

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.8568 of 2020
and W.M.P.Nos.10357 and 10358 of 2020

K.Pachiappan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Chief Secretary to Government,
Personnel and Administrative Reforms (S) Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai 600 009.
3. The Commissioner of School Education,
O/o.the Commissioner of School Education Department,
College Road, Chennai-6.
4. The Director of School Education,
O/o.The School Education Department,
College Road, Chennai-6.
5. The Chief Educational Officer,
O/o.The Chief Educational Officer,
Dharmapuri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings in G.O. Ms. No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020, in so far as it restricts to those who are in regular service as on date and due to retire on superannuation from 31.05.2020 and the consequential impugned order passed by the first respondent in his Proceedings in Letter No.11308/S/2020-1 dated 14.05.2020 and quash the same as illegal and consequently to direct the respondents to extend the

retirement age of the petitioner from 58 years to 59 years in terms of G.O.Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020.

For Petitioner : Mr.R.Thamaraiselvan
For Respondents: Mr.R.Vijayakumar,
Addl.Govt.Pleader for R1

Mr.C.Munusamy, Spl.GP (Edn.)
for R2 to R5

ORDER

According to the petitioner, he is working as Headmaster in the Government Higher Secondary School, Athagappadi. He attained the age of superannuation on 31.01.2020, ie., during the middle of the academic year and thereafter on re-employment, he has been permitted to work till 31.05.2020.

2.While so, the Government of Tamil Nadu has passed the order in G.O.Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020 as per which the age of superannuation of Government servants has been increased from 58 years to 59 years and the same has been directed not to apply for the teachers who are actually in service as on the date of the Government Order on re-employment. Contending that the petitioner herein is also entitled to the benefits of G.O.Ms.No.51 dated 07.05.2020, the present writ petition has been filed praying to set aside the Government Order in G.O.Ms.No.51 dated 07.05.2020 and the subsequent Government Letter issued by the first respondent in Letter No.11308/S/2020-1 dated 14.05.2020 insofar as it disallows the teachers in service on re-employment as on 07.05.2020 and consequently to direct the respondents to allow the petitioner to continue in service till reaching the age of 59 years, with all consequential and attendant benefits.

3.The learned counsel for the petitioner has submitted that as per the Government Order, revision of age of retirement is not applied to Government teachers in service as on the date of the Government Order on re-employment till the end of the academic year, on the premise that they reached the age of retirement prior to the date of Government Order. Such discrimination against the teachers who are actually in service on re-employment as on the date of the Government Order by referring to the cutoff date for retirement is ex-facie arbitrary and illegal and opposed to the purpose/object for which the age of retirement has been directed to be revised as per the Government Order. He further submitted that the continuation of cutoff date to exclude the teachers in service

as on the date of the Government order on re-employment is blatantly capricious and against the ratio laid down by the Constitutional Bench of the Hon'ble Supreme Court in D.S.Nagara case (1983 (1) SCC 305), wherein the Hon'ble Supreme Court has directed that the benefits of liberalised and the extended tenure even in accordance with the liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and the benefits cannot be confined only to the persons who retired on or after the specified date by considering the purpose for grant of benefits of liberalisation in pension. It is his further submission that the determination of cutoff date needs to be passed on the uniform criteria which is intelligible, fair and reasonable opportunity as per the ratio laid down by the Hon'ble Supreme Court reported in (2015) 16 SCC 652, whereas, the impugned order has been passed without carving out the intelligible differentia between the Government servants in regular service and the teachers in service on re-employment as on the date of the Government order. Finally stating that the impugned Government Order in G.O.Ms.No.51, dated 07.05.2020 issued by the Government in not extending the benefit of the revision of age of retirement in respect of the teachers in service as on the date of the Government order on re-employment basis is in violation of Articles 14 and 16 of the Constitution of India, the learned counsel for the petitioner prayed for allowing the prayer as sought for in this writ petition.

