



W.P(MD)No.21029 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2025

CORAM

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

WP(MD)No.21029 of 2019

S.R.Bindulekha

...Petitioner

vs.

1.The State of Tamilnadu,
Rep. by its Secretary,
School Education Department,
Fort.St.George,
Chennai - 600 009.

2.The Joint Director,
(Employee Division),
Department of School Education,
College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Kanyakumari District,
Kanyakumari.

4.The Accountant General,
Office of the Principal Accountant General,
No.361, Anna Salai,
Chennai - 18.

5.The Chairman,
Teacher's Recruitment Board,
Sambath Building,
College Road,
Chennai - 6.

...Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in Na.Ka.No.024619/R1/E3/2019, dated 26.08.2019 and quash the same and further direct the respondents to include the name of the petitioner in the list of Teachers brought under the General Profit Fund Scheme by extending all benefits of Pension under the said Pension Scheme.

For Petitioner : Mr.K.Jeyamohan

For Respondents : Mr.J.Ashok,
Additional Government Pleader
for R1 to R3

for Mr.P.Gunasekaran
Standing Counsel for R4

Mr.T.Amjad Khan,
Standing Counsel for R5

ORDER

The present writ petition has been filed to quash the impugned order of the first respondent in Na.Ka.No.024619/R1/E3/2019, dated 26.08.2019, in and by which, the petitioner's claim to be brought under the old pension scheme was rejected.

2. Heard both sides.



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3. The learned counsel for the petitioner would submit that the petitioner participated in the examination conducted by the fifth respondent for the post of Block Resource Teacher. The petitioner passed the examination with merit list rank of 17. In pursuance thereof, the petitioner was called for certificate verification and she participated in the certificate verification on 01.06.2002. However, in the final list, the petitioner's name did not find place since her mother tongue was Malayalam. In this regard, the petitioner filed O.A.No.4171 of 2002 before the Tamil Nadu Administrative Tribunal, Chennai, wherein, the Tribunal has passed an order on 28.02.2003, by and in which, the Recruitment body was directed to select the petitioner and give her posting. In pursuance thereof, appointment order was issued to the petitioner on 31.03.2003 and the petitioner joined in the post on 04.04.2003 as a Block Resource Teacher. Now the respondents have not subscribed the petitioner to the old pension scheme and subscribed her to the new contributory pension scheme in pursuance of G.O.(Ms)No.430, Finance (Pension) Department, dated 06.08.2004. Hence, the present petition.

4. The learned counsel for the petitioner would further submit that according to the above Government Order, the crucial date is only the date of recruitment and in the present case, the petitioner was recruited on



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31.03.2003. Therefore, the petitioner is eligible to be considered for the old pension scheme. In support of his contentions, he relied upon (i) the Judgment of the learned Single Judge in W.P.(MD)No.3308 of 2007 and Writ Appeal arising against that petition in W.A.(MD)No.370 of 2018 and (ii) the order of the learned Single Judge in W.P.No.1006 of 2019 and the subsequent Government Order in G.O.(Ms)No.15, School Education Department, dated 13.01.2025, complying the direction given in that Writ Petition.

5. The said contentions were totally objected by the learned Standing Counsel appearing for R4, who would contend that according to proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978, the persons who are appointed on or after 01.04.2003 are not eligible to be subscribed under old pension scheme and the petitioner has joined the services on 04.04.2003 i.e., after the cut of date fixed in the Tamil Nadu Pension Rules, 1978. He also relied upon a Division Bench Judgment of the Principal Seat of this Court in W.P.Nos.9027 & 9035 of 2019, dated 10.06.2019, wherein also the persons who joined in service after the cut off date were not permitted to get the benefit of old pension scheme. Hence, prayed to dismiss the petition.



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6. The above contentions were reiterated by the learned Additional Government Pleader appearing for the respondents 1 to 3.

7. I have given my anxious consideration to either side submissions.

8. The short point to be considered in the present writ petition is that whether the petitioner is eligible to be considered for old pension scheme or not?

9. In this regard, it is appropriate to extract the proviso to Rule 2 of Tamil Nadu Pension Rules, 1978, hereunder:-

"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."

