IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.08.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.28303 of 2014

1.G.Tamilselvan
2.N.Gnanasekaran
3.D.Ramasamy
4.G.Packirisamy
5.B.Gopinath
6.K.Balachandran ... Petitioners

Vs

1.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.

2.The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.

3.The Secretary to the Government of
Tamil Nadu,
Housing and Urban Development,
Fort St.George,
Chennai 600 009. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent dated 08.09.2014 and made in R.C.No.A2/1880/2013 and quash the order of the 1st respondent as illegal and without jurisdiction and consequently, directing the respondents to compute the 50% percent of the services rendered by the petitioners on daily wages basis for the purpose of pension benefits and further direct the first respondent to revise the pension benefits payable to the petitioners.

For Petitioners : Mr.G.Ravi Sankar
For Respondents : Mr.R.Sivakumar for RR1 and 2
: Mrs.P.Rose Kamalam,
Additional Government Pleader for R3

O R D E R

Heard Mr.G.Ravi Sankar, learned counsel for the petitioners and Mr.R.Sivakumar, learned counsel appearing for the first and second respondents and Mrs.P.Rose Kamalam, learned Additional Government Pleader appearing for the third respondent.

2. The petitioners have approached this Court, seeking the following relief:-

> "To issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent dated 08.09.2014 and made in R.C.No.A2/1880/2013 and quash the order of the 1st respondent as illegal and without jurisdiction and consequently, directing the respondents to compute the 50% percent of the services rendered by the petitioners on daily wages basis for the purpose of pension benefits and further direct the first respondent to revise the pension benefits payable to the petitioners. "

3. The case of the petitioners is as follows:-

These petitioners were originally employed on daily wage basis under the second respondent Board from 1979 till 1986. The service of the petitioners were subsequently regularized by the Board on 19.07.1989. The Government has issued G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, wherein, it is provided that the services rendered by the employees on non provisionalised service, consolidated pay honorarium and daily wages shall be taken into account for the purpose of pensionary benefits. As per the Government Order, 50% of the service rendered by the employees in their non-provisional service, can be taken into consideration for the pensionary benefits.

4. The grievance of the petitioners is that in spite of the above Government Order which was also extended to certain other establishments under the control of the Government, the same benefit has not been extended to these petitioners. Therefore, these petitioners had approached this Court in W.P.No.30519 of 2012. This Court by its order dated 30.01.2014, disposed of the writ petition by giving the following direction in paragraph Nos.4 and 5, which are extracted below:-

> "4.This Court is unable to agree with the submissions of the learned counsel for the respondents. The reason is that it is not in dispute that all the six petitioners who joined the services on 6.8.1979, 5.9.1979, 10.8.1979, 18.10.1979, 9.11.1979 and 1.8.1979 respectively got their services regularised by the proceedings dated 19.07.1989 of the first respondent during the year 1986. But when the petitioners were working from the date of entry into service on daily wages basis, the benefit of regularisation was given only in the year 1986. The application of G.O. 408 Finance (Pension) Department dated 25.08.2009 is based on two criteria; they are, for the persons whose services are absorbed before 01.04.2003 and the benefit of regularisation is granted for persons who have worked after 01.01.1961. Both these conditions will apply to

the petitioners' case, therefore, in the present case, by giving the benefit of the said G.O. to the petitioners for 3½ years, the respondents are not likely to suffer any huge financial prejudice.

5.In view of the above, this Court hereby directs the first respondent to consider the case of the petitioners, on the basis of G.O. No.408 Finance (Pension) Department dated 25.08.2009, if they are covered by the said G.O. and the first respondent is further directed to count 50% of the services rendered by the petitioners on daily wage basis for calculating the pensionary benefits. The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order."

5. In pursuance of the above direction, by proceedings of the first respondent dated 08.09.2014, the petitioners were informed that they were not covered under the G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, as the said Government Order would cover only the Government employees and the employees of the local bodies. According to the said communication, public sector undertakings like the respondent Board and Corporation were not covered under the Government Order. The said communication dated 08.09.2014, is put to challenge in the present writ petition.

6. The learned counsel for the petitioners would at the outset submit that the reasons stated in the impugned communication, cannot be countenanced both in law and on facts for the reason that whatever the benefits which were admissible to the Government employees and other local bodies, the same shall be applicable to the employees of the Board, since their service conditions are governed by various Government Orders issued from time to time and the same being adopted by the Board also. The learned counsel would draw the attention of this Court to the Tamil Nadu State Slum Clearance Board Pension Rules 1980, which provides for pensionary benefits to the employees of the Board and would draw the attention to Rule 7, which reads as follows:-

"Pension and Death-cum-Retirement Gratuity –

(i) All the pension rules applicable to Government servants under the rule making control of Government of Tamil Nadu together with the instructions and ruling issued thereunder from time to time shall be applied to Board employees who come under these rules subject to the modifications that the terms "Government Servants", "Government" and "Heads of Department" in this rules shall mean and include "Board Employee", "Board" and the "Chairman" respectively.

