



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.06.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD) No.6619 of 2020

and

W.M.P. (MD) .Nos.5971 and 5972 of 2020

J.Hemalatha

... Petitioner

Vs.

1. The State of Tamilnadu,
rep. By its Chief Secretary to the Government,
Personnel & Administrative Reforms (S) Department,
Secretariat, Chennai - 600 009.
 2. The State of Tamil Nadu,
Rep. By its Chief Secretary to Government,
School Education Department, Secretariat,
Chennai - 600 009.
 3. The Commissioner of School Education,
O/o. the Commissioner of School Education Department,
College Road, Chennai - 600 006.
 4. The Director of School Education,
O/o. The School Education Department,
College Road, Chennai - 600 006.
 5. The Chief Educational Officer,
O/o. Chief Educational Office,
Thanjavur, Thanjavur District
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of ***Certiorarified Mandamus***, calling for the records relating to the Government Order in G.O Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020 on the file of the first respondent 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 consequential impugned order in Lr.No.11308/S/2020-1, dated 14.05.2020, on the file of the first respondent and quash the same as illegal and consequently for a direction, directing the respondents to extend the retirement age of the petitioner from 58 years to 59 years in terms of the G.O Ms.No.51 Personnel and Administrative Reforms (S) Department dated 07.05.2020, within the time period stipulated by this Court.



For Petitioner : Mr.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

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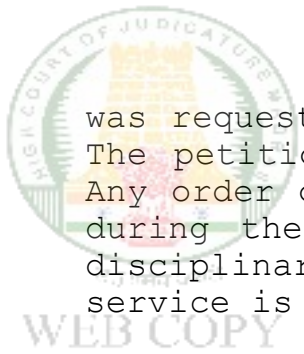
ORDER

The instant Writ Petition has been filed in the nature of ***Certiorarified Mandamus*** to quash the impugned order passed by the first respondent in proceedings in **G.O Ms.No.51 Personnel and Administrative Reforms (S) Department, dated 07.05.2020** and consequential impugned order passed by the first respondent in proceedings in **Lr.No.11308/S/2020-1 dated 14.5.2020** and also sought for a direction to the respondents **to extend the retirement age from 58 years to 59 years of the petitioner in terms of the G.O Ms.No.51 Personnel and Administrative Reforms (S) Department dated 07.05.2020.**

2. Heard Mr.Aswin Rajasimman, learned counsel appearing for the petitioner. Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, takes notice for the respondents. Heard Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, appearing for the respondents.

3. The petitioner was initially appointed as Secondary Grade Teacher and is now working as Higher Secondary School Headmaster in the Government Girls Higher Secondary School, Mathukur, Thanjavur District. The petitioner had retired on 31.07.2019 on reaching the age of superannuation and thereafter, she was granted re-employment upto 31.05.2020 as a Teacher in the Education Department. This has always been the practice, obviously for the welfare and in the interest of the students. If any teacher, particularly, in the higher secondary grade is granted extension then it is for the benefit of students. It is not any concession shown to the teacher. If the teacher is an expert in Maths or Physics and suddenly retires half way during the academic year then a new teacher cannot be expected to continue to teach the syllabus in the manner in which the students are accustomed. In such circumstances, re-employment was granted only in the Education Department and more particularly for higher secondary grade teachers. On the date of superannuation the employer and employee relationship had become frustrated. Out of a sense of duty, the teacher continues in service to teach the students with a noble object in mind. The teacher will be relieved from service and an order would be passed terminating the agreement on completion of the academic year.

4. The writ petitioner has retired on superannuation on 31.07.2019. 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 31.07.2019. 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 07.05.2020.** 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 31.07.2019. 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 31.07.2019, 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.



9. The learned counsel appearing for the petitioner made a submission that at the time of admission of earlier writ petitions it had been stated that similarly placed writ petitioners would not claim any monetary benefit. That is a statement which can have no bearing on extension of service. The petitioner cannot claim any extension. The learned counsel also stated that the date 31.05.2020, had been fixed arbitrarily and no reason had been given. **It is an executive decision and this Court is not prepared to examine that aspect.** It was further stated by the learned counsel for the petitioner that COVID-19 pandemic lockdown was announced as early as on 31.07.2019. I am not able to comprehend the inference that by implication, the petitioner should be deemed to be in regular service even after that date. The Government Order can be only prospective in nature. It cannot be retrospective. There has got to be a cut off date.