10. It is also relevant to extract the relevant portion of the Government Order in G.O.(Ms)No.430, Finance (Pension) Department, dated 06.08.2004, hereunder :-



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*"In the G.O. read above, the Government have introduced a new Contributory Pension Scheme based on defined Contributions for all the employees, who are recruited on or after 01.04.2003. In order to implement the Contributory Pension Scheme, the following further orders are issued:-
....."*

11. In the Government Order in G.O.(Ms)No.430, Finance (Pension) Department, dated 06.08.2004, it has been mentioned that the persons 'recruited' on or after 01.04.2003 are not eligible for old pension scheme. Whereas, in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978, the word used is 'appointed' on or after 01.04.2003. Only after the proviso was incorporated in the Tamil Nadu Pension Rules, 1978, there was clarity with regard to the crucial date and it is crystal clear that the appointment of the employee is the crucial date to consider whether the employee would come under the old pension scheme or new pension scheme.

12. The learned counsel for the petitioner relied on the appointment order of the petitioner dated 31.03.2003. For ready reference, the relevant image of the said order is scanned and depicted as follows.



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தமிழ்நாடு பள்ளிக் கல்வி இணை இயக்குநரின் செயல்முறைகள்
(பணியாளர் தொகுதி, சென்னை-6)

ந.க.எண். 74927 /சி 5 /தி 20/02 நாள்: 31.3.2003

பொருள்: தமிழ்நாடு பள்ளிக் கல்வி சார்நிலையப்பணி - வட்டார வள மைய
பயிற்றுநர் நோடி நியமனம் - 2002-03 ஆசிரியர் தேர்வு
வாரியத்தால் தேர்ந்தெடுக்கப்பட்டவர்கள் நியமனம் செய்தல் -
சார்பாக.

பார்வை: சென்னை-6, தமிழ்நாடு ஆசிரியர் தேர்வு வாரியத்தின் கடித
ந.க.எண். 199/த2/01 நாள்: 18.3.2003.

2. தமிழ்நாடு நேர்வுரை சரீர்ப்பாயி ஆத ௨.௭.௭௧.4171/02
நாள்: 28.2.2003

தமிழ்நாடு மாநில மற்றும் சார்நிலையப்பணியில் 2002-03ம் ஆண்டில் நடைபெற்ற நோடித்
தேர்வுகளில் தேர்ந்தெடுக்கப்பட்டு "அனைவருக்கும் தொடக்கக் கல்வித்" திட்டத்தின் கீழ்
ஒன்றிய வள மையத்தில் வளமைய ஆசிரியர் பயிற்றுநராக நியமனம் செய்ய ஒதுக்கீடு
செய்யப்பட்டுள்ள கீழ்க்குறித்த தேர்வாளர் அவருக்கெதிரே குறிப்பிட்டுள்ள ஒன்றிய வள
மையத்தில் வளமைய ஆசிரியர் பயிற்றுநராக நியமனம் செய்யப்படுகிறார்.

ஆசிரியர் தேர்வு வாரியத்தால் அளிக்கப்பட்டதும் எண்.	பெயர் மற்றும் முகவரி	எந்தப் பாடத்தில் தேர்ந்தெடுக்கப் பட்டவர்.	நியமனம் அளிக்கப்படும் ஒன்றிய வள மையம்
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பி 172.

தருமசி.என்.கி.பி.கே.என்.

பா/பெ.சென்னை-6

3. த. உயிர்தொழில் வளமையம்,

சென்னை-600 001

இலாபி

தருமசுருக் ஒன்றியம்

நாகை மாவட்டம்



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13. Reading and re-reading the above order clearly stipulates that on 31.03.2003, the petitioner was appointed as Block Resource Teacher for Physics Subject in Thirumarugal onriyam. The date of appointment is not in dispute. However, the main contention put forth by the learned Standing Counsel for the fourth respondent is that the petitioner joined services only on 04.04.2003. A penetrative reading of the Tamil Nadu Pension Rules, 1978, as well as the aforesaid Government Order shows that both refer about the appointment and recruitment dates of an employee and not the joining date.

