

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 30.06.2020

Orders Pronounced on : 07.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.8274 of 2020

and

Writ Miscellaneous Petition No.9911 of 2020

M.Karpagam

Advocate (E.No.2413/2018),

Navin's Apartment, II Floor,

No.4, Nandanam Extension IV Street,

Chennai-600 035.

.. Petitioner

Versus

1. The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

2. The Secretary to Government,
Personnel and Administrative (S) Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

3. The Director,
Directorate of Vigilance and Anti-Corruption,
M.K.N.Road, Alandur,
Chennai-600 016.

... Respondents

Prayer: Writ Petition (Public Interest Litigation) filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents 1 and 2 forthwith to remove all the delinquent employee charged under the Prevention of Corruption Act, who are still in service taking the benefit of G.O.(Ms).No.51, Personnel and Administrative Reforms Department, dated 07.05.2020.

For Petitioner

: Mr.R.Prabhakaran

For Respondents

: Mr.V.Jayaprakash Narayanan
Government Pleader

ORDER

R.SUBBIAH, J

The present Writ Petition has been filed by the Petitioner as a Pro Bono Publico, praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to forthwith remove all the delinquent employees charged under the Prevention of Corruption Act, who are still in service, taking the benefit of G.O.(Ms).No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020.

2. Though very many contentions have been raised by the petitioner in the affidavit filed in support of the Writ Petition, the sum and substance of the grievance of the petitioner is that, recently, the Government of Tamil Nadu had issued G.O.(Ms).No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020, thereby enhancing the age of retirement of the Government employees in regular service, who are due to retire on 31.05.2020, from 58 years to 59 years. According to the petitioner, the said Government Order was issued purportedly due to financial crunch confronted by the Government of Tamil Nadu due to the epidemic (Corona-Covid-19) outbreak. The petitioner further states that this Government Order has been passed to postpone the liability of the Government from paying Gratuity and other benefits to the retired employees, which comes to nearly Rs.5,000 Crores. As per the said Government Order, the relevant provisions under Rule 56 of the Tamil Nadu Fundamental Rules (for short, "FR") will be modified with regard to the above extension of age limit of retirement from 58 years to 59 years. According to the petitioner, the said Government Order was made to apply to all the Government employees who were due to retire on reaching the age of superannuation on 31.05.2020, irrespective of the fact whether any of them was subjected to any disciplinary proceedings under the Prevention of Corruption Act or for any other serious offences. In other words, the Government Order did not exempt any of the Government employees and the employees who have rendered unblemished service and those who are facing departmental proceedings were treated alike. The petitioner also stated that subsequently, a letter was issued by the Personnel and Administrative Reforms (S) Department, Secretariat, Chennai-600 009 in Letter No.11308/S/2020-1, dated 14.05.2020, whereby clarifications were issued by the Government with regard to the applicability of the said Government Order. One of the clarifications issued is to the effect that the Government Order will not be applicable for those employees

against whom disciplinary proceedings is/are pending due to any misconduct. Notwithstanding such clarification, the petitioner would contend that the clarification issued by the Government is not clear as to whether it applies to those employees against whom charges are pending under the Prevention of Corruption Act (for short, "the PC Act") and other serious offences under the Indian Penal Code (IPC). Therefore, it is contended by the petitioner that the aforesaid Government Order issued by the Government is arbitrary and unreasonable whereby the Government treated all the employees, who are due to retire on 31.05.2020, alike, in extending their age of retirement from 58 to 59, irrespective of whether they are subjected to disciplinary proceedings under the Prevention of Corruption Act or any other Act.

3. It is also stated by the petitioner in her affidavit filed in support of the Writ Petition that due to the present Pandemic situation and the consequential financial crunch, the respondents/Government have chosen to increase the age of retirement of the employees who are retiring from service on 31.05.2020. However, similar extension of service has not been resorted to by any other State Government in the Country. Therefore, it is contended by the petitioner that the Government of Tamil Nadu ought not have enhanced the age of retirement without juxtaposing the status of the retiring Government employees as to whether they are facing any departmental proceeding or not.

4. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner made detailed submissions advertng to the averments made in the affidavit filed in support of the Writ Petition.

5. Countering the above submissions, the learned Government Pleader appearing for all the respondents, by placing reliance on the counter affidavit of respondents 1 and 2, submitted that it is incorrect to state that the Government had enhanced the age of retirement due to financial crunch caused due to the Pandemic. In the Government Order dated 07.05.2020, the Government had neither adduced any reason to raise the age of superannuation of the Government servants, nor issued specific orders for with-holding or postponing the terminal benefits of the Government servants/teachers who were to retire on or before 30.04.2020. Further, the petitioner is trying to project as if F.R.56 does not exempt any class of employees. By inviting our attention to FR.56(1)(c), the learned Government Pleader submits that FR 56 stipulates that those categories of

persons whose conduct comes under scrutiny, are not permitted to retire on reaching the date of retirement and they are retained in service only for the purpose of concluding the disciplinary proceedings pending against them. This aspect was also made clear by the Government in the subsequent clarification letter dated 14.05.2020 stating that the Government Order dated 07.05.2020 is not applicable to Government servants whose services are retained under FR.56(1)(c) and not allowed to retire on or before 30.04.2020 due to disciplinary proceedings pending against them.

