

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.10870 of 2020

and

W.M.P Nos.13190 and 13768 of 2020

N.Naganathathevar

...Petitioner

Vs.

1.The Chief Secretary to Government,  
Personnel and Administrative  
Reforms (S) Department,  
Fort St.George,  
Chennai-9.

2.The Additional Chief Secretary  
to Government,  
Revenue and Disaster Management  
Department,  
Fort St.George,  
Chennai-9.

3.The Secretary,  
Personnel and Administrative  
Reforms (FR II) Department,  
Fort St.George,  
Chennai-9.

4.The Principal Secretary to  
Government (FAC),  
Public (Spl.A) Department,  
Fort St.George,  
Chennai-9.

... Respondents

Prayer:

Writ Petition filed under Section Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus, calling for the records relating to the fourth respondent herein in letter N.484/A112020 Public (Special A) Department, dated 28.05.2020 and quash the same and consequently direct the second respondent herein to retire the petitioner with effect from 31.05.2020 and settle all the retirement benefits.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.P.Sivashanmuga Sundaram  
Special Government Pleader

O R D E R

The matter is taken up through web hearing.

2.This writ petition is filed with the following prayer:

"To call for the records relating to the fourth respondent herein in letter N.484/A112020 Public (Special A) Department, dated 28.05.2020 and quash the same and consequently direct the second respondent herein to retire the petitioner with effect from 31.05.2020 and settle all the retirement benefits"

3.The petitioner originally was appointed as Assistant in the year 1990 and was promoted to the post of Assistant Section Officer in the year 1994. He was further promoted to the post of Section Officer in 2006 and again promoted to the post of Under Secretary in 2012 and finally promoted to the post of Deputy Secretary in 2018. The petitioner reached the age of superannuation on completion of 58 years of age, on 25.05.2020 and hence, due for retirement on 31.05.2020.

4.The Government has issued G.O.Ms.No.51, Personal and Administrative (S) Department, dated 07.05.2020, increasing the age of superannuation of the Government Servants from 58 to 59 years. The Government issued the said order in view of the pandemic crisis faced by the State. The petitioner, however, submitted a representation to the 4<sup>th</sup> respondent on 08.05.2020, requesting to permit him to retire from service on 31.05.2020 with all retirement benefits, notwithstanding the above said G.O., increasing the age of retirement of the Government servants from 58 to 59 years.

5.The fourth respondent, vide his proceedings dated 28.05.2020, rejected the request of the petitioner stating that no relaxation was permissible in the application of G.O.No.51, dated 07.05.2020. The rejection letter dated 28.05.2020 is put to challenge in the Writ Petition.

6.Mr.R.S.Aanandan, the learned counsel for the petitioner would submit that as per Fundamental Rule 56(1)(a), the prescribed age of retirement on superannuation is 58 years. While this being the position of the Rule, the third respondent

issued G.O.Ms.No.62, Personal and Administrative Reform (FRII) Department dated 01.06.2020, amending the Fundamental Rule 56(1) (a), enhancing the age of retirement on superannuation from 58 to 59 years. The said amendment was given retrospective effect from 07.05.2020, the date on which the earlier G.O.Ms.51 was issued. According to the learned counsel, the retrospective amendment is illegal and invalid and cannot be applied to the Government Servants, like the petitioner herein.

7.The learned counsel would also submit that a mere Government Order will not override the Fundamental Rules, as the petitioner was deemed to have retired from service on 31.05.2020 itself, meaning that original G.O.Ms.No.51, dated 07.05.2020, cannot supersede the statutory Rule retrospectively. According to the learned counsel, the amendment came only on 01.06.2020 and therefore, the rejection of the petitioner's request is unsustainable in law.

8.This Court has considered the submissions of the learned counsel appearing for the petitioner with reference to the Government Orders quoted and also the relevant Fundamental Rules. At the outset, this Court is of the considered view that the petitioner's challenge in the writ petition is thoroughly misconceived and misplaced. When the Government issued G.O.Ms.No.51, dated 07.05.2020, increasing the age of superannuation of Government Servants from 58 to 59, the objective behind increasing the age was to overcome and tackle the extraordinary pandemic crisis faced by the Government. The Government Order was necessitated for protecting the larger interest of the State and as a matter of fact, thousands of Government employees have been benefited in view of increase in the age of retirement. Infact, this Court has witnessed several batches of writ petitions filed by the Government servants, seeking extension of the benefit of G.O.Ms.No.51, dated 07.05.2020, whose cases were excluded from the purview of the said G.O., due their retirement earlier than May, 2020.

