



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD)No.8737 of 2020

and

W.M.P. (MD) Nos.8040 & 8041 of 2020

P.Subbian

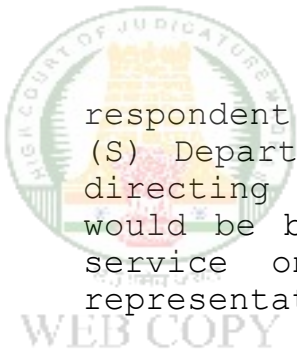
... Petitioner

Vs.

- 1) The Chief Secretary,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009
 - 2) The Secretary,
Personnel and Administrative Reforms (S) Department,
Secretariat, Fort St.George,
Chennai 600 009
 - 3) The Principal Chief Engineer
& Chief Engineer (General),
Public Works Department,
Chepauk, Chennai.
 - 4) The Special Chief Engineer,
Public Works Department/ Water
Resource Organisation,
Vaipar Basin Circle,
Virudhunagar, Virudhunagar District.
 - 5) The Executive Engineer,
Ground Water Division,
Public Works Department,
Madurai 625 002
 - 6) The Executive Engineer,
Public Works Department/
Water Resources Organization,
Gundar Basin Division,
Madurai 625 002
- ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 1st

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respondent in G.O.(Ms) No.51 Personnel and Administrative Reforms (S) Department dated 07.05.2020 and quash the same as illegal and directing the respondent to issue a revised Government Order which would be benefit to the Government servants who have retired from service on 30.04.2020 like the petitioner by considering the representation of the petitioner dated 07.05.2020.

For Petitioner : Dr.C.Guhaseelarupan

For Respondents : Mr.M.Jeyakumar,
Additional Government Pleader

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, seeking to call for the records of the impugned order passed by the 1st respondent in G.O.(Ms) No.51 Personnel and Administrative Reforms (S) Department, dated 07.05.2020 and quash the same as illegal and direct the respondents to issue a revised Government Order, which would be beneficial to the Government servants, who have retired from service on 30.04.2020, like the petitioner, by considering the representation of the petitioner dated 07.05.2020.

2. The petitioner had been working as Assistant at the third respondent/ Office of the Principal Chief Engineer & Chief Engineer (General), Public Works Department, Chempauk, Chennai and on superannuation retired from service on 30.04.2020.

3. On 07.05.2020, the State of Tamil Nadu issued a Government Order in G.O.(Ms).No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020, which reads thus:

"G.O.Ms.No.51

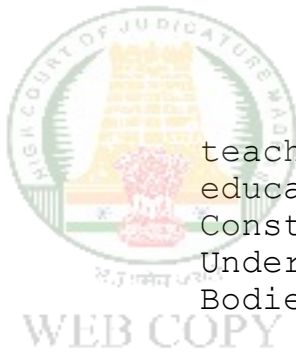
Dated 07.05.2020

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G.O.(Ms.) No.532, Personnel and Administrative Reforms (Personnel-M) Department, dated 25.04.1979.

ORDER:

The Government have decided to increase the age of superannuation of Government servants from 58 years to 59 years and orders accordingly. This will apply to all those who are in regular service as on date and due to retire on superannuation from 31.05.2020.



2.This 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 Corporation, Local Bodies, Boards, Commissions, Societies, etc.

3.The relevant provisions under rule 56 of Tamil Nadu Fundamental Rules will be modified to the above extent. Necessary amendment to the above rules will be issued accordingly.

(BY ORDER OF THE GOVERNOR)

K.SHANMUGAM
CHIEF SECRETARY TO GOVERNMENT"

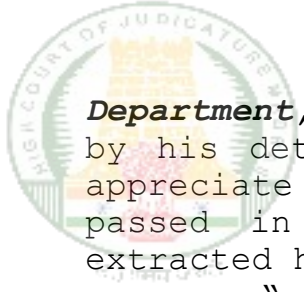
4. By virtue of the said G.O.(Ms).No.51, the superannuation age of Government employees and Statutory Bodies, Public Sector Undertakings including all State Corporation, Local Bodies, Boards, Commissions, Societies, etc., were enhanced from 58 to 59.

5. Subsequently, the Government also issued a clarrification by which, the import of G.O. and the benefit conferred under G.O. (Ms).No.51 would be made applicable for the employees those who are in service on 31.05.2020, which means, those who retired from service due to superannuation prior to 31.05.2020 would not get the benefits or fruits of this G.O.(Ms).No.51 for getting extension of superannuation age by one year (i.e.) from 58 to 59.

6. Since the petitioner retired from service on 30.04.2020 and within one week period (i.e.) on 07.05.2020, G.O.(Ms).No.51, Personnel and Administrative Reforms (S) Department was issued, wherein, the cut-off date fixed as 31.05.2020, was the eligible date to get the benefit of enhancement of retirement age from 58 to 59, is bad in law. Therefore, according to the petitioner, the impugned G.O. restricting the period as 31.05.2020 and thereafter, has to be interfered with and accordingly, the benefit conferred under G.O. (Ms).No.51 can be extended to the petitioner also.

