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Writ Petition No.1006 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>27.03.2024</i>
<i>Pronounced on</i>	<i>26.04.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition Nos.1006 of 2019

S.Achuthan

..Petitioner

vs.

1.The Secretary to Government,
Educational Department,
Government of Tamilnadu,

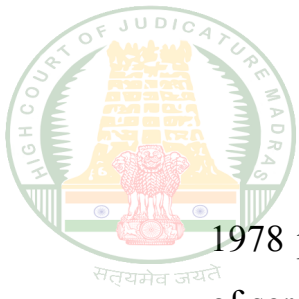
2.The Director of School Education,
Office of the Director of School Education,

3.The State Project Officer,
Teachers Recruitment Board,

4.The Accountant General,
DMS Compound,

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to treat the petitioner as an employee covered under Tamilnadu Pension Rules



Writ Petition No.1006 of 2019

1978 prior to its amendment dated 01.04.2003 consequently to fix the date of service for old pension scheme with effect from 26.03.2003.

For Petitioner : Mr.Isaac Mohanlal, Sr.counsel for
Mr.H.Thayumanaswamy

For Respondents : Mr.L.S.M.Hasan Fizal, AGP for RR1 &2
Mr.M.Alagu Gowtham, GA for R3
Ms.Hema Muralikrishnan for R4

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, to direct the respondents to treat the petitioner as employee covered under Tamilnadu Pension Rules 1978 prior to its amendment dated 01.04.2003 consequently to fix the date of service of the petitioner for old pension scheme with effect from 26.03.2003.

2.The brief facts, which led to the filing of the present Writ Petition, can be stated hereunder:

The petitioner herein, has been appointed as Maths Teacher by way of direct recruitment conducted by the Teachers' Recruitment Board in respect of Block Resource Centre Teachers. He was issued with posting orders dated 26.03.2003, directing him to report duty within 7 days at



Writ Petition No.1006 of 2019

WEB COPY

Anthiyoor Block Resource Centre (Rural), Erode District. Pursuant to the same, when the petitioner went to report duty on 28.03.2003 at 10.00 a.m., he was informed by one Mrs.Visalakshi, Supervisor of the said Block Resource Centre that there was no vacancy in Maths subject and she gave a written letter dated 28.03.2003 addressing to the Director of School Education, Chennai. Later, the petitioner approached the 2nd respondent, who in turn, issued fresh modified appointment order dated 31.03.2003, appointing the petitioner as Maths Teacher at Block Resource Centre, Thirumarugal, Nagapattinam District. Pursuant to the same, the petitioner joined duty on 01.04.2003. Now the grievance of the petitioner is that he was appointed much earlier to the date, i.e. 01.04.2003, on which date, the new Contributory Pension Scheme came into force, however, on certain unfortunate follies committed by the appointing authorities, he was constrained to report duty on and after 01.04.2003, which made him ineligible to claim the erstwhile pension scheme. When the petitioner approached the respondents by way of representations, he was denied the benefit on the ground that as on the date of his appointment, no pension scheme was existing and thereby, he is eligible only to the benefits of new Contributory Pension Scheme. Aggrieved by the same, the petitioner has



Writ Petition No.1006 of 2019

constrained to file the present Writ Petition.

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3.A counter affidavit has been filed on behalf of the second respondent, wherein, it has been stated that the Government vide G.O.Ms.No.259 dated 06.08.2003 has modified the then pension scheme and issued a contributory pension scheme with effect from 01.04.2003 for all the employees who were appointed on or after 01.04.2003. Hence, the petitioner has to accept the new contributory pension scheme as ordered in G.O.Ms.No.259 dated 06.08.2003 and thereby the petitioner is not entitled to be covered under the Tamilnadu Pension Scheme 1978. Due to administrative reasons, the petitioner was issued with the revised appointment order on 31.03.2003. The respondents would not expect that a new pension scheme is going to be implemented with effect from 01.04.2003 at the time of issuing of appointment order to the petitioner since the new pension scheme order was issued only in the month of August 2003. The petitioner cannot, as a matter of right claim that he was appointed prior to 01.04.2003. It is also the decision of the Government to bring all the persons who were appointed on or after 01.04.2003 into new pension scheme and hence relaxation cannot be given for the delay caused in



Writ Petition No.1006 of 2019

WEB COPY

administrative process and for this purpose, no lapse can be attributed on the part of the respondents. With these averments, the second respondent sought for dismissal of the Writ Petition.

