

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12-06-2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.26144 of 2016

And

W.M.P.No.22428 of 2016

S.Selvam

... Petitioner

Versus

- 1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Animal Husbandry, Dairying and Fisheries
Department, Fort St. George,
Chennai-600 009.
- 2.The Commissioner for Milk Production And
Dairy Development,
Madhavaram Milk Colony,
Madhavaram,
Chennai-600 051.
- 3.Tamil Nadu Co-operative Milk Producers
Federation Ltd., Represented by its
Managing Director,
Madhavaram Milk Colony,
Madhavaram,
Chennai-600 051.
- 4.The General Manager,
Vellore-Thiruvannamalai District Co-operative
Milk Union Ltd.,
No.142, Arcot Road,
Sathuvachari,
Vellore-9.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the fourth respondent to allow the petitioner to work as Selection Grade Mazdoor/Senior Factory Assistant upto the age of 60 years with all attendant and monetary benefits.

For Petitioner : Mrs.M.Rajeswari for
M/s.Karan and Uday.

For Respondent-1 : Mr.M.Elumalai,
Government Advocate.

For Respondents 2 to 4 : Mr.R.Bala Ramesh

ORDER

The relief sought for in this writ petition is for a direction to direct the fourth respondent to allow the petitioner to work as Selection Grade Mazdoor/Senior Factory Assistant upto the age of 60 years with all attendant and monetary benefits.

2. The writ petitioner was appointed as a Casual Labour on 17.6.1976 in Vellore-Thiruvannamalai District Co-operative Milk Union Limited. Subsequently, he was permanently absorbed as a Last Grade Servant in the cadre of Office Assistant. Thereafter, the petitioner was promoted to the post of Junior Mazdoor/Junior Factory Assistant.

3. The grievance of the writ petitioner is that he is entitled to serve till he attains the age of 60 years. However, the respondents have taken steps to retire the writ petitioner on completion of his 58 years of age. The writ petitioner claims that in the light of Fundamental Rule 56(1)(a) r/w Rule 149 (3) of the Tamil Nadu Co-operative Societies Rules, 1988, the respondents ought to have allowed the writ petitioner to continue till he attains the age of 60 years.

4. The Madurai Bench of this Court considered the similar issue in detail and delivered a judgment on 30.8.2016 in a batch of writ petitions in W.P.(MD) Nos.14737, 14790, 13416, 10299, 9617 to 9621 and 13562 of 2016, after discussing the similar issue elaborately with reference to the Fundamental Rules, this Court passed the following order:-

"19. Although the petitioners are correct in contending that Rule 149(3) of the Tamil Nadu Cooperative Societies Rules, 1988, says that in the matter of appointment and retirement of the co-operative employees, the rules applicable to the Government servant shall be followed, therefore the first proviso to Rule 56(1)(a) of the Fundamental Rules of the Tamil Nadu Government, stating that all basic servants shall retire on attaining the age of 60 years alone would

apply to the case of the petitioners, as rightly contended on behalf of the respondents, the posts which the petitioners are holding namely, Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively, do not fall within the classes and categories of Government servants relating to Tamil Nadu Basic Service, as extracted supra. Further, Fundamental Rule 9(iii) shows that Basic Service includes all services in the following appointments unless declared by Government to be superior:-

a) Service as Office Assistant, Head Office Assistant, Chobdar or Duffadar;

b) Service in Posts the pay of which does not exceed Rs.750/-.

All other service is superior.

20. Therefore, the petitioners who are working in the abovesaid posts which do not fall within the classes and categories of Basic Service, cannot seek a prayer to direct the respondents to allow them to work upto 60 years, as per Rule 149(3) of the Tamil Nadu Cooperative Societies Rules, 1988, read with first proviso to Rule 56(1)(a) of the Fundamental Rules. Accordingly, all the Writ Petitions are dismissed. No costs. Consequently, the interim orders granted, are vacated and all connected Miscellaneous Petitions are closed."

5. In view of the judgment already delivered by the Madurai Bench of this Court on the very same issue and this Court has already confirmed that the similarly placed persons are entitled to continue in service upto the age of 58 years, this Court is not inclined to consider the very same grounds raised in this writ petition.

6. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary to Government,
Government of Tamil Nadu,
Animal Husbandry, Dairying and Fisheries
Department, Fort St. George,
Chennai-600 009.

2.The Commissioner for Milk Production And
Dairy Development,
Madhavaram Milk Colony,
Madhavaram,
Chennai-600 051.

3.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd.,
Madhavaram Milk Colony,
Madhavaram,
Chennai-600 051.

4.The General Manager,
Vellore-Thiruvannamalai District Co-operative
Milk Union Ltd.,
No.142, Arcot Road,
Sathuvachari,
Vellore-9.

+1cc to Mr.R.Balaramesh, Advocate, S.R.No.36512
+1cc to Mr.Karan and Uday, Advocate, S.R.No.36705
+1cc to the Government Pleader, S.R.No.37033

W.P.No.26144 of 2016

(CO)
GSP (21/06/2018)

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