(ii) The power assigned to the Accountant-General and the Audit Officer in the rules referred to in clause (i) above shall be assigned to the Auditor

who shall exercise such powers.
(iii) The rules referred to in clause (i) above shall form part of these rules together with such instructions, rulings and amendments issued thereunder from time to time under the rule making powers of the Government.

7. According to the learned counsel for the petitioners that the above rule is very clear that the instructions and ruling issued by the Government from time to time shall be applied to the Board employees. Moreover, the learned counsel would submit that earlier this Court, in W.P.No.30519 of 2012 by order dated 30.01.2014, has held that these petitioners were entitled to the benefit of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 and once the issue stood concluded by the decision of this Court in the aforesaid writ petition, no discretion is to be left to the authority for taking a different view, contrary to the directions of this Court. According to the learned counsel for the petitioners, the Court has clearly directed to consider the claim of the petitioners with reference to the Government Order which does not mean that the authority has the discretion to reject the claim of the petitioners.

8. Upon notice, learned counsel appearing for the first and second respondents and learned Additional Government Pleader appearing for the third respondent, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is stated that if the request of the employees is acceded to, then, it will be a wrong precedent and it will lead to other Boards also to place similar request to the Government. It is also averred in the counter affidavit that the counting of daily wage services would involve considerable financial implication. As regards the application of Rule 7 of the Tamil Nadu State Slum Clearance Board Pension Rules, 1980, is concerned, it is submitted that such rule is applicable to the Board employees and not to daily wage employees. These points were reiterated by the learned counsel appearing for the respondent Board.

9. This Court while considering the materials and pleadings placed on record and the submissions made by the learned counsels on either side, is of the clear view that once the petitioners' services came to be regularised in 1989, the question of treating them as an employee of daily wages even after that, cannot be a valid reason for not applying rule 7 of the Tamil Nadu State Slum Clearance Board Pension Rules 1980. Such averment in the counter affidavit and the legal submission made on behalf of the respondents, cannot be countenanced either in law or on facts.

10. In any event, this Court in the earlier proceedings, considered the claim of the petitioners and granted direction and in the opinion of this Court, the respondents ought to

have obeyed the direction in the spirit in which it was granted. But, unfortunately, the authority viz., the first respondent herein, felt that he had discretion in the matter of taking a decision one way or the other, even contrary to the direction issued by this Court. Such approach by the authority concerned, does not advance good governance and administration, particularly, in dealing with the claims of the last grade servants. When the Court has concluded the issue in favour of the petitioners as found in paragraph Nos.4 and 5 of the orders extracted supra, this Court does not see any justification on what basis the claim of the petitioner came to be rejected, which rejection runs contrary to the letter and spirit of the orders passed by this Court.

11. Moreover, this Court finds that the Rule 7 of the Tamil Nadu State Slum Clearance Board Pension Rules, 1980, applicable to the Board is very clear that whatever instructions issued by the Government from time to time, will be applied to the Board employees. When statutory rule prescribes as such, it is not open to the authority to reject the claim of the petitioners, contrary to the statutory provision. The financial implication as projected in the counter affidavit, cannot be a reason for denying the full pensionary benefits to the petitioners by counting their 50% of their service rendered on daily wage basis, since such counting of service is envisaged in the pension rule through G.O.Ms.No.408, Finance (Pension Department) dated 25.08.2009. Once the petitioners are legally entitled to certain benefits, it is not open to the authority to deny the same only on the basis of financial implication, particularly, in this case, the authority has no discretion to reject the claim of the last grade servants.

12. For the above said reasons, this Court finds that the impugned order in R.C.No.A2/1880/2013, dated 08.09.2014, is unsustainable and therefore, the same is set aside. There shall be a consequential direction to the respondents to count 50% of the service rendered by the petitioners on daily wage basis for the purpose of pensionary benefits and revise pensionary benefits payable to the petitioners and pay the petitioners' arrears of pension on such revision. The consequential direction of this Court shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.

2.The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.

3.The Secretary to the Government of
Tamil Nadu,
Housing and Urban Development,
Fort St.George,
Chennai 600 009.

+1cc to Mr.Ravishankar, Advocate SR.NO.52301
+1cc to Mr.R.Sivakumar, Advocate SR.NO.52480

MG(CO)
sm:24.9.2018

W.P.No.28303 of 2014