14. In the case in hand, admittedly, the petitioner was appointed on 31.03.2003. Therefore, this Court is of the firm opinion that the petitioner is eligible to be considered for old pension scheme by quashing the impugned order dated 26.08.2019. The above view has been vindicated in W.P. (MD)No.3308 of 2007, wherein in respect of similarly placed persons, who happened to be appointed on 26.03.2003 in a different recruitment process, this Court was of the opinion that the appointment date is relevant and not the joining date. In this regard, it is relevant to extract the relevant paragraphs of the above Judgment:-

"16. Un-disputably, an order of appointment was issued to the petitioner by the second respondent on 26.06.2003, through



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his proceedings in Na.Ka.No.68578/C20/C5/02. A perusal of the said order only shows that the petitioner was appointed on the said date itself. The order does not stipulate that the said order of appointment is either provisional or otherwise or it takes effect from some other day. On the other hand, a clause found in the said order only shows that the petitioner was given a week's time to join duty. Thus, it is manifestly clear that for all practical purposes, the date of appointment of the petitioner is to be taken only as 26.03.2003 and not as contended by the learned counsel appearing for the respondents.

17. No doubt, the petitioner joined duty only on 04.04.2003. The reason for joining only on 04.04.2003 has been explained by the the petitioner by stating that she could able to get the Medical Fitness Certificate from the Medical Board only on 04.04.2003, as the Board was functioning once in a week. The said fact also not disputed by the first respondent in his counter affidavit. On the other hand, it is admitted by them that the Board had issued the certificate only on 04.04.2003 and the petitioner also joined duty on the very same day. Therefore, the petitioner cannot be found fault with in joining the duty after 31.03.2003.

18....

19. On going by the language of the said Government Order, more particularly the clause 3(i), there will not be any difficulty to say that the said Government Order is applicable to persons, who are appointed on or after 01.04.2003. The



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word recruited cannot be construed or taken to mean 'joined' Certainly, the word recruited has to have a related meaning of the word appointed. When the 'recruitment' is the action of the employer, 'joining the duty' is the action of the employee. Both are to be seen with different connotation. When that being the position, in my considered view, the said G.O.No.259 having been made only in respect of persons, who have been recruited on or after 01.04.2003, the same cannot be applied to the petitioner's case, who was admittedly recruited earlier to 01.04.2003."

15. The learned Single Judge in the above case has found a fine distinction between the word 'joined' and 'recruited' and it is explained that 'joining the duty' is the action of the employee and 'recruitment' is action of the employer. The above Judgment was upheld by the Division Bench of this Court in W.A.(MD)No.370 of 2018 vide Judgment dated 14.03.2018.

16. It is also relevant to rely on the recent Judgment in W.P.No.1006 of 2019, dated 26.04.2024, which relates to the very same recruitment, wherein, the respondents were directed to bring the petitioner therein under the old pension scheme. The Government has also complied the said order vide G.O.(Ms)No.15, School Education Department, dated 13.01.2025. Therefore, the contention put forth by the learned Additional Government



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Pleader and learned Standing Counsel by referring to Division Bench Judgment in W.P.Nos.9027 & 9035 of 2019, dated 10.06.2019, is of no use, as that order assailed with the appointment of the petitioners on 09.09.2003, and the case in hand, deals with the petitioner who was appointed on 31.03.2003.

17. In view of the above observations, the impugned order of the first respondent in Na.Ka.No.024619/R1/E3/2019, dated 26.08.2019 is quashed and in consequence, the petitioner shall be brought under the old pension scheme that was prevailing prior to the implementation of the G.O.(Ms.)259, Finance (Pension) Department, dated 06.08.2003 and whatever contribution has already been recovered from the petitioner, shall be transferred to the old pension scheme. The process shall be completed by the respondents within a period of twelve (12) weeks from the date of receipt of a copy of this order.

18. In the result, the Writ Petition is allowed. No costs.

05.11.2025

Index : Yes/No

NCC : Yes/No

Internet :Yes

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To

1.The Secretary,
School Education Department,
Fort.St.George, Chennai - 600 009.

2.The Joint Director,
(Employee Division),
Department of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Kanyakumari District, Kanyakumari.



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C.KUMARAPPAN, J.

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