



W.P.(MD).No.26130 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.01.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.26130 of 2024
and
W.M.P.(MD).No.22141 of 2024

N.Latha

... Petitioner

Vs

1. The Secretary,
Sanjeevinadhapuram Elementary School,
Rajapalayam,
Virudhunagar District.

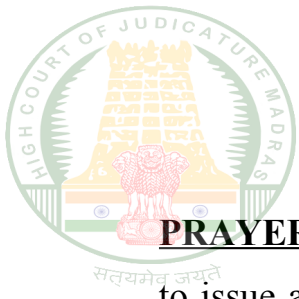
2. The District Elementary Educational Officer,
D.E.E.O. Office,
Virudhunagar,
Virudhunagar District.

3. The Assistant Elementary Educational Officer,
A.E.E.O. Office,
Rajapalayam,
Virudhunagar District.

4. The District Elementary Educational Officer,
D.E.E.O. Office,
Sivakasi,
Virudhunagar District.

5. The Principal Accountant General (A&E),
O/o. The Principal Accountant General,
361, Anna Salai, Chennai-18
(R5 is suo motu impleaded vide Court order
dt. 17.12.2024 in W.P.(MD).No.26130/2024 by RVJ)

...Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 4th respondent proceedings made in Na.Ka.No.0003/A2/2022, dated 05.07.2024, quash the same, and further direct him to take steps to get ASTPF (Aided School Teachers Provident Fund) number to the petitioner.

For Petitioner : Mr.R.Sundar

For Respondent Nos.2 to 4 : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

The instant writ petition has been filed by a Secondary Grade Teacher, challenging the order passed by the fourth respondent herein on 05.07.2024, wherein, the request of the petitioner to get herself enrolled under ASTPF (Aided School Teachers Provident Fund) has been rejected.

2. A perusal of the records reveal that the petitioner herein was initially appointed as a Secondary Grade Teacher with B.T. Assistant qualification on 05.07.2002. Thereafter, the petitioner has undergone and completed child psychology training on 08.03.2010. Approval of her appointment was granted with effect from 09.03.2010. The petitioner, not being satisfied with the grant of approval order from 09.03.2010, filed a writ petition in W.P.(MD).No.1306 of 2004. This court by an order dated 20.09.2007, has allowed the writ petition. The operative portion of the said order is extracted as follows:



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"18. Under the circumstances, the writ petition will stand allowed and the impugned order will stand set aside. The petitioner will be directed to reinstate in the fourth respondent school with a further direction that she may be sent to the Child Psychology Training in any one of the Districts. After her completing the Child Psychology Training, she may be posted either in the fourth respondent school if the economic strength so warrants or she may be redeployed to any other needy school.

19. With regard to the back wages, since the petitioner had not physically worked during the period, she may not be entitled to get any back wages. At the same time, the entire period from the original date of appointment as per the resolution passed by the School Management appointing her to the post of Secondary Grade Teacher in the Fourth respondent school on 05.07.2002, the petitioner is deemed to be considered as being appointed for that academic year and the entire service will be counted for all the purposes including the length of service and pay fixation."

3. The state as well as school management had filed writ appeals in W.A.(MD).No.25 and 63 of 2008. The said writ appeals were dismissed by the Hon'ble Division Bench of this Court on 17.03.2008. Pursuant to the orders of the Hon'ble Division bench of this Court, the Government of TamilNadu has issued G.O.(3D).No.59, School Education Department, dated 02.04.2013, granting notional pay fixation and other benefits for the period between 05.07.2002 to 08.03.2010.

4. Based upon the above said Government Order, the petitioner has given a representation on 06.11.2015, to enroll herself under the old pension scheme. Since the same was not considered by the authorities, the petitioner has filed a



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writ petition in W.P.(MD).No.22736 of 2022, seeking a mandamus directing the respondents to take steps to get ASTPF number to the petitioner. This Court by an order dated 25.04.2024, has directed the authorities to consider the representation of the writ petitioner and pass orders within a period of two weeks. Pursuant to the orders of this Court, the present impugned order has been passed on 05.07.2024.

