

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:08.03.2018
CORAM

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1464 of 2013
and M.P.No.1 of 2013

1.The District Collector
Salem, Salem District.

2.The Block Development Officer
Kadayampatty Union
Salem District. ...Appellants/Respondent

Vs.
K.Subramanian ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 14.11.2011 made in W.P.No.16115 of 2009 on the file of this Court.

WP.No.16115 of 2009: writ petition filed under Article 226 of constitution of India, praying for the issuance of writ of certiorari mandamus to call for the records of the 2nd respondent in connection with the impugned order of allowed to retire from service prior to the date of superannuation by the 2nd respondent in Na.Ka.No.3504/2008/A1 dt.30.6.2008 and quash the same and further direct the respondent 1 and 2 to allow the petitioner to continue in service till the date of superannuation i.e. 30.6.2010.

For Appellants : Mr.V.Anandhamurthy
Additional Government Pleader
For Respondent : Mr.P.Kannan Kumar

J U D G M E N T
[Judgment of the Court was delivered by K.K.SASIDHARAN,
J.]

The respondent was appointed as a Ward Boy and he was attached to a local body in the District of Salem. Subsequently, the Government issued order in G.O.Ms.No.39, Rural Development & Panchayat (E5) Department, dated 04 May, 2006 and a consequential order dated 20 December, 2007 absorbing the Doctors and Ward Boys in the Rural Dispensary Department employed earlier into Indian Medicine and Homeopathy Department.

The Government Order was issued after formation of the Indian Medicine and Homeopathy Department. The Ward Boys like the respondent were all transferred to the newly created Department. The age for retirement of Ward Boy is stated to be 60 years, in view of their employment in the Indian Medicine and Homeopathy Department.

2. The respondent was made to retire at the age of 58. The respondent, after his retirement, made a claim that being a Ward Boy, he should retire only after attaining 60 and as such, his premature retirement was not justifiable. The request was not considered. The respondent, therefore, filed a writ petition in W.P.No.16115 of 2009 challenging his order of retirement at the age of 58.

3. The learned Single Judge found that under similar circumstances, other employees were permitted to retire at the age of 60 and that the respondent being a last grade servant would retire only after attaining the age 60, and therefore, directed the appellants to pay him the salary for a period of two years. The order directing payment of salary was passed on account of the subsequent events relating to the expiry of two years, meaning thereby, the age of retirement, viz., 60 years. The order is under challenge at the instance of the State.

4. We have heard the learned Additional Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondent.

5. There is no dispute that the respondent was initially appointed as a Ward Boy in the local body. He worked under the Panchayat Union. The Government created the Indian Medicine and Homeopathy Department. The Government, thereafter, issued an order in G.O.Ms.No.39, Rural Development & Panchayat (E5) Department, dated 04 May, 2006 transferring Doctors and Ward Boys in the Rural Dispensary Department to the Indian Medicine and Homeopathy Department with effect from 20 December, 2007. However, for the reasons best known to the appellants, the services of the respondent was not transferred to the newly created department.

6. The respondent was made to retire at the age of 58 years, even though the age of retirement for similarly situated Ward Boys is 60. The papers signed by the respondent while attaining the age of superannuation at 58 years was taken as basic materials to deny his claim by the appellants. However, the respondent contended that being an illiterate, he signed wherever he was asked to sign by his superior.

7. The appellants have no case that the respondent was not eligible for transfer to the newly created Indian Medicine and Homeopathy Department. The fact that the services of the respondent were not transferred to the newly formed Department would not give a right to the appellants to contend that he should retire at the age of 58 years. The respondent has no role to play in a matter for transfer of the employee from the Panchayat Union to the newly constituted Indian Medicine and Homeopathy Department. The respondent being a last grade servant, obeyed his master and served in the Panchayat Union Dispensary till his retirement. We are therefore, of the view that the learned single Judge was justified in the observation that the respondent would retire only after attaining the age of 60.

8. The further question is as to whether the learned single Judge was correct in directing the appellants to pay the wages for a period of two years without extracting work from the respondent.

9. It is a matter of record that only after retirement, the respondent made a claim that he would retire only after attaining the age of 60 and not at 58 years. In fact, the Audit Wing made a query as to how the respondent would retire at the age of 58 years. The Audit Wing was not prepared to accept the pension papers of the respondent. The said information obtained by the respondent appears to be the reason to file a writ petition by him. In any case, the writ petition itself was filed only after retirement. We are, therefore, of the view that the learned Single Judge was not correct in directing the appellants to pay the wages for a period of two years.

10. We make it clear that the respondent should be treated as an employee retired after attaining the age of 60 and he should be given all the benefits, like continuity of service, except back wages. for a period of two years. In short, the two years period would be counted for fixing pension and other retirement benefits.

The intra court appeal is disposed of by modifying the order passed by the learned Single Judge. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gms

To

1.The District Collector
Salem, Salem District.

2.The Block Development Officer
Kadayampatty Union
Salem District.

+1cc to Government Pleader Sr.No.18109
+1cc to Mr.P.Kannankumar, Advocate sr.NO.18535

SSV(CO)
sm:2.4.2018

W.A.No.1464 of 2013



WEB COPY