

W.A.(MD)No.420 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.420 of 2025
and
C.M.P.(MD)No.3253 of 2025

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai-9.
- 2.The Commissioner of School Education,
DPI Campus, Chennai-6.
- 3.The Chief Educational Officer,
Theni, Theni District.
- 4.The Headmaster,
Government Higher Secondary School,
Pannaipuram, Theni District.

... Appellants

Vs.

- 1.S.Josephine Mangayarkarasi
- 2.The Principal Accountant General (A&E),
Office of the Principal Accountant General (A&E),
361, Anna Salai,
Chennai-600 018.

... Respondents



W.A.(MD)No.420 of 2025

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.18608 of 2021, dated 04.06.2024.

For Appellants	:Mr.J.Ashok Additional Government Pleader
For R1	:Mr.T.Ashwin Rajasimman
For R2	:M/s.S.Mahalakshmi Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the respondents in the writ petition against the order dated 04.06.2024 passed in W.P.(MD)No.18608 of 2021.

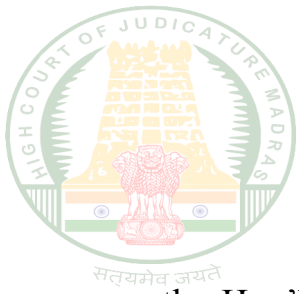
2. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order, dated 23.08.2021 and consequently, to direct the respondents to include the petitioner under old pension scheme and disburse the retirement benefits of the petitioner with effect from 30.04.2016 including gratuity and other monetary benefits along with arrears within a stipulated time.



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3. The writ petitioner was appointed as Block Resource Teacher on 26.03.2003 and joined the duty on 31.03.2003 at Theni, the joining report was forwarded, vide proceedings, dated 04.04.2003 and the service was regularized with effect from 31.03.2003, thereafter promoted as PG Assistant in the year 2008 and retired from service on 30.04.2016. The contention of the writ petitioner is that though GPF account was maintained and she was provided with general provident fund, but was not granted the pension and gratuity. Infact is entitled to be included in the old pension scheme, since she was appointed and regularized well before the cutoff date, i.e., 01.04.2003. But the 3rd respondent in the writ petition, i.e., the Accountant General has returned the pension proposal on the ground that her pay was fixed only on 01.04.2003 and insisted for relaxation order. The petitioner relied on the order dated 30.09.2015 passed in W.A.(MD)No.1026 of 2015 wherein it is held that the new scheme is applicable to the employees appointed on or after 01.04.2003. Since the petitioner was appointment and regularisation on 31.03.2003, which is one day prior to the cutoff date of 01.04.2003, hence the petitioner is entitled to GPF. However, the respondents denied GPF, aggrieved over the petitioner submitted a representation, dated 28.09.2020 and filed W.P.(MD)No.15781 of 2020 and

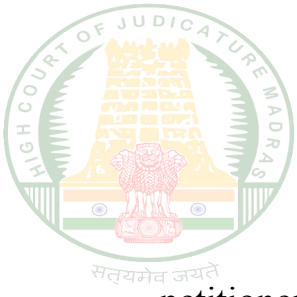


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the Hon'ble Court directed the respondents to consider and pass order. Based on the same the respondent passed the order dated 23.08.2021, which is impugned in the writ petition, wherein the respondents had rejected the claim of the writ petitioner on the ground that previous service cannot be included as the petitioner had resigned from the said service, which would amount to forfeiture of earlier service. As far as date of appointment and joining in service on 31.03.2003 is concerned, the same was rejected by referring to FR 17(3) of the Fundamental Rules which provides that the pay and allowance attached to the tenure of a post with effect from the date on which the person assumes the duties of the post, if the charge is transferred before noon of that date. If the charge is afternoon, he commences to draw them from the following day. According to the petitioner both the reasons are misconceived and against the provisions of Tamil Nadu Pension Rules, 1978. Hence the petitioner challenged the same in the writ petition.

