BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.10518 of 2014

R.Sakthivelu ... Petitioner

Vs.

The Director,
Gandhigram Institute of Rural
Health and Family Welfare Trust,
Ambathurai R.S.,
Gandhigram post,
Dindigul District - 624 302. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to pay the salary, increments due and other monetary benefits, such as service and retirement benefits on the basis of the salary payable on the date of retirement on 31.08.2003 and also the consequential arrear arising thereon together with 12% interest within a specified period.

For Petitioner : Mr.K.Muthumalai

For respondent : No appearance

ORDER

This writ petition has been filed by the petitioner seeking a direction to the respondent to pay salary, increments due and other monetary benefits, such as service and retirement benefits on the basis of the salary payable on the date of retirement on 31.08.2003 and also the consequential arrear arising thereon together with 12% interest within a specified period.

2. It is stated in the petition that the petitioner had served as Attender in the respondent / Institution and after 32 years of service, he was retired from service at the age of 58 years on 31.08.2001, based on the amended Rule, though his retirement age was 60 years. Against this arbitrary action of the respondent, writ petitions were filed in W.P.(MD)Nos.832 and 1331 of 2011 and this Court, by order dated 27.06.2012, has set aside the impugned amendment reducing the age of retirement from 60 years to 58 years. The respondent has filed appeals in W.A.(MD)Nos.570 and 572 of 2012

and they were dismissed by a Division Bench of this Court, vide order dated 04.11.2013. As the matter has reached finality, the petitioner has sent a representation dated 11.04.2014. As the same was not considered by the respondent, the petitioner has filed this writ petition.

3. Heard the learned counsel for the petitioner. Though the writ petition is of the year 2014, the respondent did not even file counter affidavit till date. Today, there is no representation for the petitioner. Hence, this Court is constrained to decide the writ petition on merits based on the materials available on record.

4. The issue to be decided in this case is as to whether the respondent was right in retiring the petitioner at the age of 58 years? and as to whether the petitioner is entitled for wages for two years ie., upto 60 years and other consequential benefits with interest?

5. The issue involved in this writ petition is no more *res integra* in view of the decision of the Division Bench of this Court in **W.A.(MD).Nos.477 of 2011 and 570 to 572 of 2012 (P.Theetha Pillai Vs. The Director, Gandhigram Institute of Rural Health & Family Welfare Trust, Dindigul),** by order dated 04.11.2013. The relevant portion is extracted hereunder:

> "12.From the provisions of Section 9 A and the Clauses 8 and 9 of the Fourth Schedule, extracted supra, it is very clear that it is the mandatory duty cast upon the employer to issue a notice under Section 9(A) of the Act before any change is effected and if there is no dispute or objections raised by the workmen, the change can be effected after 21 days of such notice. If the change is effected pursuant to the any settlement or award, no notice is required. Similarly, if the workmen are going to be affected by any change based on the Rules and Regulations notified by the Government in the official Gazette, notice under Section 9(A) is not required. Admittedly, the Management has reduced the age to 58 years when there is no amendment for retirement of age from 60 to 58 years. The service rules framed by the Management is not statutory in nature, even though it binds on the Management and workmen and the said amendment of the rules framed by the Management cannot take away the benefit conferred on the workmen by the Management by violating the mandatory provisions of Section 9A of the Industrial Disputes Act, 1947. Hence, the contention of the Management that the age of the retirement will not come under alteration of service conditions has to fail. When the Management has not complied with the

mandatory provisions, the question of retrospective effect to the rules need not be gone into. Whether the rules framed by the Management is retrospective or prospective cannot take away the benefit conferred on the employees under the Industrial Disputes Act, 1947. When the Management has extended the age of the retirement to 60 in 2003 and it continued for three years, it has become a service condition and it cannot be withdrawn unilaterally.

