



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2017

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CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A. [MD].No.811 of 2017
and

C.M.P (MD) No.5651 of 2017

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Chennai - 600 009.
 2. The Director of Town Panchayats,
Kuralagam, Chennai - 600 108.
 3. The Assistant Director of Town Panchayats,
Collectorate, Nagercoil,
Kanyakumari District.
 4. The Executive Officer,
Pacode Town Panchayat,
Pacode, Thckuruchi Post - 629 168
Kanyakumari District.
- : Appellants/Respondents

Vs.

M.Thomas : Respondent/Petitioner

PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent praying to set aside the order, dated 14.12.2016 made in W.P.(MD) No.194 of 2014.

Prayer in WP(MD). 194/ 2014 :

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 in pursuant to the Impugned Order passed by the 4th Respondent in his Proceedings Na.Ka.No.264/2013/A1 dated 01.04.2013 and quash the same and consequently direct the respondents to permit the petitioner to allow retire from service on attaining the age of sixty years and disburse all attendant and pensionary benefits within a stipulated time may be fixed by this Honourable Court.



For Appellants

: Mr.V.Muruganantham

Additional Government Pleader

For Respondent

: Mr.M.Saravanakumar

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JUDGMENT

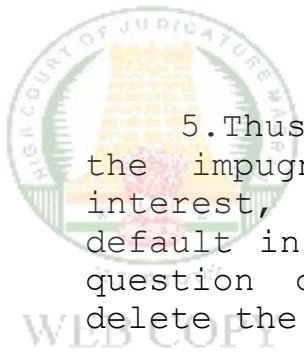
[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.V.Muruganantham, learned Additional Government Pleader appearing for the appellants and Mr.M.Saravanakumar, learned counsel appearing for the respondent.

2.By consent of both sides, this writ appeal itself is taken up for final disposal.

3. The appellants are aggrieved by the order passed by this Court in W.P.(MD)No.194 of 2014, dated 14.12.2016 filed by the respondent challenging the order passed by the fourth appellant, dated 01.04.2013 by which, the fourth appellant proposed to recover the salary paid to the respondent/writ petitioner beyond the age of 58 years till he attained the age of 60 years. The appellant would contend that the respondent was Water Tap Fitter and he was not entitled to continue till the age of 60 years and the Tamil Nadu Municipal (Establishment) Rules 1975 is not applicable to an employee of Town Panchayat Service.

4.The Writ Court took into consideration the fact that the respondent/writ petitioner was a basic servant and in terms of Rule 21 of the Tamil Nadu Town Panchayat (Establishment) Rule 1988, the age of retirement is 60 years. Further, the Court noted that the writ petitioner was allowed to continue till the age of 60 years, therefore, the question of recovery would not arise. Thus, a direction was issued to the fourth appellant to pay the arrears of wages, if any, together with terminal benefits on or before 31.03.2017, failing which, ordered that the amount shall carry interest at the rate of 12% per annum from 01.04.2014, i.e., the month of filing of the writ petition. We are in agreement with the view expressed by the writ court not only for the reasons assigned in the impugned order in the writ petition, but also due to the fact that the fourth appellant has extracted work from the respondent/writ petitioner till he attained the age of 60 years. Furthermore, we find that the order, which was impugned in the writ petition, dated 01.04.2013 was passed by the fourth appellant only based on the Audit objection, which would go to show that the fourth appellant by himself has not taken the decision, only to get over the Audit objection, sought for recovery from the respondent.



5. Thus, we find no grounds to entertain the appeal as against the impugned order. However, with regard to the payment of interest, which has been ordered to be paid in the event of default in settling the amount, we are of the view that since the question of interpretation of Service Rules was involved, we delete the order directing payment of default interest.

6. In the result the Writ Appeal is partly allowed and the direction, directing payment of default imposing interest at the rate of 12% is set aside and direction issued to clear the arrears of wages, if any, along with terminal benefits is confirmed and if any arrears is payable, it shall be disbursed to the respondent/writ petitioner, within a period of two weeks from the date of receipt of a copy of this judgment.

7. With the above direction, the writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Protocol)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Municipal Administration & Water Supply Department,
Chennai - 600 009.
2. The Director of Town Panchayats,
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Kanyakumari District.
4. The Executive Officer,
Pacode Town Panchayat,
Pacode, Thckuruchi Post - 629 168
Kanyakumari District.

+ 1 CC TO Mr.M.SARAVANA KUMAR, ADVOCATE IN SR No. 62228
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 62728

AM/IS

PSM/MR-KKR/SAR-III : 06/07/2017 : 3P/7C