

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.26850 of 2013

S.Krishnamurthy

... Petitioner

vs.

1. The Managing Director,  
TANHODA,  
Chepauk,  
Chennai 600 005.
2. The Joint Director of Horticulture,  
Udhagamandalam.
3. The Assistant Director,  
Department of Horticulture,  
Simspark,  
Coonoor - 643 103.
4. The Manager,  
Department of Horticulture,  
Simspark,  
Coonoor - 643 103.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus, directing the Respondents to allow the Petitioner to continue in service till the completion of 60 years as per FR 56(1) and in the light of the judgment rendered in (2013) 4 MLJ 151.

For Petitioner : Mr.Mohammed Mudassir Ali  
for Ms.Lesi Saravanan

For Respondents : Mr.A.Ansar,  
Government Advocate

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondents to allow him to continue in service till the completion of 60 years as per FR 56(1) and in the light of the judgment rendered in the case of G.Ebinazer vs. The Managing Director, TANHODA, Chennai reported in (2013) 4 MLJ 151.

2. According to the Petitioner, he joined the Department of Horticulture as Farm Worker in the year 1984 on daily wages of Rs.27/- per day. The Government issued G.O.Ms.No.494, Agriculture Department, dated 29.11.2007, regularizing the services of 1083 casual labourers working in Horticulture Department, who have put in 10 years of service as on 01.01.2016 including the Petitioner.

3. It is further stated by the Petitioner that at the time of filing this Writ Petition, he was working in Sims Park Farm under the control of Respondents 3 and 4. While so, the Respondents orally directed the Petitioner to retire from service on completion of 58 years of age, i.e. on 30.09.2013 by placing reliance on a clarification dated 26.11.2009, as per which, the retirement age of Horticulture Farm workers whose services were regularized and brought under the control of Horticulture Department, was fixed as 58 years.

4. It is the case of the Petitioner that since he is a last grade servant, he is entitled to continue till the age of 60 years. Citing reference to similarly placed Noon-meal employees, who are allowed to retire from service on attaining the age of 60 years, the Petitioner pleaded that the same benefit ought to be extended to him also.

5. Learned counsel for the Petitioner submitted that as per FR 56(1), the retirement age of persons in superior service alone is 58 years and that of basic servants is 60 years and hence, the Petitioner, as a last grade servant, is entitled to continue in service till the age of 60 years. He further submitted that the issue as to whether Clause IV employees can continue in service upto 60 years is dealt with in the decision rendered by this Court in the case of G.Ebinazer vs. The Managing Director, TANHODA, Chennai, reported in (2013) 4 MLJ 151. For better appreciation, relevant portion of the said decision is extracted hereunder:

"8. ... This Court rejected the said contention in a batch of Writ Petitions in W.P.No.14977 of 2011 and batch cases [K.Gowran v. State of Tamil Nadu], dated 24.01.2013.

... 14. In the present case, as agreed in the counter affidavit, the State Government fixed the pay lower than the scale of pay available to basic service, certainly they will be treated either under the basic service or below the basic service. It cannot be said that the petitioners are coming

under the superior service, considering the scale of pay fixed to them. Since the Government has admittedly fixed the scale of pay to the petitioners below the persons working under the basic pay, it has to be taken that they are also coming under the basic service or something below the basic service. If the employees under the basic service are entitled to get retired at the age of 60 years, there is no reason for the persons like the petitioners who are drawing scale of pay lesser than the pay of the basic servants, to reject their contention that they should be retired at the age of 60 years, unless the petitioners' service was declared as superior service. When their pay is fixed below the pay of the basic service, they belong to basic service."

9. In the light of the same, the petitioners are bound to succeed. The writ petition stands allowed. In so far as the impugned direction viz., fixing the age of superannuation as 58 years is set aside. It is further directed that the persons who are covered by G.O.Ms.No.494 Agriculture Department, dated 29.11.2007, are entitled to continue in service till the age of 60 years. No costs. Connected miscellaneous petitions are closed."

6. In reply, Mr.A.Ansar, learned Government Advocate appearing for the Respondents submitted that the petitioner has worked upto 60 years in the Respondent-Department and hence, he will be entitled to the benefit of the said decision.

7. This Court on 26.09.2013 granted an interim order of injunction restraining the Respondents from superannuating the Petitioner, until further orders. Now, the Petitioner is almost 65 years and he has rendered service upto 60 years in the Respondent-Department. In view of the same, the Petitioner is entitled to wages upto 60 years apart from other terminal benefits. If the terminal benefits are not extended to the Petitioner, the same shall be extended to him within a period of twelve (12) weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected M.P.Nos.1 and 2 of 2013 are closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Managing Director,  
TANHODA, Chepauk,  
Chennai 600 005.
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Udhagamandalam.
3. The Assistant Director,  
Department of Horticulture,  
Simspark, Coonoor - 643 103.
4. The Manager,  
Department of Horticulture,  
Simspark,  
Coonoor - 643 103.

+1cc to Ms.Lesi Saravanan, Advocate SR.No.46712

+1cc to Government Pleader SR.No.46930

W.P.No.26850 of 2013

GJ(CO)  
GMY(08/07/2019)

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