10. The learned counsel appearing for the petitioner also questioned **Lr.No.11308/S/2020-1 dated 14.5.2020** by which a clarification was issued regarding **G.O.Ms.No.51 Personnel and Administrative Reforms (S) Department, dated 7.5.2020.** In the clarification it had been stated that **the Government order is not applicable to those teaching staffs such as Teachers, Lectures, Professors etc., who have already retired prior to 31.05.2020 but re-employed for the remaining academic year.**

11. The teachers were granted extension of period with the hope that they would extend their knowledge for the benefit of students. On the other hand, they are now claiming extension of service which is condemnable. They cannot be given any false hope. The learned counsel appearing for the petitioner drew the attention of this Court to an interim order of a learned Single Judge wherein the Government order had been kept in abeyance. That is an issue beyond the purview of this Court.

12. This Court is not able to understand the grounds on which the writ petition has filed. The relationship of employer and employee has been frustrated on the date of superannuation. They have been granted extension of period only to teach the students on contractual basis.

13. The learned counsel appearing for the petitioner also stated that the petitioner had retired on superannuation on 31.07.2019 itself and imputed an oblique motive on the Government stating that the order had been passed only because the Government was not in a position to pay the retirement benefits of those who retire from service on superannuation. As stated in the Government Order in **G.O Ms.No.51 Personnel and Administrative Reforms (S) Department, dated 7.5.2020** the extension is only for those who retired after 31.05.2020. Naturally there cannot be any denial of pensionary benefits for those who retired prior to 31.05.2020.



14. The learned counsel for the petitioner also stated that there has been discrimination between the petitioner, whose services had been extended and regular employees, who were in service as on 31.05.2010. I hold that the petitioner cannot be categorized as a regular employee on account of retirement by superannuation on 31.07.2019. Therefore, on 31.05.2020, the petitioner cannot be compared with an employee in regular service. The petitioner, on 31.05.2020, was not in regular service. The petitioner was only on service under an agreement / contract. Therefore, there cannot be any issue of discrimination or even comparison between the petitioner and a regular employee as on 31.05.2020.

15. Reference has been made to **AIR 1983 SC 130 (D.S.Nakara and others Vs. Union of India)** and in particular to paragraph No.47.

"47.Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive."

16. The learned counsel for the petitioner therefore stated that **G.O.Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020** should also be retrospective in effect. Unfortunately, the ratio laid down in the above judgment is not applicable to the facts and circumstances of the present case. The petitioner had retired on superannuation on 31.07.2019. The Employer / Employee relationship stood frustrated on that date. The petitioner cannot claim any further benefit from the Government apart from the pensionary and retirement benefits. Therefore, the date fixed in the Government Order in the instant case, cannot be made applicable retrospectively. This would lead to an anomalous situation where every employee in every department, who retired at any point of time prior to 31.05.2020 would seek extension of service as a matter of right. Such a situation cannot be permitted by any Court of law. Grant of pension is a right arising out of the service and is a separate and distinct issue altogether. That was a primary issue before the Constitution Bench in the above judgment.

17. Reference has also been made to **2010 (9) SCC 496 (M/s.Kranti Association Private Limited and another Vs. Masood Ahmed Khan and others)** and in particular to paragraph Nos.17 and 18.

*"17. The expression '**speaking order**' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to **orders with errors on the face of the record** and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)"*



18. This Court always opined that **the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the inscrutable face of a Sphinx'."**

18. In the instant case, the Government Order had been passed with reference to regular employees and it is only those employees, who can seek any explanation about the Government Order. The petitioner, who is not in regular service, cannot complain about the Government Order, which does not apply to her at all. As repeatedly pointed out she is not a regular employee.

