* cited supra was pronounced on 02.04.2004. It is true that the Hon'ble Division Bench had held that the past service of the appointees would count for pension. Since the pension scheme, which was then in force, came to be abolished very shortly thereafter, the aforesaid directions of the



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Division Bench could not be pressed into service.

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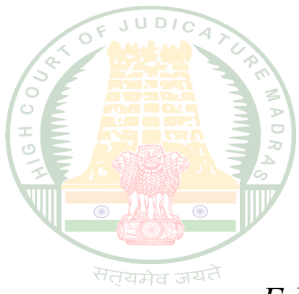
7. Admittedly, the appellant was placed under the Contributory Pension Scheme in the year 2006 itself. The Writ Petition was filed only in the year 2020.

8. It is not in dispute that the appellant's appointment was approved only on 20.10.2005 with effect from 02.06.2003. The cut off date for coming under the Old Pension Scheme is 01.04.2003.

9. Even though there are quite a few Division Bench decisions favouring the appellant's contentions, we propose to follow the latest decision of the coordinate Division Bench vide order dated 10.06.2024 in ***W.A.Nos.1207, 1213 and 1214 of 2021 in the Secretary, Government of Tamil Nadu, Finance (Pension) Department, Fort St. George, Secretariat, Chennai and others Vs. B.Bhuvaneswari and others*** reported in ***2024:MHC:2369***. In the said decision, the Hon'ble Division Bench had held as follows:

“9. Considering the arguments as advanced between the parties to the lis on hand, two questions arise;

(1) Whether the Government orders extending the benefit is to be considered in the case of the respondents herein;



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(2) Whether the date of approval of appointment by the Educational Authorities of the Government of Tamil Nadu is to be taken or the date of original appointment made by the private management of the aided schools is to be taken into account for extending the benefit of old pension scheme under the Tamil Nadu Pension Rules, 1978.

10. With reference to the first question, the provision of the Tamil Nadu Pension Rules, 1978 would be applicable in the event of claiming benefit under the old pension scheme. The Government orders, if any issued cannot supersede the provisions of the Tamil Nadu Pension Rules, 1978. Therefore, the rules will prevail over the Government orders. The old pension scheme came to an end on 01.04.2003.

11. The second question regarding the approval of appointment. It is needless to state that the Government salary is being disbursed only to the Teachers only from the date of approval of appointment. Their initial appointment was made by the private management and they were not paid Government Salary. The salary has been paid by the private management from the school funds and not from the Government funds. Further, the General Provident Fund (GPF) account will be opened to the Teachers only from the date of approval of appointment and not from the date of initial appointment by the private management.

12. The very purpose and object of approval is to pay



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Government salary and benefits to the Teachers and approval of appointments are made under the provisions of the Act and Rules. If the appointments are approved by the Competent Authorities of the Education Department of Government of Tamil Nadu under the Private School Regulations Laws, then alone the question of payment of Government salary and extending the benefit of pension would arise.

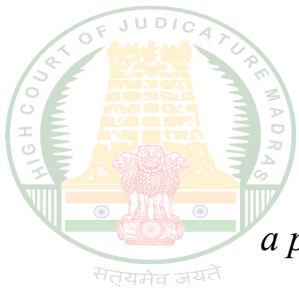
13. It is to be considered whether services rendered as private management teachers can be construed as qualifying service under the pensionable establishment under the provisions of the Tamil Nadu Pension Rules, 1978 or not?

14. Rule 3 of the Tamil Nadu Pension Rules, 1978 provides definition. Rule 3(1)(j) defines “Qualifying Service” means “Permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment”.

15. Rule 11 speaks about the qualifying services, the qualifying services in a pensionable establishment should be reckoned for the purpose of settling benefits under the old pension schemes.

16. What is relevant is the qualifying services in a pensionable establishment.

17. Let us consider, whether the respondents have served in



a pensionable establishment or not, if so, from which date.

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18. The respondents have admittedly appointed by the private management in an aided school with effect from 06.08.1997 in sanctioned post. However, they were not possessing the requisite qualification of Child Psychology Training. Child Psychology Training is a requisite qualification for appointment to the post of Secondary Grade Teachers. Their appointments were not initially approved by the Department in the year 1997. On completion of the mandatory qualification of Child Psychology Training, the school management submitted a proposal for approval of appointment. Thereafter, the Education Department has approved the appointment of the respondents with effect from 02.06.2003 and 10.01.2004 respectively. Therefore, on the date of appointment of the respondents by the management in the aided school, they were not possessing the requisite qualification of the Child Psychology Training.

19. The Hon'ble Supreme Court of India held that Child Psychology Training is a mandatory qualification for appointment to the post of Secondary Grade Teachers. The Division Bench order of this Court passed in this context was upheld by the Hon'ble Supreme Court. Therefore, the date of approval of appointment of the respondents is to be taken into consideration for the purpose of extending the pensionary benefits.

20. Mr.S.Conscious Ilango, learned counsel for the



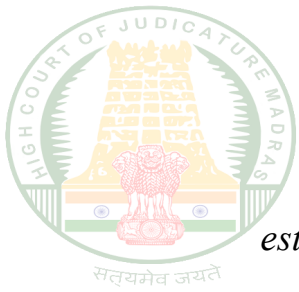
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respondents would submit that similar such cases were considered by this Court and Government also passed an order in G.O.No.413 dated 04.11.2010 implementing the orders of this Court.

21. With reference to the G.O.Ms.No.413, paragraph 8 of the Government order states that the Secondary Grade Teachers appointed in a sanctioned regular post in private aided schools during the period from 11.07.1995 to 19.05.1998 and whose services were regularised as per G.O.Ms.No.155, School Education (D2) Department dated 03.10.2002 are to be extended the old pension scheme and General Provident Fund as applicable to the Teachers appointed before 01.04.2003.

22. The said Government order cannot be applied in view of the fact that the approval of appointment was granted after completion of the requisite qualification of the Child Psychology Training. However, the fact remains that the approval of appointment of the respondents herein were made after the cut off date of 01.04.2003. The qualifying services as defined under the Tamil Nadu Pension Rules, 1978 would reveal that the qualifying services must be in the pensionable establishment for securing the benefit under the Tamil Nadu Pension Rules, 1978. When the respondents were not having the qualifying services within the meaning of Rule 3(1)(j) of the Tamil Nadu Pension Rules, 1978, they cannot seek the benefits under the Tamil Nadu Pension Rules, 1978, since their qualifying services in a pensionable



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establishment commences from the date of approval of appointment on 02.06.2003 and 10.01.2004 respectively. Thus, the respondents are not entitled for the benefit under the old pension scheme, but entitled to get the benefit under the new pension scheme i.e., Contributory Pension Scheme (CPS) for the qualifying services rendered by them in accordance with the new pension scheme.

23. Hence, the impugned order passed in W.P.Nos.14996 to 14998 of 2009 is set aside and the Writ Appeal stands allowed. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs."

10. Respectfully adopting the said ratio, we sustain the order of the learned Single Judge and dismiss the Writ Appeal. There shall be no order as to costs.

(G.R.S.,J.) (K.R.S.,J.)
16.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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The State of Tamil Nadu,
School Education Department,
Fort St.George,
Chennai - 600 009.

2.The Accountant General,
No.361, Anna Salai,
Teynampet, Chennai – 18.

3.The Director of School Education,
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