4. Heard the learned Additional Government Pleader appearing for the first respondent and the learned Special Government Pleader (Education) appearing for the respondents 2 to 5, who have submitted that the issue involved in this writ petition has been elaborately dealt with by this Court and an order has been passed by the Madurai Bench in W.P.(MD)No.6442 of 2020 etc.batch on 08.06.2020 dismissing the claim of the incumbents therein, who are similarly placed like that of the petitioner herein; the said order squarely applies to the facts of the present case and hence the petitioner herein is not entitled for the relief as prayed for in this writ petition.

5. This Court has perused the order passed by this Court in W.P.(MD)No.6442 of 2020 etc.batch dated 08.06.2020 which applies to the present case on all fours. In that case, upon exhaustive consideration of the issue, the learned single Judge has dismissed the claim of the incumbents therein. The relevant portion of the said order reads as under:

"7. In the present year, a Government Order came to be passed, namely, G.O Ms.No.51 Personnel and Administrative Reforms (S) Department, dated 7.5.2020. By this Government Order, the Government had decided to increase the age of superannuation of Government

service from 58 years to 59 years. It was stated that this would apply to all those who are in regular service as on that date and due to retire on superannuation on 31.05.2020. The Government Order was issued on 07.05.2020. The writ petitioner was not in regular service on 07.05.2020. She was only a contractual employee. She cannot claim any benefit under the aforesaid Government order. A clarification was issued stating that the order would not apply to those who had attained the age of superannuation on or before 01.05.2020. The petitioner herein had already retired on superannuation on 31.03.2020. There cannot be two retirements on superannuation. Every person will attain the age of 58 years only once in his/her life time. The petitioner had attained the age of 58 years as on 31.03.2020, cannot claim any further benefit as she is no longer a regular employee. The Government order also stated that the order shall also be applicable to all teaching and non-teaching staff working in aided educational institutions and employees of all Constitutional/Statutory Bodies, Public Sector Undertakings including all State Corporations, Local Bodies, Boards, Commissions, Societies, etc.

8. The benefit of the Government order by a conjoint reading will apply only to those who were in regular service as on 31.05.2020 and those who are due to retire on superannuation as on 31.05.2020. I hold that the entire writ petition is misconceived."

6. In the present case, the petitioner has been granted re-employment through a letter/agreement. Since the relationship of employer and employee has been frustrated on the date of superannuation, the re-employment so granted to the petitioner is not an extension of service and he was requested to render his service only for the benefit of students till the end of the academic year. The petitioner, who had taken up the offer, cannot seek any additional benefit, as he had enjoyed all benefits during the period of his regular service. After the academic year comes to an end, the service of the petitioner would stand automatically terminated and so, he cannot be compared with an employee in regular service. Therefore, there cannot be any issue of discrimination or even comparison between the petitioner and a regular employee as on 31.05.2020. Further, the Government Order had been passed with reference to regular employees and it is only those employees, who can seek any explanation about the same. As such, the petitioner, who is not in regular service, cannot complain about the Government Order, which does not apply to him at all.

7.In such view of the matter, the writ petition deserves only to be dismissed and accordingly it is dismissed. The first respondent/Government is directed to process the pension papers and pay the pensionary and retirement benefits to the petitioner herein, which he is entitled to, at the earliest. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

KM
To

1. The Chief Secretary to Government,
Government of Tamil Nadu,
Personnel and Administrative Reforms (S) Department,
Secretariat, Fort St. George, Chennai 600 009.
2. The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George, Chennai 600 009.
3. The Commissioner of School Education,
O/o.the Commissioner of School Education Department,
College Road, Chennai-6.
4. The Director of School Education,
O/o.The School Education Department,
College Road, Chennai-6.
5. The Chief Educational Officer,
O/o.The Chief Educational Officer,
Dharmapuri District.

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PP(CO)
SP(30/07/2020)