

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.17745 of 2003
& WPMP No.22187 of 2003

The Management
Salem District Consumers Cooperative
Wholesale Stores Limited
Salem 636 009 ... Petitioner

Vs.

1. The Presiding Officer
Labour Court,
Salem

2. V.Kaveri ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records in I.D.No.358 of 2000 on the file of the Labour Court, Salem, the first respondent herein and quash the award dated 23.11.2002 passed therein.

For Petitioner ... Mr.M.R.Ragavan
For Respondents ... R1-Labour Court
Mr.V.Ajoy Khose for R2

ORDER

Kaveri was working as Driver in Salem District Consumers Cooperative Wholesale Stores Limited (hereinafter would be referred to as "management" for the sake of brevity). He retired from service, on superannuation, after attaining the age of 58 on 30.6.1997. He was paid his terminal benefits.

2. Two years later, Kaveri raised an industrial dispute, contending that he was illegally terminated by the management on 30.6.1997 at the age of 58 and that the retirement age for Drivers is 60. On the failure of conciliation proceedings, the matter was referred to the Labour Court, Salem in I.D.No.358 of 2000.

3. The Labour Court framed the following issues:

(i) Whether the age of retirement of the workman was 60

years?

(ii) To what relief, he is entitled to?

4. Before the Labour Court, no witness was examined on either side, but on behalf of the management 11 documents were marked.

5. The Labour Court, by award dated 28.11.2002 in I.D.No.358 of 2000 held that the retirement age of Kaveri is 60 and directed that he be paid backwages, challenging which the management is before this Court.

6. Heard Mr.M.R.Raghavan, learned counsel for the management and Mr.V.Ajoy Khose, learned counsel for the workman.

7. The short point that falls for consideration in this writ petition is whether the age of retirement of a Driver working in a Cooperative Society is '58 years' or '60 years'?

8. It may be relevant to extract Rule 149(3) of the Tamil Nadu Cooperative Societies Rules, as it stood in the year 1997:

"In matters of reservation for appointments and age for appointment and retirement, the rule applicable to the Government servants shall be followed."

9. From the above Rule, it is clear that the Service Rules applicable to Government servants would apply to employees of Cooperative Societies. Until 1979, the age of retirement of Tamil Nadu Government servants was 55. The retirement age was increased to 58, by G.O.Ms.No.532, P&AR (Per.M) Department, dated 25.4.1979.

10. Fundamental Rule 56(1) 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, Subordinate 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." (emphasis supplied)

11. Now it has to be seen whether the post of Driver falls within the category of basic service or not.

12. By G.O.Ms.No.1962, Public (Services-G) dated 25.6.1971, the Government of Tamil Nadu has framed Special Rules for the Tamil Nadu Basic Service, wherein all the posts for which the Special Rules will apply, have been catalogued. Basic Service have been classified into 4 classes, namely Class I, Class II, Class III and Class IV, and in each class, there are several categories.

13. On a perusal of the list, the post of Driver does not find place therein. Therefore, it is beyond cavil that the post of Driver does not fall within the Tamil Nadu Basic Service and therefore, the age of retirement of Driver is 58 and not 60.

14. This is further clear from Rule 10(a) of the Tamil Nadu Basic Service Rules:

"10A. Postings and Transfers:

a) All transfers and postings shall be made by the appointing authority.

Provided that the powers conferred on the appointing authority by this sub-rule may be exercised also by any authority to whom the appointing authority is administratively subordinate.

b) All transfers and postings from the jurisdiction of the appointing authority to that of other shall be made by the authority to which such appointing authorities are administratively subordinate.

N.B: Age of retirement and pay: Notwithstanding anything contained in Fundamental Rule 56(1)(a), any person appointed by recruitment by transfer to the category of Office Assistant or Helper under the fourth proviso to sub rule (a) of rule 3 from the post of Driver shall retire from service on attaining the age of fifty eight years and shall continue to draw pay in the scale applicable to the post of Driver (vide G.O.Ms.No.60, P&AR (F) Department dated 6.3.2007). (Emphasis supplied)

15. The Labour Court has proceeded on the premise that the

post of Driver falls within the category of Tamil Nadu Basic Service. This is incorrect.

16. In the result, this writ petition is allowed and the award of the Labour Court, Salem dated 28.11.2002 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ajr

TO

1. The Presiding Officer, Labour Court, Salem.
 2. The Section Officer, Writ Section, High Court, Madras.
- + 1 cc to Mr.V. Ajoy Khose, Advocate SR.10053
+ 1 c to Mr.M.R. Raghavan, Advocate Sr.9850

Copy to: The Section Officer, ER Section,
High Court, Madras.

(for sending records immediately to the Labour, Court)

W.P.No.17745 of 2003

SVI (CO)
EU 1.03.17

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