7. Heard Dr.C.Guhaseelarupan, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondents.

8. The said issue raised in this writ petition has already engaged this Court in a number of cases. Initially, when a batch of cases came up for hearing before this Court, a learned Judge of this Court in W.P.(MD) No.6442 of 2020 etc. batch in the matter of **S. Germani Isabella Vs. The State of Tamilnadu, rep. by its Chief Secretary to the Government, Personnel & Administrative Reforms (S)**



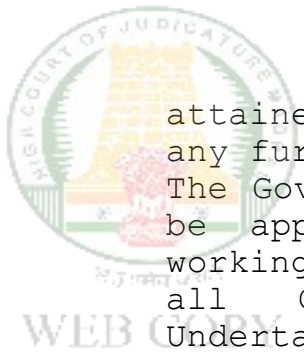
Department, Secretariat, Chennai - 600 009 and others is concerned, by his detailed order has rejected the said plea and in order to appreciate the same, the relevant paragraphs of the common order passed in the batch of writ petitions referred to above are extracted hereunder:

" 4. The writ petitioner has retired on superannuation on 31.03.2020. The employee and employer relationship stood frustrated on that date. Thereafter, a letter was issued and the petitioner was requested to continue her service on the conditions stipulated. The petitioner can be removed from service at any point of time. Any order of termination of the agreement or any other order passed during the period of contractual extension would not require any disciplinary proceedings to be initiated. An order determining service is enough.

5. The petitioner had enjoyed all benefits during the period of her regular service. After the academic year comes to an end the service of the petitioner would stand automatically terminated. The petitioner cannot get any further extension of period flowing to the next academic year.

6. In the present case, the writ petitioner who is before this Court had retired on 31.03.2020. The writ petitioner was granted period of extension through a letter/agreement. It is not an extension of service. She was requested to continue teaching 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.

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.

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20. The said Judgement is directly binding on this Court. The petitioner is similarly not entitled to the benefit under **G.O Ms.No.51 Personnel and Administrative Reforms (S) Department, dated 7.5.2020.**

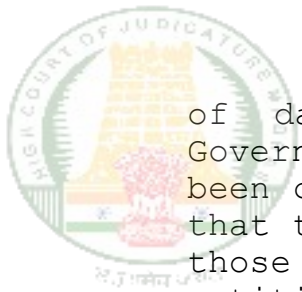
21. Therefore, for all the reasons as stated above the relief sought for by the petitioner is rejected. Accordingly, **the writ petition stands dismissed** with following direction:

(i) **A direction is issued to the first respondent/Government to process the pension papers and pay the pensionary and retirement benefits to the petitioner as applicable, on or before 31.07.2020.** If there is any delay, the petitioner would be entitled to seek that appropriate interest be levied.

22. In view of the above, all the Writ Petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed."

9. Following the said judgment, I had an occasion to consider a similar issue in some of the cases, where in W.P.(MD) No.7338 of 2020, by order dated 08.07.2020, I have passed the following order:

"7.The petitioner also is similarly placed as he also, on superannuation on 29.02.2020, got reemployment upto 31.05.2020. Therefore, she would also not be eligible or entitled to avail the benefit of G.O.Ms.No.51, which is impugned herein. Moreover, the Government, either considering the COVID 19 period or otherwise took a policy decision to extend the superannuation age of State Government employees from 58 years to 59 years by amending Rule 56 of Fundamental Rules and once, such a benefit is given and cut off date is fixed, such prescription of cut



of date since is with the sound reasoning of the Government, cannot be found fault with. It has further been clarified by the consequential order dated 14.05.2020 that the benefit of G.O.Ms.No.51 would be extended only to those who are in regular service as on 31.05.2020. The petitioner cannot be considered to be in regular service as on 31.05.2020 as admittedly, he has superannuated on 29.02.2020 and his re-employment upto the end of the academic year or upto 31.05.2020 cannot be stretched upon as a regular service. Therefore, the benefit arising out of G.O.Ms.No.51 shall not be made applicable to the petitioner and the similarly placed persons.

8. In this regard, the decision in S.Germani Isabella case cited supra has already given a complete answer, which has become final. Therefore, I am in respectful agreement with the decision of the learned Judge and also inclined to follow the same. Accordingly, this petitioner is not deserved to be considered for getting the relief sought for in this writ petition. Accordingly, the writ petition fails and is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

10. Since a number of orders have been passed on the very same issue raised by similiarly placed persons, who retired on superannuation on or before 30.05.2020 and whose request to extend the benefit of G.O.Ms.No.51 since has been rejected invariably in all these cases, as referred to above, the present writ petition is also liable to be rejected as admittedly, the petitioner retired from service on superannuation on 30.04.2020. Therefore, the import of G.O(Ms).No.51, Personel and Administrative Reforms (S) Department, dated 07.05.2020 cannot be extended to the petitioner, as admittedly, he was not in service on 31.05.2020.

11. In that view of the matter, this writ petition fails. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

- 1) The Chief Secretary,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2) The Secretary,
Personal and Administrative Reforms (S) Department,
Secretariat, Fort St.George,
Chennai 600 009
- 3) The Principal Chief Engineer
& Chief Engineer (General),
Public Works Department,
Chepauk, Chennai.
- 4) The Speical Chief Engineer,
Public Works Department/ Water
Resource Organisation,
Vaipar Basin Circle,
Virudhunagar, Virudhunagar District.
- 5) The Executive Engineer,
Ground Water Division,
Public Works Department,
Madurai 625 002.
- 6) The Executive Engineer,
Public Works Department/
Water Resources Organization,
Gundar Basin Division,
Madurai 625 002

Order made in
W.P. (MD)No.8737 of 2020
Dated:05.08.2020

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SDS (03.09.2020) 7P-7C