19. On very similar facts, Hon'ble Supreme Court of India in **Chandra Mohan Varma Vs. State of Uttar Pradesh & Others, 2020(2) Scale 251** had held as follows:

1.

A Division Bench of the High Court of Judicature at Allahabad dismissed, by its judgment dated 2 February 2018, a Writ Petition instituted by the appellant under Article 226 of the Constitution. By his petition, **the appellant sought a mandamus for his continuance in service as Professor and Head of the Department of Cardiology of the LPS Institute of Cardiology in GSVM Medical College, Kanpur until he attained the age of 65. He claimed this relief on the basis of a notification dated 6 February 2015 of the Government of Uttar Pradesh extending the age of retirement from 60 to 65 years. The appellant had before the issuance of the above government notification attained the age of superannuation of 60 years on 13 August 2014. But, in terms of a Government decision ("GO") dated 19 November 2012, he had been granted a 'session benefit' of an extension of service up to 30 June 2015. Based on this extension, the appellant's case is that he is entitled to the extension in the age of retirement which has been brought about by the notification dated 6 February 2015. This claim has been repelled by the judgment and order of the Allahabad High Court which is questioned in appeal.**

.....

8.

On 6 August 2014, an order was issued by the Director General, Medical Education & Training, on an application moved by the appellant on 31 May 2014 granting the benefit of an extension of service until the end of the session subject to the fulfillment of the conditions stipulated in the GO dated 19 November 2012. Apprehending that his services would be discontinued on 30 June 2015 at the conclusion of the academic session, the appellant instituted a Writ Petition before the Allahabad High Court



seeking to interdict his retirement before he attained the age of 65.

....
18. **The date on which the employee attains the age of superannuation is prescribed by the Fundamental Rules.** The decision which was communicated by the State Government on 19 November 2012 does not alter the date of superannuation or retirement. However, **what the decision effectuates is to allow the continuance of the employee, after retirement, upon the attainment of the age of superannuation with the salient purpose of preventing a disruption in education instruction prior to the end of the academic session.** This view is fortified by the fact that the continuance of the employee until the end of the session is subject to the fulfillment of conditions stipulated, as noticed above.

19. **The determination of the age of retirement is a matter of executive policy.** The appellant attained the age of superannuation prior to the notification dated 6 February 2015 and was not entitled to the benefit of the enhancement of the age of retirement.

....
23. The issue in Civil Appeal Nos.6667-6668 of 2019 (Dr.Profesor Rajendra Chaudhary Vs. State of Uttar Pradesh) was distinct from the central point in this case. In the present case the issue is whether the appellant who had already attained the age of superannuation under the prevailing rules and was continuing until the end of the session would be entitled to the benefit of the enhancement of the age of retirement under the notification dated 6 February 2015. The decision in Dr Rajendra Chaudhary (referred supra) is hence distinguishable.

24. For the reasons that we have indicated, we hold that the appellant who attained the age of 60 years - the age of retirement which prevailed at the relevant time was not entitled to the benefit of the notification dated 6 February 2015. The appellant was continuing until the end of the session (30 June 2015) after retirement, in terms of the decision dated 19 November 2012. He was not entitled to the enhanced age of retirement of 65 years. The terminal benefits which are due to the appellant shall be accordingly computed and released within a period of two months from the date of receipt of a certified copy of this order. For the reasons which we have indicated, we have come to the conclusion that there is no merit in the



appeals. The appeals shall stand dismissed. There shall be no order as to costs.

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. The Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

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 to the Government,
The State of Tamilnadu
Personnel & Administrative Reforms (S) Department,
Secretariat, Chennai - 600 009.

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2. The State of Tamil Nadu,
Rep. By its Chief Secretary to Government,
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3. The Commissioner of School Education,
O/o. the Commissioner of School Education Department,
College Road, Chennai - 600 006.
4. The Director of School Education,
O/o. The School Education Department,
College Road, Chennai - 600 006.
5. The Chief Educational Officer,
O/o. Chief Educational Office,
Thanjavur, Thanjavur District.

W.P(MD) Nos.6619 of 2020

10.06.2020

KK(12.06.2020) 9P 6C