13.The contention of the Management that in view of the order dated 29.11.2010 in W.P(MD)No.14002 of 2010, the learned Judge ought to have dismissed the writ petition which is subject to the writ appeal, is farfetched. In the writ petition filed by one employee namely P.Theetha Pillai, he has questioned by filing a Writ of Certiorarified Mandamus the list of the Management retiring the employees at the age of 58 years and then to continue up to the age of 60 years. The learned Judge dismissed the writ petition holding that as the rules were not questioned, the writ petition was not maintainable. The learned Judge while dismissing the writ petition, has observed that Fundamental Rules are applicable *mutadis mutandis* and pay the allowances and other conditions of the services and in that case Board has made a clarification that there shall be a uniform age of retirement. There was no challenge to the Rules in W.P(MD)No.14002 of 2010. In W.P(MD)No.14002 of 2010, the employee has not questioned the Clause 16 of Service Rules, 2003, amended with effect from 01.04.2006 and thereby, retiring the age of employees at the age of 58.

14.Hence, the judgment in W.P.(MD)No.14002 of 2010 will not be applicable as the Rules have not been questioned. In any event that decision is subject matter of W.A(MD)No.477 of 2011 now decided in this common judgment. The Management cannot quote the unreported judgment when the same is subject matter of appeal now being heard and decided.

15. The Hon'ble Supreme Court in the matter of ***Hindustan Petroleum Corporation Ltd., and another -Vs- Dolly Dass*** reported in ***1999 4 SCC 450*** has held that when the facts are not in dispute relegating the parties to alternative remedy is not required. As observed earlier, the date of joining, the date of retirement age at 60, subsequently reduced to 58 years and applicability of Section 56(1)(a) of the Fundamental Rules, the status of the employees as class-IV employees, there was no notice as contemplated under Section 9A of the Industrial

Disputes Act, 1947, the Management receiving grant in aid from the Government are all admitted facts.

16.In such a situation, relegating to an alternative remedy and direct them to go and approach the industrial forum even though the Management is an Industry as per the Industrial Disputes Act, 1947, we feel that such an exercise need not be given to the employees, as based on the admitted facts, the employees will have to succeed. The Management unfortunately without acting as a model employer has driven them to the Court to get the two years wages when the money value got down.

17.We therefore **dismiss** the writ appeals in W.A (MD)Nos.570 to 572 of 2012 as the Clause 16 of the Service Rules, 2003 has held to be bad as in violation of Section 9A of the Industrial Disputes Act, and in view of this, there is no adjudication required in W.A(MD)No.477 of 2011. It is a fit case for payment of costs. Since the Management is a Trust and hoping that henceforth the Management would be a model employer, we refrain from imposing costs. The Management is directed to pay the wages for two years with interest @ 6% per annum from the date of writ petition, and other consequential benefits including terminal benefits, if any, like Gratuity with statutory interest as per payment of Gratuity Act, 1947, from the date of the money became due. Consequently, the connected miscellaneous petitions are also dismissed. No costs."

6. Following the above decision of the Division Bench of this Court, a learned Single Judge of this Court in **W.P.(MD).No.7036 of 2011, (J.Pandian Vs. The Director, Gandhigram Institute of Rural Health and Family Welfare Trust, Dindigul and another)**, by order dated 22.04.2014 has directed the respondent to pay terminal benefits in the light of the above judgment of the Division Bench.

7. In this case, it is not in dispute that on 31.08.2001 the petitioner was retired from service at the age of 58 years, though he is entitled to be retired at the age of 60 years on 31.08.2003, only based on the amended Rule. The Division Bench of this Court in W.A.(MD).Nos.477 of 2011 and 570 to 572 of 2012 has held that the said amendment is bad in law and in violation of Section 9-A of the Industrial Disputes Act and directed the respondent to pay wages for two years and other consequential benefits. Therefore, the relief granted in the writ appeal shall be extended to the petitioner also.

8. In the light of the above judgment of the Division Bench of this Court, this Court directs the respondent to pay wages for two years I.e, for the period between 31.08.2001 to 31.08.2003 with

interest at the rate of 6% p.a. from the date of writ petition and other consequential benefits, including the terminal benefits, if any, like Gratuity with statutory interest as per payment of Gratuity Act, 1947, from the date of the money became due. The above said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

9. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

Sub Assistant Registrar(CS)

gcg

+1 CC to M/s.K.MUTHUMALAI, Advocate (SR-103884[F] dated 06/12/2019)

+1 CC to M/s.M.SENTHILKUMAR, Advocate (SR-103989[F] dated 09/12/2019)

W.P(MD)No.10518 of 2014
06.12.2019

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