9.Surprisingly and rather strangely the present petitioner, in the guise of challenging the rejection order dated 28.05.2020, in fact, is questioning the basis of G.O.Ms.No.51, dated 07.05.2020. The learned counsel's submission about the Government Order overriding the Fundamental Rule is rather a specious argument, which, in the opinion of this Court, does not merit any serious consideration. As a matter of Policy, it is always within the prerogative of the Government to increase or decrease the age of retirement of the government servants, which cannot be questioned lightly by the Government servants, unless the Policy is opposed to public interest or suffer from rank arbitrariness.

10.As far as the present action of the Government by issuing G.O.Ms.No.51, dated 07.05.2020, increasing the age of superannuation from 58 to 59 is an outcome of a policy decision of the Government due to Covid-19 situation, which can never be construed as action taken in haste or would be construed to suffer the vice of arbitrariness.

11.Be that as it may, the right of an individual is bound to be subordinated to the larger public interest and particularly in today's context of unprecedented crisis. The Policy as effected in G.O.Ms.No.51, dated 07.05.2020, cannot sought to be assailed under the pretext of an individual being affected by the increase in the age. The challenge to rejection order dated 28.05.2020 and thereby questioning the Policy decision of the Government in enhancing the age from 58 to 59 years is nothing but a manifestation of unabashed promotion of self cause by the petitioner against larger interest of his colleague Government Servants and the State. If this Court were to accept the contention of the petitioner, it would amount to interfering with the Policy of the Government, at the instance of a self centred interest of one individual officer. It would be a travesty of justice, if this Court is to entertain the writ petition and quash G.O.Ms.No.51 dated 07.05.2020.

12.Although this Court was inclined to dismiss the writ petition with exemplary costs, however, considering the age of the petitioner and his anxiety to leave the Government service at the age of 58, probably, for the retirement benefits which may follow his retirement, this Court is refraining from imposing costs.

13.In the above circumstances the writ petition is dismissed as being devoid of merits and substance. No costs. Connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Secretary to Government,  
Personnel and Administrative  
Reforms (S) Department,  
Fort St.George,  
Chennai-9.

2.The Additional Chief Secretary  
to Government,  
Revenue and Disaster Management  
Department,  
Fort St.George,  
Chennai-9.

3.The Secretary,  
Personnel and Administrative  
Reforms (FR II) Department,  
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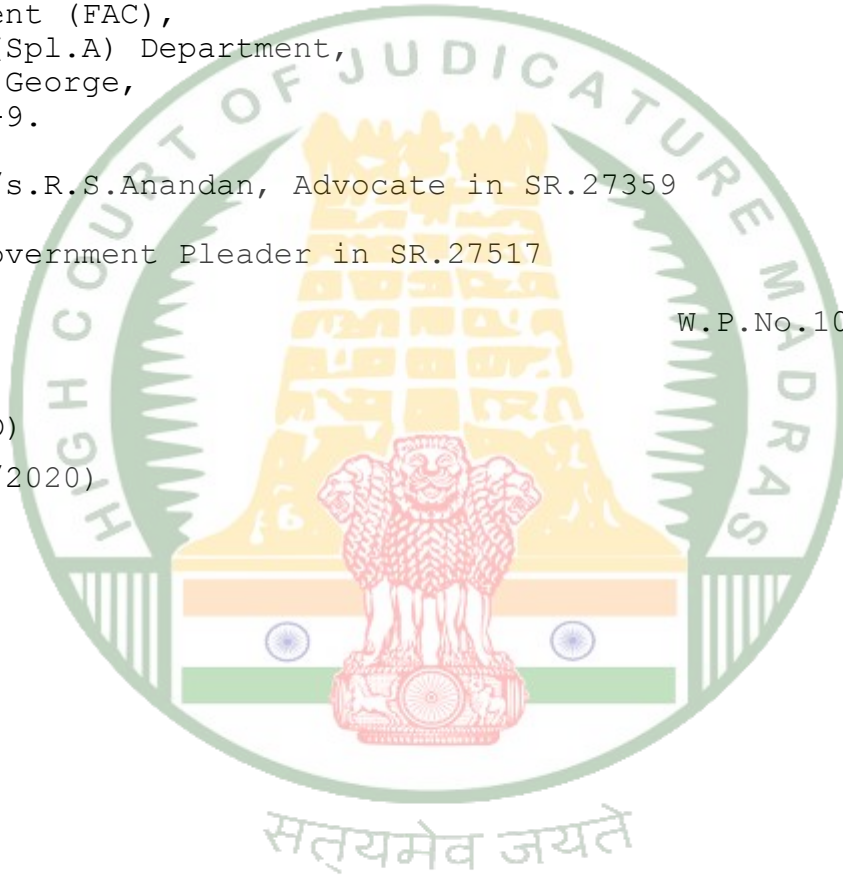
+1cc to M/s.R.S.Anandan, Advocate in SR.27359

+1cc to Government Pleader in SR.27517

W.P.No.10870 of 2020

VSN II (CO)

RV (10/09/2020)



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