
(2011) 10 MAD CK 0228
In the Madras High Court
Case No : Writ Petition No. 24045 of 2009

V. Jeeva

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Citation : (2011) 10 MAD CK 0228

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Sellapandian for M/s. C.S. Associates, for the Appellant; I. Arokiasamy, GA (Education), for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has come forward to challenge an order dated Nil (October 2009) and received by the petitioner on 20.10.2009. By the said order passed by the second respondent Director of School Education, the petitioner was informed that as per the Government letter, dated 7.10.2009, the new pension scheme will apply to the petitioner and that he is not eligible to be covered by the old pension scheme. Hence he cannot be given any GPF number. The impugned order came to be passed on the petitioner filing a writ petition earlier in W.P. No. 7515 of 2009, wherein this court had directed the petitioner's representation dated 12.1.2009 to be considered in accordance with law.

2. This writ petition was admitted on 24.11.2009. Pending the writ petition, this court had declined to grant any interim relief and hence the application for interim relief was rejected on 16.7.2010.

3. On notice from this court, the second respondent has filed a counter affidavit, dated Nil (2010) together with supporting documents. It must be noted that the State Government by G.O.Ms. No. 259, Finance (Pension) Department, dated 6.8.2003 had introduced a new contributory pension scheme for employees who

were recruited on or after 1.4.2003 and that the old pension rule will not apply. Subsequently, an another Government Order was issued in G.O. No. 430, Finance (Pension) Department, dated 6.8.2004 stating that the persons who have joined on or after 1.4.2003 become members of the new contributory pension scheme and 10% of their basic pay and DA would be deducted from the salary of the Government employees towards the scheme.

4. The case of the petitioner was that the Teachers Recruitment Board had called for a list of candidates on 9.2.2002 for appointment to the post of Block Resource Teacher Educator in various subjects. He had applied for the post of Block Resource Teacher Educator (Botany). During February, 2003, he was called for certificate verification as he had come out successful in the written examination. He was appointed on 26.3.2003 and posted at Block Resource Centre at Madhanur, Vellore District. When he went to join duty on 27.3.2003, he was not allowed to join as there was no vacancy. Thereafter, he had contacted the fourth respondent Chief Educational Officer, Vellore who had directed him to approach the second respondent Director of School Education. Thereafter, he had approached the Joint Director on 28.3.2003. The petitioner was once again asked to come to his office on 29.3.2003. Finally, on 31.3.2003, the third respondent gave the revised posting order appointing him as BRTE at Block Resource Centre, Thimiri, Vellore District. The petitioner had joined duty on 1.4.2003. Inasmuch as he was appointed on 27.3.2003, the new contributory pension scheme will not apply to the case of the petitioner.

5. However, the stand of the second respondent was that the order of appointment was given to him on 26.3.2003 posting him in Madhanur, Vellore District. There was no post vacant and that the joining time of one week was given. It was also stated in the order itself that they should intimate the date of joining to the joint Director of School Education (Personnel). The person who took charge in the Block Resource centre will be allowed to join only after confirmation by the Supervisor that the post is vacant. Therefore, when the petitioner went and reported for work, he could not be accommodated. Subsequently, on an information being furnished, the revised order was furnished only on 31.3.2003 posting him at Thimiri Block Resource centre. Admittedly, the petitioner had joined duty in that place only on 1.4.2003.

6. In the counter affidavit in paragraph 6, it was averred as follows:

6....it is submitted that Government have introduced this new pension scheme in G.O.Ms. No. 259 Finance (Pension) Department, dated 06.08.2003 and G.O.Ms. No. 430 Finance (Pension) Department, dated 06.08.2004 it has ordered that it is mandatory for all the new employees, who were recruited on or after 01.04.2003 to become members of the contributory pension scheme. Many of the Block Resource Teacher Educators who were recruited by Teachers Recruitment Board along with the petitioner and who got appointment orders before 01.04.2003 but joined on and after 1.4.2003 were brought under new contributory pension scheme....

7. Therefore, for all practical purposes, the petitioner is paid salary only from the month of April, 2003 and that it will be presumed that he has been in service only from 1.4.2003, the date on which he was allowed to join on a clear vacancy. In the light of the stand taken by the respondents, the contentions made by the petitioner cannot be countenanced by this court. Hence the writ petition will stand dismissed. No costs.