



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.12.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.194 of 2014
and
M.P. (MD) .No.1 of 2014

M.Thomas

... Petitioner

Vs.

1.The State of Tamil Nadu Represented by its
Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Chennai - 600 009.

2.The Director of Town Panchayats,
Kuralagam, Chennai - 600 108.

3.The Assistant Director of Town Panchayats,
Collectorate,
Nagercoil,
Kanyakumari District.

4.The Executive Officer,
Pacode Town Panchayat,
Pacode, Thickenkuruchi Post - 629 168,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the records in pursuant to the Impugned Order passed by the 4th Respondent in his Proceedings Na.Ka.No.264/2013/A1, dated 01.04.2013 and quash the same and consequently direct the respondents to permit the petitioner to allow retire from service on attaining the age of sixty years and disburse all attendant and pensionary benefits within a stipulated time that may be fixed by this Honourable Court.

For Petitioner : Mr.M.Saravanakumar
For R1 to R3 : Mr.M.Rajarajan
Government Advocate
For R4 : Mr.S.Chandrasekar

**ORDER**

This writ petition has been filed to set aside the impugned order passed by the fourth respondent in Na.Ka.No.264/2013/A1, dated 01.04.2013 and consequently direct the respondents to permit the petitioner to retire from service, on attaining the age of sixty years and disburse all attendant and pensionary benefits within a time frame.

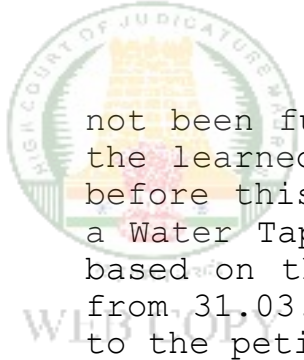
2. The petitioner joined in the service of Tax Collector in the Pacode Town Panchayat, on 31.12.1981 and subsequently deputed in street light maintenance on 15.11.1985 as per Resolution No.23, dated 15.11.1985, passed by the fourth respondent Town Panchayat Council. Subsequently, the fourth respondent passed an order in his proceedings No.A1/107/99, dated 28.03.2001 and thereby brought the petitioner as Water Tape Fitter on consolidated pay. As per orders of the fourth respondent, the petitioner was continued as Water Tape Fitter in the fourth respondent Town Panchayat. Thereafter, as per orders of the respondents 1 and 2, the fourth respondent passed an order in his proceedings Na.Ka.No.161/2006, dated 31.07.2006, and thereby brought the petitioner's services into regular time scale of pay with effect from 23.06.2006.

3. According to the petitioner, as per Rule 21 of the Tamil Nadu Town Panchayats Establishments Rule, 1988, the petitioner is entitled to work up to the age of 60 years. The above said Rule is extracted hereunder:

"21. Age of retirement: No officer or servant of a Town Panchayat in superior shall be retained in its service after he has attained the age of 58 years. A person in basic service shall not be retained in service after he has completed the age of 60 years."

As per the above Rule, the petitioner is entitled to work up to the age of 60 years. On that basis, the petitioner was allowed to continue in service, after he attained the age of 58 years on 31.05.2011, for a further period of 22 months.

4. Reading of the Rule reveals that the person working in superior service will retire at the age of 58 years and the basic servant shall retire at the age of 60 years. Based on the above Rule, the petitioner was allowed to continue till 31.03.2013, even though, the petitioner was completed the age of 60 years, on 31.05.2013. Based on the Audit Objection, the fourth respondent passed the impugned order, dated 01.04.2013, stating that the petitioner ought to have allowed to retire at the age of 58 years i.e., on 31.05.2011, and further stated that he has been allowed to continue for further period of 22 months, after attaining the age of superannuation at 58 years and hence the fourth respondent have decided to recover the salary of 22 months, in-advertently paid to the petitioner by them. Even though, a copy of the Audit Report has



not been furnished to the petitioner along with the impugned order, the learned counsel for the fourth respondent has produced the same before this Court and contended that the petitioner was employed as a Water Tape Fitter, which was equivalent to Record Clerk and hence based on the Audit Objection, he was allowed to retire with effect from 31.03.2013, apart from to recover the wages inadvertently paid to the petitioner for a period of 22 months.

5. Even though, the learned counsel for the petitioner contended that the respondents have permitted a number of persons working in the basic service, who have been allowed to continue after the age of 58 years, per contra, a detailed counter has been filed by the fourth respondent stating that the persons, who have been allowed to continue after 58 years and their salary paid after the age of 58 years would be recovered.

6. A cursory glance on the Rule and the provisions of the Act mentioned supra is very clear that the petitioner was only a basic servant, who is allowed to continue up to the age of 60 years. Even assuming for the sake of argument that he has got retired at the age of 58 years, for the services rendered by the employee, wages paid to them cannot be recovered at any stage. Since the petitioner is a basic servant and the action of the fourth respondent in passing the impugned order is illegal and liable to be interfered with and the same is set aside. Therefore, the petitioner would be entitled to continue up to the age of 60 years, i.e., up to 31.05.2013 and the petitioner will be entitled to get salary for a period of two months, namely April and May 2013, apart from the fact that he would be entitled to all terminal benefits as if he has attained the age of superannuation on 31.05.2013. While setting aside the impugned order passed by the fourth respondent, this Court makes it very clear that the arrears of wages, if any, together with terminal benefits, will have to be settled as expeditiously as possible, preferably on or before 31.03.2017, failing which, it would be fetch interest at the rate of 12% from 01.04.2014, i.e., the month of filing of the Writ Petition and the respondents 1 to 3 will have to identify the officer, who has to implement the order, and if the order is not implemented, the amount of interest payable to the employee can be recovered from the officers concerned.

7. Accordingly this writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



1.The Principal Secretary to Government,
Municipal Administration and
Water Supply Department,
Chennai - 600 009.

2.The Director of Town Panchayats,
Kuralagam, Chennai - 600 108.

3.The Assistant Director of Town Panchayats,
Collectorate, Nagercoil,
Kanyakumari District.

4.The Executive Officer,
Pacode Town Panchayat,
Pacode,
Thickuruchi Post - 629 168,
Kanyakumari District.

+ 1 CC TO Mr.M.SARAVANAKUMAR, ADVOCATE IN SR No. 80793
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 80869

PJL

TE/RR-BS/SAR-II : 31/01/2017 : 4P/7C

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