

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(s.) 3176-3177 OF 2022**  
**(Arising from the SLP(Civil) No(s).14438-39 OF 2019)**

**P. RANJITHARAJ**

**...Appellant(s)**

**VERSUS**

**THE STATE OF TAMIL NADU & ORS.**

**...Respondent(s)**

**WITH**

**CIVIL APPEAL NO(s.) 3178 -3179 OF 2022**  
**(Arising from the SLP(Civil) No(s). 7824-7825 OF 2022)**  
**(D. NO.9915 OF 2019)**

**J U D G M E N T**

1. Delay condoned.
2. Leave granted.
3. The present appeals have been filed assailing the judgment dated 19<sup>th</sup> June, 2014 and later order dated 2<sup>nd</sup> November, 2018

passed in review application, whereby the appellants have been denied to become member of the Tamil Nadu Pension Rules, 1978.

4. The indisputed facts manifest from the record are that 53 vacancies of Assistant Public Prosecutor Grade II (hereinafter referred to as “APP Grade II”) came to be advertised by the Tamil Nadu Public Service Commission (hereinafter referred to as “the Commission”) by advertisement dated 9<sup>th</sup> November, 2001. After undertaking the process for selection, the final select list was sent by the Commission to the State Government, pursuant to which 51 persons, including those who are lower in order of merit to the appellants herein, were appointed on the post of APP Grade II by the Government by order dated 24<sup>th</sup> September, 2002.

5. So far as the present appellants are concerned, their names at the given point of time were withheld for want of further verification and clearance from the Commission. The Commission on verification granted clearance to both the appellants and intimated to the State Government by its communication dated 3<sup>rd</sup> September, 2002 (much before the appointments made by order dated 24<sup>th</sup> September, 2002). Despite all the formalities being completed, without any reasonable cause or justification, the State Government

withheld the appointments of the appellants and finally both the appellants were appointed on the post of APP Grade II on 23rd August, 2005 and 23rd April, 2004 respectively.

6. In the meanwhile vide notification dated 6<sup>th</sup> August, 2003, an amendment was made under the Tamil Nadu Pension Rules, 1978 which came into force w.e.f. 1<sup>st</sup> April, 2003 and following proviso was added to Rule 2 :

“Provided that these rules shall not apply to Government Servants appointed on or after 1<sup>st</sup> April, 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent.”

7. Accordingly, the State Government introduced a new Contributory Pension Scheme applicable to the Tamil Nadu State Government employees who are recruited on or after 1<sup>st</sup> April, 2003.

8. The grievance of the appellants is that advertisement was published by the Commission on 9<sup>th</sup> November, 2001 for the block year 1998-2002, pursuant to which after selection 51 candidates out of 53 (except the appellants) were appointed by order dated 24<sup>th</sup> September, 2002 and before these appointments could be made, the names of the appellants were also cleared by the Commission after due verification on 3<sup>rd</sup> September, 2002, but the State Government failed to include their names while appointments of other selected candidates, including those who are lower in order of merit,

were made on 24<sup>th</sup> September, 2002 and without any reasonable cause/justification, their appointments were withheld for two/three years and finally they were appointed on 23rd August, 2005 and 23rd April, 2004 respectively and the delay in appointments in no manner could be attributable to the appellants and because of their later appointments, the Government has denied them to avail the benefit and become a member of the Scheme, 1978 which was applicable to the employees who were appointed on or before 1<sup>st</sup> April, 2003.

9. The counsel for the appellants further submits that in terms of their placement in order of merit in the select list despite later appointments in the year 2004 and 2005, still all benefits, including seniority, promotion, etc. were extended to the appellants. In the given circumstances, merely because there is delay in appointment would not deprive the appellants of their right to become a member of the Pension Scheme, 1978 claiming parity with the other candidates who had participated in the common process of selection held by the Commission pursuant to advertisement dated 9<sup>th</sup> September, 2001 and the High Court has committed a manifest error to proceed blindly on the premise that since they were appointed after 1<sup>st</sup> April, 2003, are not entitled to become member of Pension Scheme, 1978,

which was applicable to the employees appointed on or before 1<sup>st</sup> April, 2003 and the same needs to be interfered with by this Court.

10. Learned counsel for the respondents, on the other hand, while supporting the finding recorded by the High Court under the impugned judgment, submits that the Scheme of Rules 1978 which has been amended by the notification dated 6<sup>th</sup> August, 2003, is not under challenge and that clearly demonstrates that it will be applicable only to such of the employees who were appointed on or before 1<sup>st</sup> April, 2003, to draw the benefits of the Tamil Nadu Pension Rules, 1978. Admittedly, the present appellants were appointed much after the new Contributory Pension Scheme was introduced, which was applicable to the employees recruited on or after 1<sup>st</sup> April, 2003, which alone will be applicable to the present appellants and this what the High Court has observed in the impugned judgment and needs no further interference by this Court.

11. After we have heard counsel for the parties and with their assistance perused the material available on record, in our considered view, the premise on which the High Court has proceeded is not sustainable for the reason that the appellants along with other applicants had participated in the self-same selection process pursuant to advertisement dated 9<sup>th</sup> September, 2001 held for the post

of APP Grade II and verification was made by the Commission in the case of the present appellants on 3<sup>rd</sup> September, 2002.

12. In the given circumstances, when those who are lower in order of merit to the appellants were appointed by an order dated 24<sup>th</sup> September, 2002, the appellants have no right of say in the matter of appointment and no justification has been tendered by the State respondent as to why their names were withheld for two/three years, when their names were cleared by the Commission on 3<sup>rd</sup> September, 2002 and sent to the State Government and finally appointments were made of the appellants on 23<sup>rd</sup> August, 2005 and 23<sup>rd</sup> April, 2004 respectively and the delay indeed in making appointments in the case of the present appellants in no manner could be attributable to them.

13. In the given circumstances, when all other candidates who had participated along with the appellants pursuant to advertisement dated 9<sup>th</sup> November, 2001, on the recommendations made by the Commission were appointed on 24<sup>th</sup> September, 2002 including those who are lower in the order of merit, there appears no reason for withholding the names of the present appellants and merely because they were appointed at a later point of time, would not deprive them from claiming to become a member of Tamil Nadu Pen-

sion Rules, 1978, which is applicable to the employees who were appointed on or before 1<sup>st</sup> April, 2003.

14. In the facts and circumstances, the finding recorded by the High Court qua the present appellants is not sustainable and deserves to be set aside.

15. The appeals are accordingly allowed and the judgment and order dated 19<sup>th</sup> June, 2014 and 2<sup>nd</sup> November, 2018 of the High Court qua the appellants are set aside. The respondents are directed to treat the present appellants to be a member of the Tamil Nadu Pension Rules, 1978 for all practical purposes and benefits as member of the Rules, 1978 to which the appellants are entitled, including retiral benefits, be made available to them. No costs.

16. Pending application(s), if any shall stand disposed of.

.....J.  
(AJAY RASTOGI)

.....J.  
(BELA M. TRIVEDI)

**New Delhi**  
**APRIL 25, 2022.**