



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

W.A. (MD) No.705 of 2015 and M.P. (MD) No.1 of 2015

M.Moorthi

... Appellant / Petitioner

Vs.

1.The Chief Secretary to the Government,
Government of Tamil Nadu,
St.George Fort,
Chennai - 9.

2.The District Collector,
Collectorate, Tuticorin District

3.The Sub Collector,
Sub Collector Office, Tuticorin.

4.The Tahsildar,
Tuticorin Taluk
Tuticorin District.

... Respondents / Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent Act, against the order passed by this Court in W.P. (MD) No.9715 of 2015, dated 17.06.2015.

Prayer in WP(MD). 9715/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the third respondent to adhere the guidelines laid down in the G.O.Ms.No.144, dated 08.06.2007 issued by the 1st respondent in pursuant to the superannuation of the petitioner.

For Petitioner : Mr.K.Seemaraj
For Respondents : Mr.N.Manohar,
Spl.Govt.Pleader

JUDGMENT

(Order of this Court was made by S.MANIKUMAR, J.)

Material on record discloses that writ petitioner has sought for a Mandamus, directing the Sub-Collector, Tuticorin, to adhere to the guidelines laid down in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, issued by the Government, on attaining the age of superannuation.

2. Adverting to the averments, learned Single Judge, at para No.4, has ordered as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

4.The prayer sought in this Writ Petition as such cannot be granted because the issue whether an



employee placed under suspension is allowed to be retire or not has to be decided by the appropriate authority and also this Court cannot give a blanket direction to the respondents to allow the petitioner to retire on attaining superannuation in terms of the guidelines given in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 which is also the matter to be decided by the respondents and not this Court. However, without expressing any opinion on the merits of the issue involved, the third respondent is directed to consider the representation of the petitioner dated 10.06.2015, and take appropriate decision in accordance with law and communicate the same to the petitioner on or before 30.07.2015 if there are no legal impediments. This Court also expresses its unhappiness over the attitude of the petitioner in approaching this Court at eleventh hour and that too the representation has been given only on 10.06.2015."

3. Today, i.e. on 30.06.2015, the appellant attains the age of superannuation. Therefore, apprehending that he would be placed under suspension and being aggrieved by the date fixed for the disposal of the representation that is, on or before 30.07.2015, Writ Appeal is filed.

4. When we posed a question to the learned counsel for the appellant as to whether, the Writ Court, was requested to amend the date as 30.06.2015 instead of 30.07.2015, the answer was that despite request, it was not considered. There is no such averments in the supporting affidavit filed to M.P.(MD)No.1 of 2015, praying for Stay of the operation of the impugned order made in W.P.No.9715, dated 17.6.2015. Grounds also did not disclose the same.

5. A Government Servant attains the age of superannuation on completion of 58 years. According to the appellant, today is the date, on which the appellant attains the age of superannuation. Therefore, the respondents have to consider the said date, and pass orders. The issue as to whether a Government Servant to be placed under suspension or allowed to be retired, has to be decided only by the competent authority. Blanket direction cannot be issued. Procedures for retention of the Government Servant in service, after attaining the age of superannuation is governed by Fundamental Rule 56, which reads as follows:-

"56(1) Retirement on Superannuation.(a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu



Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years :

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.

Explanation I. When a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government servant shall retire, revert or cease to be on leave, with effect on and from that day.

Explanation II. The grant under rule 86 or corresponding other rules of leave extending beyond the date on which a Government servant must retire or beyond the date upto which a Government servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of Pensionary or Contributory Provident Fund benefits or retention of lien. The Government servant shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be.

(b) [Omitted]

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order



passed thereon by the competent authority or by any higher authority.

Explanation. For the purpose of this clause, the expression criminal misconduct shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56 (1) (c). Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.

6. There is no valid ground to interfere with the impugned order. Hence, the Writ Appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

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3.The Sub Collector,
Sub Collector Office, Tuticorin.

4.The Tahsildar,
Tuticorin Taluk
Tuticorin District.

+1cc to Special Govt.Pleader SR.No. 35009
+1cc to Mr.K.Seemaraj,Advocate SR.No.34984

W.A. (MD) No.705 of 2015
30.06.2015

mpk

PA/IV/14.07.2015/4P/7C