

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.06.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.A. NO. 577 OF 2016

AND

C.M.P. NO. 7610 OF 2016

1. The Labour Officer (Social Security Scheme)
No.24, 1st Cross Street
Seetharam Nagar, Pudhupalayam
Cuddalore - 1.
2. The Commissioner of labour
DMS Compound
Teynampet, Chennai - 600 006. ... Appellants

- Vs -

1. M.Meenakshi
2. Tamil Nadu Manual Workers
Welfare Board, rep. By its, Secretary
G-133, Chinthamani Co-operative
Commercial Complex
Anna Nagar East, Chennai 600 102. .. Respondents

Writ Appeal filed against the order dated 19.06.2014 passed by the learned single Judge in W.P. No.30030 of 2013.

Petition filed u/art 226 of constitution of India praying to issue a writ of certiorarified mandamus Calling for the concerned records from the 2nd respondent quash the proceedings of the 3rd respondent bearing W1/22093/09 dated 4.12.2009 and the order of the 2nd respondent dated 11.6.2013 bearing No.Street Vending/3209/2013 and consequently direct the respondents to pay the pension at rate of Rs.1000/- per month for the period from May 2013 as per Clause 18(1) of the Tamil Nadu Manual Workers Social Security and Welfare Scheme 2006.

For Appellants : Ms. A.Srijeyanthi, Spl. G.P.

For Respondents: Mr. Balan Haridas for R-1

ORDER

(DELIVERED BY HULUVADI G.RAMESH, J.)

This writ appeal is filed by the appellants challenging the order passed by the learned single Judge, wherein the learned single Judge has directed the appellants to pay the pension amount to the petitioner along with arrears.

2. The petitioner/respondent herein filed writ petition, W.P. No.30030/2013 for issuance of a writ of certiorarified mandamus and to quash the proceedings of the 3rd respondent, viz., Commissioner for Labour and also sought for payment of pension @ Rs.1000/= per month and to implement the order of the 2nd respondent, viz., the Secretary, Tamil Nadu Manual Workers Welfare Board, dated 11.6.13 from 1st May, 2013.

3. The petitioner is a registered manual worker, registered with the 2nd respondent Board. For the purpose of age proof, the petitioner submitted medical certificate as required under Form I, wherein the Medical Officer has certified the age of the petitioner as 58 years. As per the Tamil Nadu Manual Workers (Regulation of Employment & Conditions of Work) Act, 1982, it provides for the formulation of a the Tamil Nadu Manual Social Security & Welfare Scheme, 2006, which provides for various benefits to the manual workers. On completion of 60 years, the petitioner claimed pension as per the Scheme framed. However, her application was rejected vide the impugned order of the 2nd respondent basing on the proceedings of the 3rd respondent.

4. The 3rd respondent rejected the claim of the petitioner for pension on the ground that though the petitioner had retired only on 30.4.2013, she has not renewed her membership, which expired on 17.4.2013 and as there was no valid membership on the date of her retirement and, therefore, she is not eligible for pension.

5. Aggrieved by the said order, the petitioner approached this Court. Learned single Judge, after hearing the parties, in para-14 of the order has held that there is no rationale behind the procedure adopted by the 3rd respondent in fixing the date of registration as the date of birth for those persons, who register on the first day of the month and for others fixing it as the last day of the month. Learned single Judge held that such a procedure is discriminatory and violative of Article 14 of the Constitution. It was further held that when normally the service rules, for all practical purposes, provide for superannuating the employee on the last day of the month and salary as well as all retirement benefits, including pension are settled on that basis, the reason attributed by the 3rd respondent authority for rejecting the claim of the petitioner for pension being that the membership has not been renewed from 17.4.2013 to 30.4.2013 and, therefore, the petitioner is not entitled for payment of pension cannot be sustained.

6. Learned Special Government Pleader appearing for the appellants contended that since the petitioner/1st respondent herein had not renewed her membership between 17.4.2013 and 30.4.2013, on which date she superannuated, the 3rd respondent was justified in rejecting the claim of the petitioner.

7. Heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available in the typed set of documents.

8. A careful reading of the order of the learned single Judge reveals that on account of misinterpretation, the 3rd respondent has passed the impugned order. Learned single Judge has observed that in respect of manual workers, whose date of birth is not known, the date of registration can be taken as the date of birth uniformly for all the persons, who are unable to tell their date of birth.

9. It is settled position of law that for all benefits to which an employee is entitled, it is not the date of birth of the employee which is relevant but the end of the month in which he is retiring alone is relevant. The stand of the 3rd respondent that the employee has not renewed his membership between 17.4.2013 to 30.4.2013, and the crucial date on which date he was superannuated, the employee not having valid membership, he is not entitled to pension is only a misinterpretation of the legal position.

10. It is not the employee who is retiring from service, rather she is made to retire from service by the employer. It is the practice of retiring the employee only at the end of the month and not on the date when she attains the crucial age. Therefore, for all practical purposes, the employee is deemed to have retired on the date of her attaining the crucial age, based on her date of birth and for administrative reasons the employee is being treated as retired at the end of the month. In the case on hand, as directed by the learned single Judge, the date of registration of the employee being taken as the date of birth, technically for all purposes, the employee having completed 60 years, is deemed to have retired on that day, but for the administrative reasons when she is relieved on the last day of the month. So, there is no necessity for the employee to have her membership renewed from 17.4.2013 to 30.4.2013, she having attained the age of superannuation. Therefore, learned single Judge was right in quashing the order passed by the 3rd respondent and this Court is of the considered opinion that no interference is called for with the well considered order passed by the learned single Judge.

11. For the reasons stated above, this writ appeal fails and the same is dismissed. The respondent authorities are directed to pay the pension to the petitioner/respondent herein from 1.5.2013. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

GLN

To

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1 cc to Mr. Balan Haridas, Advocate, Sr. 29810
1 cc to Government Pleader, sr. 30142

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