

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

W.A.No.753 of 2014 and M.P.No.1 of 2014

1. The Managing Director,  
TANHODA, Chepauk,  
Chennai-5.
  2. The Joint Director of Horticulture Department,  
Krishnagiri.
  3. The Assistant Manager,  
Horticulture Department,  
Nilgiri.
- ... Appellants/Respondents
- Vs
1. G.Ebinezer
  2. N.B.Nanjundan
  3. B.K.Chandran
- ... Respondents/Petitioners

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.2.2013 made in W.P.No.18920/2012 by a learned Single Judge.

Prayer in WP.NO.1892 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari/Mandamus Calling for the records of the 1st respondent in No./FBM.887/08 dated 26.11.09 and quash the same in so far as it stipulates the date of retirement of farm employees as 58 years and consequently direct the respondent to permit the petitioners to continue in service till the petitioner attain the age of 60 years in accordance with law

For Petitioners :: Mr.P.S.Sivashanmugasundaram,  
Special Government Pleader

For Respondents :: M/s.S.Esai Rani

## JUDGMENT

(Judgment of the Court was pronounced by RMT.TEEKA RAMAN, J.)

The Writ Appeal is directed against the Order dated 22.2.2013 made in W.P.No.18920/2012 by a learned Single Judge.

2. The Writ Petition has been filed by the petitioner seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in No/FBM.887/DATED 26.11.2009 and quash the same in so far as it stipulates the date of retirement of Farm Employees as 58 years and consequently, direct the respondents to permit the petitioners to continue in service till the petitioners attain the age of 60 years in accordance with law.

3. The case of the petitioners is as follows:-

(i) The State Government took a policy decision to regularise the persons, who were working in various Horticulture farms for more than 10 years and decided to appoint them as workers under the TANHODA, had issued G.O.Ms.No.494 Agriculture Department, dated 29.11.2007, wherein and by which, 1083 daily wage labourers working in various farms were directed to be regularised and they were brought under time scale of pay of Rs.1300-20-1500-25-2000 with effect from the date of the said Government Order. The petitioners are also covered by the said Government Order. Subsequent to the order issued by the State Government, the petitioners were brought under time scale of pay and employed at State Horticulture Farm, Nanjanad. Pursuant to the G.O., the Managing Director of TANHODA, the first respondent, sent a communication to the second respondent on 26.11.2009 (impugned in the writ petition), wherein and by which, certain directions and clarifications pertaining to the service conditions of farm employees were issued. By the said order, it was stipulated that the total hours of work per day will be 8 hours and from Monday to Saturday, they will have to work and Sunday will be a holiday. In respect of their age of retirement, it was fixed as 58 years. They are eligible for one increment after completion of 10 years and also annual increment.

(ii) Subsequent to the said communication, the Association to which the petitioners belong, sent a representation to the first respondent stating that the age of retirement for Mazdoor working in the same department, with salary of Rs.4800/ was fixed as 60 years, and therefore, they demanded that the same retirement age as extended to the Mazdoor, namely, 60 years to be fixed even for persons, who were brought under time scale of pay.

(iii) While so, the grievance of the petitioners is that based upon the guidelines issued by the first respondent, several workers working in the farm were sought to be retired at the age of 58 years and therefore, they have come forward to file the present writ petition, challenging the impugned communication.

4. In the counter affidavit filed by the second respondent, it was stated that the petitioners are not categorised under "Tamil Nadu Basic Servants". They are only "Farm employees" and they have no right to compare themselves with persons belonging to Tamil Nadu Basic Services. Since they are doing farm work, they will lose their stamina to work hard at the age of 60 years and hence, fixation of 58 years was legally justified.

5. The question raised in the writ petition was also raised by the employees who were brought under time scale of pay in the Sericulture Department vide G.O.Ms.No.25, Handloom, Handicrafts, Textiles and Khadi Department, dated 23.02.2010. Even in that writ petition, the respondent State raised a contention that inasmuch as the persons are not brought under Tamil Nadu Basic Service, they are not eligible for retirement at the age of 60 years. This Court rejected the said contention in a batch of writ petitions in W.P.Nos.14977 of 2011 and batch cases [K.Gowran and others v. State of Tamil Nadu) dated 24.01.2013.

6. Further, the learned Single Judge has also held that the Fundamental Rule as well as the Government Order framing the Rule clearly says that the scales of pay to a particular post will be a relevant criteria for determining whether a person is coming under the superior service or under the basic service and also held that considering the nature of work and pay band, the petitioners have been treated as basic servants. Accordingly, directed the official respondents to fix the age of superannuation as 60 instead of 58 for the petitioners with a further direction that the persons who are covered by G.O.Ms.No.494, Agriculture Department, dated 29.11.2007 are entitled to continue in service till the age of 60 years by order dated 22.02.2013. Challenging the correctness of the said order, the respondents therein have come up with the present Writ Appeal.

7. It is the contention of the learned Special Government Pleader appearing for the appellants that merely on a proposal sent by the 1<sup>st</sup> respondent to the Government to consider the age of superannuation of the respondents herein as 60 years, it will

not confer any right upon them. Further, the learned Special Government Pleader submitted that all the three petitioners therein have already allowed to retire at the age of 58 years. Therefore, the present Writ Appeal has to be allowed.

8. Per contra, the learned Counsel for the respondents/writ petitioners submitted that at least for the purpose of calculating pensionary benefits and other monetary benefits, the petitioners age of superannuation has to be taken into account as 60 years.

9. Considered the submissions made on either side and We have also carefully gone through the materials placed on record.

10. Considering all the above submission on factual position, we are of the view that after the proposal sent by the 1<sup>st</sup> appellant/1<sup>st</sup> respondent to the Government, it is only for the concerned department to consider the said issue of fixing the petitioners superannuation age as 60 years. However, taking into consideration of the earlier order passed by the learned Single Judge of this Court in W.P.Nos.14977 of 2011 and batch cases [K.Gowran and others v. State of Tamil Nadu) dated 24.01.2013, the present impugned order seems to have been passed and now, on the facts and circumstances of the case that the petitioners have also retired from service, the Writ Appeal is disposed of by giving liberty to the 1<sup>st</sup> respondent to reconsider the entire issue and fix the superannuation age of the petitioners as 60 years. Further, it is made clear that the superannuation age of the petitioners as 60 years will be taken into account only as continuity of service for calculating pensionary benefits and no other monetary benefits on the principle of no work no pay. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

tsi

1. The Managing Director,  
TANHODA, Chepauk,  
Chennai-5.

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3. The Assistant Manager,  
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Nilgiri.

+ 1 cc to M/s.S.Esai Rani Advocate, SR.81001  
+ 1 cc to The Govt.Pleader, SR.81527

W.A.No.753/2014

MR (CO)  
NR 20/12/2017



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