4.It is pertinent to note that the Government, vide G.O.Ms.No.259, dated 06.08.2003 has replaced the then pension scheme existing prior to 1st April, 2003 and introduced a Contributory Pension Scheme with effect from 01.04.2003 for all the employees who were appointed on or after 01.04.2003.

5.The learned counsel appearing for the petitioner would contend that the very appointment order issued by the 2nd respondent was dated 26.03.2003, by which, it is clear that the petitioner was appointed on 26.03.2003 itself and he was a week's time to join duty. He would further contend that pursuant to the appointment order, when the petitioner tendered to report duty on 28.03.2003, however, due to inadvertent mistake committed by the appointing authorities as regards the place of work, where no such vacancy was available, by which, the petitioner was constrained to approach the concerned authorities and got rectified appointment order and



in the meantime, there was delay in reporting to duty on or after 01.04.2003

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and it is absolutely not his fault. Therefore, the learned counsel would vehemently contend that the very appointment of the petitioner itself came to be made as early as on 26.03.2003, which is prior to 01.04.2003, there is no justification on the part of the respondents to apply G.O.Ms.No.259 dated 06.08.2003 and bring the petitioner under the Contributory Pension Scheme.

6. In support of his contentions, the learned counsel for the petitioner has placed reliance upon the following decisions, viz.,

i) ***“Tukaram Kana Joshi and others versus Maharashtra Inndustrial Development Corporation and others”*** reported in (2013) 1 SCC 353

ii) ***“S.Mary Sherly versus Secretary to Government, Education Department, Chennai and others”*** reported in (2013) 3 MLJ 56;

iii) ***“Judgment in W.A (MD) No.370 of 2018, dated 14.03.2018”*** passed by a Division Bench of this Court;

iv) ***“Order in Rev.Aplw.No.167 of 2019 in W.P.No.5413 of 2014”*** passed by this Court;

v) ***“P.Ranjitharaj versus State of Tamil Nadu and others”*** reported



Writ Petition No.1006 of 2019

in 2022 SCC OnLine SC 508; and

WEB COPY iv) Common order in W.P.Nos.8584, 8592 etc. of 2021 dated 10.02.2023 passed by this Court;

7. *Per contra*, the learned Additional Government Pleader appearing for the respondents 1 & 2 would contend that though the petitioner was recruited prior to 01.04.2003, admittedly, he had joined duty on or after 01.04.2003 on which date only, his services would reckon and the Government, issued G.O.Ms.No. 259 dated 06.08.2003 replacing the then pension scheme existing prior to 1st April, 2003 and introduced a Contributory Pension Scheme with effect from 01.04.2003, wherein, it has been specifically clarified that the persons who were selected prior to 01.04.2003 and joined after 01.04.2003, should be brought under the Contributory Pension Scheme. Therefore, the petitioner, who had joined the duty on or after 01.04.2003, is not entitled to seek the benefits of the erstwhile pension scheme. With these contentions, the learned Additional Government Pleader sought for dismissal of the Writ Petition.

8. Heard the learned Senior counsel appearing for the petitioner and



Writ Petition No.1006 of 2019

the learned Additional Govt.Pleader appearing for the respondents 1 & 2 and

the learned Government Advocate appearing for the third respondent and

perused the entire materials placed on record.

9.This Court has carefully considered the submissions of the respective counsels and examined the materials available on record. There is no dispute that the old Pension Rules shall not apply to the Government servants, who appointed on or after 01.04.2003.

10. The only issue arises for consideration in this Writ Petition, is whether the petitioner should be given the benefit of the old pension scheme on the basis of the commencement of the selection process much before 01.04.2003 and whether the date of joining in the said post by the petitioner has to be considered?

11.While dealing with the batch of Writ Petitions in WP.No.8584 of 2021 and batch, the learned Single Judge of this Court while following the judgments of the Apex Court and the other High Courts, has held that if the selection process of the petitioners had been completed with the very same



speed with which it was done for the women Constables, the petitioner would have had the benefit of the old Pension Scheme. It is further held that even though the appointment order was issued to the petitioner during November 2003, that will not in any way deprive the petitioner the benefit of the old Pension Scheme since the process of selection had commenced through notification dated 25.05.2002. The relevant paragraphs of the said judgment are extracted hereunder:

“13. The judgment of the Delhi High Court that was cited by the learned Senior Counsel appearing on behalf of the petitioners, gives some indication as to how the issue involved in the present case should be dealt with. In the case in WP(C) 8208 of 2020, the notification was issued during June 2003 and September 2003 and the contributory Pension Scheme was brought into force during December 2003 and it was made effective from 01.01.2004. The petitioners therein got their appointment orders between June to July 2004. The Delhi High Court after taking into consideration certain early judgments, came to a conclusion that the option to continue the old Pension Scheme must be extended to all those persons, who had participated in the selection prior to the crucial date, but however got their call letters after the crucial date.

