



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.1540 of 2014

and

M.P.(MD)No.1 of 2014

The Director,
The Social Welfare Development Office,
Chennai-02.

: Appellant

Vs.

I.Jothi Gandhi

: Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 14.10.2014, made in W.P.(MD).No.16069 of 2013.

Prayer in WP(MD). 16069/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, to direct the respondent to release the retirement benefits for the petitioners service from 07/11/1981 to 31/03/2013.

For Appellant : Mr.B.Pugalendhi,
Additional Advocate Genera,
For Mr.N.S.Karthikeyan,
Additional Government Pleader

For Respondent : Mr.C.Arul Vadivel @ Sekar

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J.]

This Writ Appeal has been filed as against the order of the learned Single Judge of this Court dated 14.10.2014, made in W.P.(MD).No.16069 of 2013.

2. The brief facts, which are necessary to dispose of the present Writ Appeal, are as follows:

The respondent is a Srilankan Tamil Refugee and he came to Tamil Nadu in the year 1973. Later on, he applied for the post of Office Assistant in the Office of the Social Welfare Department, as he possessed the Educational Qualification of GCE-Ordinary Level VIth Form in Ceylon, which is equivalent to 11th standard in Tamil Nadu. Accepting the said qualification, he was appointed as Office Assistant on 05.11.1981. He had joined duty and he was also confirmed in the said post on 07.11.1982. Thereafter, the appellant has promoted the respondent to the post of Junior Assistant vide proceedings in NK.76511/4-3/91, dated 27.01.1992, as the respondent rendered a satisfactory service in the post of Office Assistant from 1981 till 1992. However, he was reverted back



to the post of Office Assistant by another order dated 13.03.1992 for the reason that the respondent did not possess the requisite educational qualification for the promotional post of Junior Assistant. While so, after eight years from the date of de-promotion, once again, the respondent was considered for regular promotion, by proceedings dated 02.06.2010 as Junior Assistant. Subsequently, he was transferred to the Combined Child Development Plan Office (West) Madurai City. When the respondent was working in the promotional post, he was called upon to furnish the educational qualification. Immediately, he gave his explanation mentioning that even at the time of appointment, i.e., on 05.11.1981, he has possessed the educational qualification of GCE-Ordinary Level VIth Form in Ceylon, which is equivalent to 11th standard in Tamil Nadu. In support of his contention, he has also produced the School Certificates along with the letter of District Educational Officer bearing Na.Ka.No.2270/AA3/2013, dated 21.03.2013, wherein it has been mentioned that GCE-Ordinary Level VIth Form in Ceylon, possessed by the respondent is equivalent to 11th standard in Tamil Nadu. Therefore, even at the time of entering service namely on 05.11.1981, he has possessed all the requisite qualification for the promotional post of Junior assistant. However, by ignoring the same as well as the proceedings issued by the District Educational Officer, dated 21.03.2013, the appellant, knowing fully well that the respondent has reached the age of superannuation on 31.03.2013, passed an order on 29.03.2013, permitting him to retire from service with a condition to produce the documents showing the minimum educational qualification possessed by the respondent, failing which, the monetary benefits given to him for the post of Junior Assistant till the date of retirement will be recovered. Even, subsequent to the conditional order permitting him to retire, retirement benefits were not disbursed to him. Though the respondent has made several representations to release the retirement benefits, the respondent has not come forward to release the same. Hence, the Writ Petition.

3. The learned Single Judge, by order dated 14.10.2014, has allowed the Writ Petition filed by the respondent herein and directed the appellant to disburse all the terminal benefits of the respondent, within a period of six weeks along with interest at the rate of 12% from the date of retirement till the date of disbursement of the entire terminal benefits.

4. Aggrieved over the same, the appellant is before this Court with the present Writ Appeal.

5. It is the submission of the learned Additional Advocate General appearing for the appellant that the respondent herein was appointed as Office Assistant on 05.11.1981 and he was also confirmed in the said post on 07.11.1982. Subsequently, considering his service from 1981 to 1992, he was promoted to the post of Junior Assistant on 27.01.1992. However, he was reverted to the post of Office Assistant, by another order dated 13.03.1992, for the reason that he does not possess the requisite educational

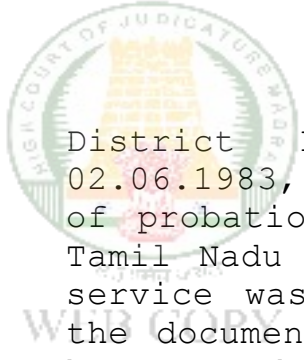


qualification for the promotional post of Junior Assistant.