4. The respondents had filed counter stating that the petitioner was working as P.G. Assistant with effect from 12.11.1981 to 07.07.1988 in Fathima Girls Higher Secondary School, then from 08.07.1998 to 25.03.2002 the



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petitioner was not in service, then from 26.03.2002 to 31.03.2003 was on consolidated pay on contract basis, then resigned on 31.03.2003, thereafter appointed as Block Resource Teacher Educator by way of direct recruitment and joined duty on A.N. 31.03.2003. As she joined in afternoon on 31.03.2003 her service begins with effect from 01.04.2003, hence the petitioner cannot be treated as joined the service prior to 01.04.2003. The consolidated service on contract basis cannot be added since as per the conditions laid down at the time of appointment. Further she resigned from service on 31.03.2003, hence the past service was forfeited. Therefore, the petitioner is not entitled to GPF, hence prayed to dismiss the writ petition.

5. After considering the rival submission the Writ Court had allowed the petition and directed to include the petitioner under General Provident Fund, disburse the retirement benefits with effect from 30.04.2016 including the gratuity and other monetary benefits along with arrears. As far as the past services for the period from 26.02.2002 to 31.03.2003 half of the services was directed to be taken into account by applying the mandates of Full Bench order. Aggrieved over the same the State had preferred the present Writ Appeal.



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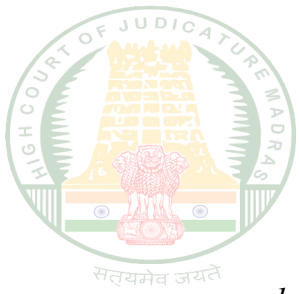
6. The primary contention of the State is that the since the writ petitioner had joined in the afternoon the petitioner is entitled to draw salary from the next day only i.e. from 01.04.2003 as per Rule 17 of Fundamental Rules. In such circumstances, the petitioner is entitled to draw the benefits from 01.04.2003, which is after the cutoff date, hence the petitioner is entitled to CPS and not GPF. In order to consider this, the relevant provision is extracted hereunder:

*“17. A Government servant shall begin to draw the pay and allowances attached to his tenure of a post **with effect from the date when he assumes the duties** of that post, and shall cease to draw them as soon as he ceases to discharge those duties.*

Instructions under Rule 17.

1. Ordinarily, the duties of a post shall be assumed and given up by the relieving and relieved Government servants simultaneously at headquarters, both of them being present. They should both sign a certificate indicating the place and the date and hour at which the change in the incumbency of the post has taken place. The transfer should ordinarily not take place on a Sunday.

2. The Government in the case of heads of departments and the head of the department concerned in other cases, may direct that the transfer shall be effected at a specified place other than the



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headquarters or that the two Government servants concerned shall communicate to one another by post or telegram that they have respectively assumed or given up the duties of a post with effect from a specified date.

(G.O.Ms.No.757, Finance, dated 2nd July 1951.)

The above directions may be issued only for special reasons of a public nature or when a government servant who has been transferred, is spending a vacation at a place other than his headquarters. The exact nature of the reasons should be recorded as a part of the order, full consideration being given to the financial effect which the order will produce.

3. A Government servant will begin to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that post if the charge is transferred before noon of that date. If the charge is transferred afternoon, he commences to draw them from the following day. This rule does not, however, apply to cases in which it is the recognized practice to pay Government servant at a higher rate for more important duties performed during a part only of a day.

RULINGS.

(1) Transfer of an officer is not completed until the certificate of transfer of charge has been signed by both the relieving and the relieved Government servants. When once signed, the relieved Government servant must be regarded as on joining time and must take charge of his new office before its expiry. Ordinarily the transfer



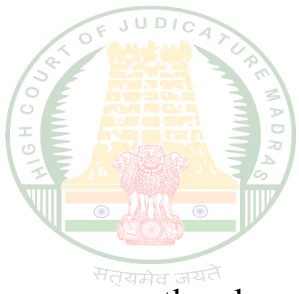
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should be completed before the expiry of the joining time of the relieving Government servant and it is his duty to arrive at, the place of transfer in time to enable him, within his joining time, to complete the transfer. In case in which the relieving Government servant does not sign the transfer certificate within this period, he should be treated as having exceeded his joining time.”