“14. The other judgment that was relied upon by the



WEB COPY



Writ Petition No.1006 of 2019

learned Senior Counsel in WP.(C) 756 of 2020, also reiterates the very same position and it was held that the benefits must be extended by taking into consideration the period during which the selection process took place and not when the same was concluded and appointment order was given.

“15. The language in G.O.No.259, dated 06.08.2003 is quite clear that the old Pensions Scheme will not apply to the Government servants appointed on or after 01.04.2003. The appointment is a continuous process starting from the date of issuance of the notification and ending with issuing the appointment orders. Whenever a beneficial Pension Scheme is applied, particularly to the employees, a wider interpretation must be given so as to benefit a large section of the employees. The Court should not adopt a strict interpretation and thereby deprive an employee of a beneficial Pension Scheme.

“16. In this case, the process of selection started with the issuance of Notification dated 25.05.2002, which is nearly 11 months before the new Pension Scheme was brought into force through G.O.No.259, dated 06.08.2003. This Government Order fixed the cut-off date as 01.04.2003. If the selection process of the petitioners had been completed with the very same speed with which it was done for the women Constables, the petitioners would have



WEB COPY



Writ Petition No.1006 of 2019

had the benefit of the old Pension Scheme. However, there was a delay in completing the selection process and it is nobody's case that the delay is attributable to the petitioners. Hence, even though the appointment order was issued to the petitioners during November 2003, that will not in any way deprive the petitioners the benefit of the old Pension Scheme since the process of selection had commenced through Notification dt.25.05.2002. This Court is in complete agreement with the judgement of the Delhi High Court that has been extracted supra. Those judgements were also confirmed by the Apex Court. The reasoning that has been given in the above judgements perfectly falls in line with regard to interpreting a beneficial Scheme. In view of the same, this Court comes to the conclusion that the petitioners cannot be deprived of the benefit of the old Pension Scheme.”

12. In the present case also, the selection process was commenced long back and the appointment order was issued to the petitioner much earlier i.e., on 01.04.2003 and due to the reasons stated by the petitioner that some mistake crept in the appointment order as such he joined duty on 31.03.2003.



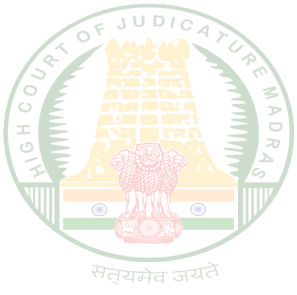
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13.This Court is in complete agreement with the finding of the learned Single Judge rendered in W.P.No.8584 of 2021 and batch. In fact, in the present case, the situation is much better than the Writ Petitions allowed by this Court. By following the said judgments, this Court is of the considered opinion that the date of commencement of the selection process for appointment has to be taken into consideration to extend the benefit of the old pension scheme but not the date of issuing appointment order or the date of joining by the employee.

14.For the reasons stated above, this Writ Petition is allowed with the following directions:

(i) There shall be a direction to the respondents to consider the representations of the petitioner dated 17.04.2015, 10.06.2017 & 09.11.2018 respectively and the petitioner shall be brought under the old Pension Scheme that was prevailing prior to the implementation of G.O.Ms.No.259 dated 06.08.2003 and whatever contribution has already been recovered from the petitioner, shall be transferred to the old Pension Scheme.

(ii) This process shall be completed by the respondents within a period of eight(8) weeks from the date of receipt of a copy of this order.



No costs.



Writ Petition No.1006 of 2019


WEB COPY


26.04.2024

Index : Yes/No


Speaking order: Yes/No
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To

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2.The Director of School Education,
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3.The State Project Officer,
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BATTU DEVANAND, J

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WEB COPY



Writ Petition No.1006 of 2019

Pre-Delivery order in
Writ Petition No.1006 of 2019

26.04.2024