6. Adding further, the learned Additional Advocate General submitted that due to administrative urgency, to fill up more Junior Assistant vacant posts, 60 Night Watchman/Office Assistants were promoted as Junior Assistants on temporary basis under Rule 39 (a)(i) of Tamil Nadu State and Subordinate Service Rules with a condition to prove the genuineness of their educational qualification certificates within three months. The respondent was also promoted as Junior Assistant on 02.06.2010. But the respondent did not produce his original Educational Certificates as sought for. In the meantime, he attained the age of superannuation in the post of Junior Assistant on 31.03.2013. Thus, he was permitted to retire from service with a condition to produce the documents showing the minimum educational qualification possessed by him, failing which, the monetary benefits given to him for the post of Junior Assistant till the date of retirement will be recovered. Thereafter, the appellant approached the department of examinations of Sri Lanka and obtained the mark statement of the respondent bearing No.11/03/F49218, dated 03.07.2013 showing that he failed in all subjects in GCE Ordinary Level examinations. As per the rules, the prescribed qualification for the post of Junior Assistant is one must possess SSLC passed certificate. Therefore, since the respondent failed in all the subjects in the General Certificate of Education (Ordinary Level), it was notified that he is ineligible for the post of Junior Assistant. The respondent wantonly suppressed the material facts and obtained an order in his favour. However, as per the existing Rule, he is eligible for getting pensionary benefits in the cadre of Office Assistant only. Moreover, he has been partially paid his retirement benefits based on the departmental proceedings. However, without considering the factual aspects, the learned Single Judge has allowed the Writ Petition which needs interference at the hands of this Court.

7. Per contra, the learned counsel for the respondent submitted that the respondent served in the post of Office Assistant for about 30 years. His probation was also declared. Further, the learned counsel submitted that even if the appellant has come to the conclusion that the respondent is ineligible for the post of Junior Assistant, he ought to have been reverted to the post of Office Assistant and allowed to continue for another two years, that is to say, till he reaches the age of 60 years, whereas, the respondent was permitted to retire in the post of Junior Assistant at the age of 58 years and he was not paid the terminal benefits. Thus, he sought for confirmation of the order passed by the learned Single Judge.

8. On a careful scrutiny of the materials available on record, we find that the learned Single Judge has come to the conclusion that the respondent was given promotion to the post of Junior Assistant, by proceedings dated 02.06.2010, since he being a Srilankan Tamil refugee and he has served in the post of Office Assistant for about 30 years. It is an admitted fact that the



District Project Nutrition Officer, by proceedings dated 02.06.1983, declared that the respondent has completed the period of probation satisfactorily in the cadre of basic servant in the Tamil Nadu Basic Services on the afternoon of 07.11.1982 and his service was also regularized with effect from 07.11.1981 and all the documents produced by the respondent would go to show that he has passed the 11th standard, old SSLC pattern. By observing so, the learned Single Judge has directed the appellant to pay terminal benefits to the respondent. Therefore, no infirmity could be found in the said order.

9. However, as rightly contended by the learned counsel for the respondent, if the respondent is not qualified for the post of Junior Assistant, he ought to have been reverted to the post of Office Assistant and he was allowed to continue for a period of another two years till he reaches the age of 60 years, but, in this case, he was permitted to retire in the post of Junior Assistant and he was denied the terminal benefits.

10. Considering the factual aspects of the case and since the respondent had already attained the age of superannuation in the post of Junior Assistant at the age of 58 years, to meet the ends of justice, we are inclined to pass the following order:

"The appellant is directed to fix the pension of the respondent in the post of Office Assistant upto the age of 60 years. The appellant is also directed not to recover the salary paid to the respondent in the post of Junior Assistant for the period during which he had worked as Junior Assistant. The terminal benefits should be paid to the respondent, within a period of six weeks from the date of receipt of a copy of this judgment. The finding with regard to the imposition of cost of Rs.10,000/- on the appellant is set aside."

11. The Writ Appeal is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(A.S)

/TRUE COPY/

Sub Assistant Registrar

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JUDGMENT MADE IN
W.A. (MD) No.1540 of 2014
Dated: 17.02.2017