7. FR 17 specifically states that the employee is entitled to draw the pay and allowance from the date when he “**assumes the duties**”. The said FR 17 is not stating from the date of transfer of charge the employee is entitled to the pay and allowances. Further the FR is not qualifying the “time” or “forenoon or afternoon”. If the appellants interpretation is accepted, it would hit the principles of “Casus Omissus”, therefore such interpretation cannot be accepted. In the present case, when the petitioner has assumed charge on 31.03.2003, then the petitioner is entitled to draw pay and allowance from 31.03.2003 onwards.

8. Under FR 17(3) it is stated “If the charge is transferred afternoon, he commences to draw pay and allowance from the following day”. The said FR 17(3) covers a situation when the incumbent employee ought to hand over



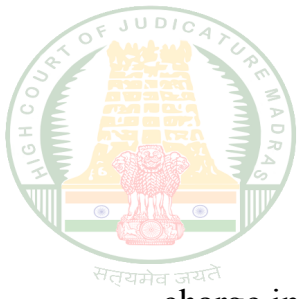
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the charge and the transferred employee assumes charge. In the present case the said post is vacant post and the petitioner was appointed through direct recruitment, hence there is no question of hand over charge or taking charge from the incumbent of the said post.

9. Moreover, when the FR 17 clearly speaks about “assuming charge” and not “transfer of charge”. Therefore, the FR 17 is applicable and FR 17(3) is not applicable to the present facts of the case. In other words, the 1st rule would prevail over the 3rd sub clause. Hence, the petitioner is entitled to pay and allowances from 31.03.2003, consequently entitled to GPF.

10. Even it is accepted for the sake of argument, that the petitioner had assumed charge on 31.03.2003, but the charge was transferred on 01.04.2003, it is not the mistake of the petitioner. Further the transferring of charge is in the hands of appointing authority or the appropriate authority or the incumbent employee or any other situation which the transferred employee has not control over it. Infact the higher authority ought to direct the incumbent to hand over the charge immediately so that the transferred employee assumes the



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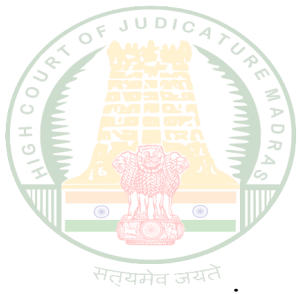
charge immediately.

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11. Even according to the Accountant General had returned the proposal and had insisted relaxation of the rule from the Government. Therefore, the Government has power to grant relaxation.

12. In the present case, even though the Accountant General had insisted for relaxation, this Court is of the considered opinion that the petitioner had assumed charge on 31.03.2003, hence entitled to draw pay and allowance from 31.03.2003 as held supra, consequently the petitioner would come within the GPF scheme and entitled to pension scheme and not CPS scheme.

13. The next contention of the appellant is that 50% of his past service cannot be taken, since the petitioner had resigned, on resignation the past service is forfeited. The Writ Court has granted the relief of 50% service from 26.03.2002 to 31.03.2003 and directed to be included in the pensionable service. It is seen under Rule 23 of Tamil Nadu Pension Rules the “resignation from a service or post entails forfeiture of past service”. However, under



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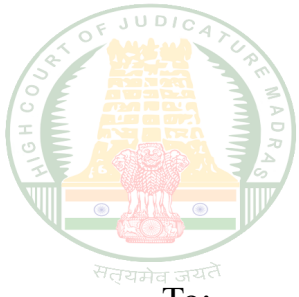
proviso resignation shall not entail forfeiture if resignation is submitted to take up another appointment with proper permission. In the present case the petitioner had resigned on 31.03.2003 and on the same day assumed the new post. Hence there is no proper permission, hence the principles of forfeiture of past service would have come into effect in the present case. Therefore, the writ petitioner is not entitled to include the past service.

14. However as stated in earlier paragraphs the petitioner is entitled to count the service from 31.03.2003 until the retirement dated 30.04.2016. Consequently, the petitioner is entitled to GPF. However, the petitioner is not entitled to 50% past service. Hence the Writ Court order is modified as stated supra.

15. With the above said observations, the writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
03.03.2025

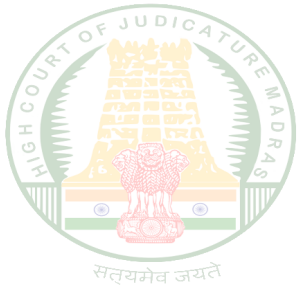
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