

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 04.08.2017**

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.140 of 2015

P.Ramasamy ... Appellant / Petitioner
Vs.

1. The District Collector /
Administrative Committee Chairman,
Mahatma Gandhi Memorial Tuberculosis
and Chest Hospital,
Sengipatti, Thanjavur District.
2. The Administrative Officer,
Mahatma Gandhi Memorial Tuberculosis
and Chest Hospital,
Sengipatti, Thanjavur District. ... Respondents/ Respondents

Prayer : This Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 06.12.2013 in WP(MD)No.13591 of 2009 and allow the said writ petition and further directing the respondents to count the period from 30.06.2008 till 30.06.2010 as duty and accordingly direct the respondents to pay revised pension benefits.

Prayer in WP(MD). 13591/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records relating to the order passed by the 2nd respondent dated 30-06-2008 in his Na.Ka.No.128/08/A1 and dated 30-07-2009 in his O.Mu.No.137/09/A1 and quash the same and to direct the respondents to permit the petitioner to rejoin duty and permit the petitioner to work up to the age of 60 years i.e., 30-06-2010 as sweeper under the 2nd respondent.

For Appellant : Mr.A.Rahul
For Respondents : Mr.T.S.Md.Mohideen, AGP

**J U D G M E N T**

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

The unsuccessful writ petitioner is on appeal challenging the order dated 06.12.2013 made in WP(MD)No.13591 of 2009.

2. According to the appellant, he was born on 01.07.1950. He joined the second respondent hospital on 11.12.1975 as a Sweeper. The said post comes under 'basic service'. The retirement age for basic services is 60 years. But the second respondent retired the appellant on 30.06.2008 when he reached the age of 58. According to the writ petitioner it is contrary to the Fundamental Rules. The appellant therefore represented to the second respondent that his retirement age was 60 and not 58. But the second respondent by order dated 30.07.2009 informed the appellant that his retirement age is only 58 and therefore extension upto 60 years would not be granted. Hence, the appellant filed WP(MD) No.13591 of 2009. The learned Single Judge dismissed the writ petition by order dated 06.12.2013. Against the said order, this intra Court appeal has been filed.

3. Heard the learned counsel for the appellant and the respondents.

4. The learned counsel for the appellant would place reliance on Fundamental Rule 56(1). It is true that when Fundamental Rules are applied, the contention of appellant will have to be accepted. But the question is whether the case of the appellant is governed by Fundamental Rules. The answer is in the negative because the appellant herein was appointed only in terms of the bye-laws governing the second respondent institution.

5. As per bye-law Chapter III Rule 8 of the respondent institution, the retirement age is only 58 for all the employees. The service condition of the appellant was all along governed only by bye-laws. His appointment as Sweeper in the respondent institution was as per the bye-law. Therefore, for determining the age of superannuation alone he cannot invoke the Fundamental Rule 56. Since Fundamental Rule 56(1) is not applicable, his contention was also rightly rejected by the learned Judge. There is no merit in this writ appeal. It stands dismissed. No costs.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar



To:

1. The District Collector /
Administrative Committee Chairman,
Mahatma Gandhi Memorial Tuberculosis
and Chest Hospital,
Sengipatti, Thanjavur District.
2. The Administrative Officer,
Mahatma Gandhi Memorial Tuberculosis
and Chest Hospital,
Sengipatti, Thanjavur District.

+1 CC to M/s.A.RAHUL, Advocate, SR No. 70845.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 71349.

SKM/ARUL

PSM/SKN-RSK/SAR2/22.08.2017/3P/5C

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