

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017
CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.442 of 2017
and
CMP.No.6618 of 2017

A.Palanisamy

... Appellant

vs.

1. Director of Town Panchayats
Chennai - 600 108.
2. The District Collector,
Namakkal District,
Namakkal.
3. The Assistant Director of Town Panchayats,
Salem.
4. The Director of Local Fund Audits,
Chennai - 600 108.
5. The Executive Officer,
Namagiripet Town Panchayat,
Namagiripet,
Namakkal District.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.03.2017 passed by a learned Single Judge of this Court in W.P.No.7058 of 2017.

W.P.No.7058 of 2017:-

Under Article 226 of the Constitution of India seeking for a Writ of certiorarified mandamus, to call for the records on the file of the 5th respondent pertaining to the proceedings Na.Ka.No.502/2015/A1 dt 31.10.2015 and to quash the same and issue consequential directions to the respondents to permit the petitioner to continue in service as Turncock and to grant the petitioner all consequential monetary benefits including the monthly salary from 1.11.2015 to 31.10.2017 and on that basis to grant the petitioner all consequential retirement and pensionary benefits.

For Appellant : Mr.M.Ravi
For Respondents : Mr.P.S.Sivashanmuga Sundaram, SGP

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

2.The unsuccessful writ petitioner is the appellant herein. This Writ Appeal has been directed against the order dated 23.03.2017 passed by a learned Single Judge of this Court in W.P.No.7058 of 2017.

3.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

4.The facts in brief are that the petitioner joined as Turncock in the Namagiripettai Town Panchayat on 22.07.1987. As per Rule 21 of the Tamil Nadu Town Panchayats Establishment Rules, 1988, a person in basic service shall be allowed to retire from service on attaining the age of 60 years. According to the petitioner, as per the said Rule, he has to be allowed to retire from service only on 31.10.2017, as his date of birth is 12.10.1957. However, by an order dated 31.10.2015 of the fifth respondent, he was permitted to retire from service, on completion of 58 years. Subsequently, his pension proposal was forwarded to the fourth respondent herein, who, in turn, by a letter dated 08.09.2016, returned the same stating that the petitioner prematurely, retired at the age of 58 years, whereas, the age of retirement for basic service is 60 years and hence, ratification has to be obtained from the Government. Thereafter, the petitioner made a representation dated 31.01.2017 to the fifth respondent, to revoke the retirement order and permit him to continue the service. Finding no response on the said representation, he filed a writ petition in W.P.No.7058 of 2017 challenging the retirement order dated 31.10.2015 and consequently, directing him to continue in service as Turncock and grant him all the benefits, including the monthly salary from 01.11.2015 to 31.10.2017, retirement and pensionary benefits. The learned Single Judge dismissed the aforesaid writ petition on the ground of laches, by the order impugned herein, against which, the present writ appeal came to be filed by the petitioner.

5.It appears from the record that the post of Turncock comes under the basic service, for which, the retirement age is 60 years. The petitioner was working as Turncock in the Namagiripet Town Panchayat and he was permitted to retire from service on

completion of 58 years, instead of 60 years, as applicable to basic service. The Pension Sanctioning Authority has also returned the pension proposal of the petitioner, as he prematurely retired before attaining the age of superannuation. We are of the opinion that when the age of retirement for the basic service is 60 years as per the provisions of the relevant Rules, the order of the fifth respondent permitting the petitioner to retire from service on attaining the age of 58 years, is in question whether it is voluntary option of the employee or made to retire.

6. However, the learned Single Judge, without deciding the claim of the petitioner, on merits, dismissed the writ petition on the ground of laches, by the order impugned herein, the relevant portion of which is extracted hereunder:

"This Court does not find any justification on the part of the petitioner, in approaching this Court belatedly. Admittedly, the impugned order, directing the petitioner to retire from service was issued on 31.10.2015. If the petitioner is aggrieved over the same, either he ought to have moved an application/representation before the concerned higher Authorities, or, should have approached this Court within a reasonable time, but, there happened to be a delay of nearly one year and four months in approaching this Court, and nowhere, in the writ petition, the reason for the delay has been properly explained. Therefore, I am not inclined to entertain this writ petition, as this court always encourages and entertains a person, who is active and approaches the court within a reasonable time, and not the one, who is dormant and lethargic, even though he has a valid claim to be considered.

7. At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of SHANKAR CO-OP HOUSING SOCIETY LTD. vs. M. PRABHAKAR & OTHERS reported in 2011 AIR SCW 3033, wherein, the Apex Court, at para 53, has given the relevant considerations, in determining whether delay or laches in approaching the Writ Court under Article 226 of the Constitution of India, which reads as follows:

"The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be

dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay."

8. In the case on hand, according to the learned Single Judge, the petitioner has approached the Court with a delay of one year and four months. However, that by itself will not disentitle the petitioner to get the legally valid claim. In our view, there can be a delay in approaching the Court by the petitioner, however, it is the duty of the respondent authority to bring the relevant rules to the notice of the individual with regard to the age of retirement. It is nobody's case that the petitioner has voluntarily retired from service on attaining the age of 58 years. In such circumstances, applying the principle laid down by the Hon'ble Supreme Court as referred to above, we are inclined to set aside the order impugned herein. Accordingly, the order of the learned Single Judge is set aside. Consequently, the petitioner is entitled to all the benefits by extending his service till the age of 60 years.

9. At this stage, learned Special Government Pleader appearing for the respondents submitted that the petitioner reached the age of 60 as on 31.10.2017. In view of the same, we direct the respondents to settle the retirement and pensionary benefits due to the petitioner, by extending his service till the age of 60 years. As far as the backwages is concerned, though the petitioner is not entitled to get monetary benefits from 31.10.2015 to 31.10.2017, during which period, he was not working, on the principle of 'no work no pay', taking note of the fact that the petitioner was unable to work till the age of 60 years, due to no fault on his part, he is entitled to get 25%

of backwages. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

10.The Writ Appeal stands allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. Director of Town Panchayats
Chennai - 600 108.
2. The District Collector,
Namakkal District, Namakkal.
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Salem.
4. The Director of Local Fund Audits,
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5. The Executive Officer,
Namagiripet Town Panchayat,
Namagiripet, Namakkal District.

+lcc to Mr.M.Ravi, Advocate, S.R.No.77712
+lcc to the Government Pleader, S.R.No.77933

W.A.No.442 of 2017

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