6. In the above context, the learned Government Pleader appearing for the respondents also invited our attention to the Explanation under FR.56(1)(c) and submitted that it is not tenable to include all the Government servants, against whom a complaint of criminal offence is under investigation and to make them ineligible to avail of the benefit conferred under the aforesaid Government Order dated 07.05.2020. Thus, the clarification issued by the Government is clear that the benefit of extension of service will not be conferred to those Government servants who are facing departmental proceedings. Even otherwise, merely because extension is conferred, it will not ipso facto give a clean chit in favour of such delinquent employee or he will be spared from the disciplinary proceedings already initiated against him. The retention of service of those employees is only to facilitate the conclusion of the disciplinary proceedings against them and therefore, the prayer sought for by the petitioner need not be entertained. It is the further submission of the learned Government Pleader that a Government servant may not be termed guilty, till the charges are proved in the disciplinary proceedings pending against him, and hence, separate orders excluding the increased age of retirement to the Government servants against whom the disciplinary proceedings are pending, cannot be issued. Thus, it is the submission of the learned Government Pleader that the increased retirement age from 58 years to 59 years will not be applicable to all the Government servants irrespective of the disciplinary proceedings pending against them under the relevant Disciplinary Rules.

7. We have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the State and perused the entire materials available on record.

8. The main grievance of the petitioner is that under the garb of issuing G.O. Ms. No.51, Personnel and Administrative Reforms Department, dated 07.05.2020, the Government had treated

alike the employees who have rendered unblemished service and those who are facing departmental proceedings either under the Prevention of Corruption Act or under the Indian Penal Code. Thus, it is the contention of the petitioner that equals are treated with unequals in the matter of extension of the age of retirement. According to the petitioner, a person who is facing serious charges under the Prevention of Corruption Act or other offences punishable under the Indian Penal Code should not be conferred with the benefit of extension of service by another year, as it would amount to giving a premium to a person with tainted record.

9. It is to be noted that even according to the petitioner, subsequent to the Government order dated 07.05.2020, the Government has given a clarification letter dated 14.05.2020. It is worthwhile to quote the relevant clarification in Clarification No.4 issued in the said letter dated 14.05.2020:

Sl. No.	Clarification sought	Reply
4	Whether the said Government Order is applicable to the Government servants whose services are retained under rule 56(i)(c) of Fundamental Rules and not allowed to retire on or before 30.04.2020 due to disciplinary proceedings pending against them	The said Government Order is not applicable to the Government servants whose services are retained under rule 56(i)(c) of Fundamental Rules and not allowed to retire on or before 30.04.2020 due to disciplinary proceedings pending against them.

10. The clarification letter issued by the Government makes it abundantly clear that the Government Order dated 07.05.2020 has no application in so far as it relates to those Government servants whose service are retained under F.R.56 (1) (c). Thus, even assuming that some of the Government servants, who are facing departmental proceedings were retained in service beyond the age of his or her retirement under the garb of the Government Order dated 07.05.2020, we are of the view that such extension of service in favour of those Government servants would not absolve their delinquency or it will in any manner aid them to get a clean chit in their favour in the departmental proceedings. The retention of the Government servant in service beyond the age of retirement is only for the purpose of conclusion of departmental enquiry. FR 56(1)(c) reads as

follows:

"Chapter-IX: Retirement:

F.R.56(1): Retirement on superannuation:

(a) ...

(b) ...

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial.

shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation: For the purpose of this clause, the expression 'criminal misconduct shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56(1)(c):- Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of

termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date."

11. Thus, the retention of the Government servants beyond the age of retirement, even if he or she is facing departmental enquiry under the Prevention of Corruption Act or under any other Act, is only for the purpose of conduct of departmental enquiry and it is also in consonance with FR.56 quoted above.

12. The learned Government Pleader would contend that merely because a complaint has been given or a disciplinary proceeding is pending against a government servant it does not mean that such a government servant is guilty of having committed the delinquency unless and until the charges are proved in the disciplinary proceedings. We find much force in the submission of the learned Government Pleader. Merely because charges are pending against a government servant, it does not mean that it should end only in holding the delinquent employee guilty of the offence (s) under the relevant Act or Rules. After conclusion of the disciplinary proceeding, the government servant may be relieved or discharged of the charges framed against him on noticing that the charges framed against him are not proved in the departmental proceedings. Furthermore, the petitioner cannot presume that all the employees, against whom charge (s) is/are pending, are guilty of the charge (s) to deny the benefit of extension of service. Moreover, the extension of the age of retirement of the government employees, by way of the Government Order dated 07.05.2020 is a policy decision taken by the Government to streamline the administrative activities over which this Court cannot interfere.

13. We also refuse to issue any relief in favour of the petitioner in this writ petition for yet another reason. Even though the petitioner has filed the present writ petition contending that unequals are treated alike with equals, by virtue of the Government Order dated 07.05.2020, we find that the petitioner has not come up with any facts and figures to substantiate the same. The petitioner has filed the present writ petition without any documentary proof to substantiate the averments. The petitioner could have pointed out some instances where the service of a Government servant, who is facing

departmental proceedings for the offence punishable under Prevention of Corruption Act or any other Act, had been extended by virtue of the Government Order dated 07.05.2020. However, the petitioner has not taken any steps to furnish such information. The affidavit filed in support of the writ petition is not only bald but also vague. By filing the present writ petition, we are of the firm opinion, that the petitioner had wasted the time of this Court. Therefore, this is a fit case for imposing exemplary costs on the petitioner for having filed the present vexatious writ petition styled as a Public Interest Litigation, however, we desist from doing so by taking into account the over all facts and circumstances of the case.

14. For all the reasons aforesaid, we dismiss the Writ Petition as devoid of any merits, however, without costs. Consequently, WMP. is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

cs/rsh

To

1. The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.
2. The Secretary to Government,
Personnel and Administrative (S) Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.
3. The Director,
Directorate of Vigilance and Anti-Corruption,
M.K.N.Road, Alandur, Chennai-600 016.

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