5. A perusal of the impugned order reveals that the request of the petitioner to get herself enroll under ASTPF has been rejected on the following grounds:

a) As per G.O.Ms.No.59, School Education Department, dated 02.04.2013, only notional pay fixation could be granted, but there is no order have been passed either regularizing the above said period or granting approval to the appointment from the initial date of appointment.

b) As per G.O.Ms.No.155, School Education Department, dated 03.10.2002, the non-approval period should not be take into consideration either for promotion, pay fixation or for pensionary benefits.

6. The request of the petitioner for enrolling herself under ASTPF cannot be granted. The above said order is put to challenge in the present writ petition. According to the learned Counsel appearing for the writ petitioner, the state



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while issuing G.O.Ms.No.59, School Education Department, dated 02.04.2013, has specifically stated that the above said period should be taken into consideration for the purpose of notional pay fixation. He further relied upon the judgement of this Court in W.P.(MD).No.1306 of 2004, wherein, it is held that the period between 05.07.2002 to 08.03.2010 should be taken into consideration for all purposes including the length of service and pay fixation. The learned Counsel appearing for the writ petitioner has also relied upon the Division Bench judgement of this Court reported in 2004(2) L.W.591, especially Paragraph No.8 and contended that the services of non-approval period should be counted for pensionary services.

7. Per contra, the learned Additional Government Pleader appearing for the respondents herein had contended that when the writ petitioner was not qualified to be appointed as a Secondary Grade Teacher, the said period cannot be counted for any purpose. He further contended that the petitioner has passed the child psychology training only in the year 2010, and therefore, the petitioner was rightly brought under the Contributory Pension Scheme and therefore, the question of inducting the petitioner into the old pension scheme does not arise. He further contended that the petitioner was not granted any approval order from the date of her initial appointment. Therefore, in such circumstances, the

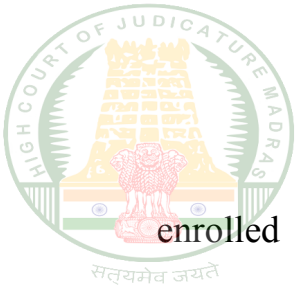


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non-approval period cannot be taken into consideration. Hence, he prayed for sustaining the present impugned order.

8. I have carefully considered the submissions made on either side and perused the materials available on record.

9. The authorities have initially refused to regularize the services of the period i.e., from the date of her initial appointment till date on which the petitioner had passed Child Psychology Training. The order was put to challenge by the petitioner in W.P.(MD).No.1306 of 2004, wherein, this Court has set aside the said order and allowed the writ petition with an observation that the entire service period shall be counted for all purposes including the length of service and pay fixation. This order was confirmed by the Hon'ble Division Bench of this Court. The state while issuing G.O.Ms.No.59, School Education Department, dated 02.04.2013, has clearly pointed out that the period between 05.07.2002 to 08.03.2010 shall be counted for fixation of notional pay. Therefore, it is clear that the period between 05.07.2002 to 08.03.2010 has already been regularized and approved both by the Court as well as by the authorities concerned. When the appointment of the writ petitioner has been approved from 05.07.2002 onwards, naturally the writ petitioner has to be



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enrolled under the old pension scheme meant for the aided school teachers namely ASTPF (Aided School Teachers Provident Fund). Therefore, the order impugned in this writ petition has not legally sustainable.

10. In view of the above said deliberations, the impugned order in this writ petition is hereby set aside and the respondent Nos.1 to 4 are directed to initiate appropriate action for inducting the writ petitioner under ASTPF (Aided School Teachers Provident Fund) and pass orders within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the above said observations, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.01.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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R.VIJAYAKUMAR, J.

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