BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**10.06.2020**
CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.(MD)No.6623 of 2020
AND
WMP(MD)No.5976 of 2020

Ramachandran ... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by
the Chief Secretary to Government,
Personnel and Administrative Reforms (S) Department,
Secretariat, Chennai-9.

2.The Commissioner,
Revenue Administration Department,
Ezhilagam, Chepauk, Chennai.

3.The District Collector,
Thoothukudi District,
Thoothukudi. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling 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 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 the G.O.Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020.

For Petitioner : Mr.J.Anandkumar
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, takes notice on behalf of the respondents.

2. The petitioner was working as Deputy Registry in the office of the District Collector, Thoothukudi District. He retired from service on attaining the age of superannuation on 30.04.2020.

3. In the affidavit filed in support of the Writ Petition, it had been stated that the first respondent had issued **G.O.Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020**, which has increased the age of Government servants from 58 years to 59 years. It was stated in the said Government Order that this was applicable to the employees, who are in regular service as on 07.05.2020 and due to retire on superannuation from 31.05.2020. The petitioner had already retired on 30.04.2020. However, no way by this Writ Petition, he seeks the benefit extended under G.O.Ms.No.51 referred supra to the petitioner also.

4. Heard Mr.J.AnandKumar, learned counsel, appearing for the petitioner and Mr.K.Aayiram K.Selvakumar, learned Additional Government Pleader, appearing for the respondents.

5. The petitioner had retired from service on attaining the age of 58 on 30.04.2020. On that date, he ceased to be a regular employee under the said Government order. There is no employer and employee relationship subsisting between the petitioner and the first respondent from 01.05.2020. The first respondent had issued G.O.Ms.No.51, Personnel and Administrative Reforms (S) Department, dated 07.05.2020 and had taken a policy decision to increase the age of superannuation of the Government servants from 58 to 59 years. It had been stated in the Government Order that the said Government Order is applicable only to regular Government servants. It would only be applicable to those Government Servants, who are in regular service. It will not be applicable to those, who had retired earlier to the date from which the order comes into effect. The Government order can come into effect only prospectively and not retrospectively. If it is to be so applied, then an anomalous situation will arise and the Government servants, who had retired either on superannuation or on voluntary retirement or on compulsory retirement would seek the benefit under G.O.Ms.No.51, even though they had retired two, three, four months prior to the issuance of the Government order. There has got to be a definiteness and a date has been fixed by the Government to decide from which date it would apply. The Government had taken a conscious decision that it would apply to those Government servants who retired from service on 31.05.2020. It would apply to those who were in regular service as on 07.05.2020. The petitioner had already retired on 30.04.2020. Therefore, there is no jural relationship of employer, employee between the petitioner and the respondents after 30.04.2020. Therefore the above said Government order is not applicable to him.

6. In a batch of Writ Petitions in ***W.P.(MD).No.6442 of 2020 (S. Germani Isabella Vs. The Chief Secretary to the Government,***

State of Tamilnadu, Personnel & Administrative Reforms (S) Department, Secretariat, Chennai - 600 009), this Court had passed an order, with respect to Teachers, who were given extension of service and questioned G.O.Ms.No.51 and had sought for applicability of the said benefit to them. The Writ Petitions were dismissed vide an elaborate order. During the course of the said order, reliance had been placed on the order of the Hon'ble Supreme Court reported in ***Chandra Mohan Varma Vs. State of Uttar Pradesh & Others, 2020(2) Scale 251.*** That judgment refers to a Professor, who was given extension of service, but who retired on superannuation prior to the date of notification. The Hon'ble Supreme Court very categorically had held that after retirement on attaining the age of superannuation, there is no jural relationship between the employer and the employee and the employee cannot seek any further benefit from the employer except his pensionary and retirement benefits. The following is the observations of the Hon'ble Supreme Court and it had been held as follows:-

> *"**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.***
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> *....*
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> *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."*

7. The said Judgment is also applicable to the Government servants in every Department, who retired prior to the date of notification. Therefore, I am unable to grant any relief to the petitioner and as such, the Writ Petition fails.

8. With these observations, the Writ Petition stands dismissed. There shall be no order as to costs. However, a direction is issued to the respondents to process the pension and retirement papers of the petitioner, as expeditiously as possible, within the time period prescribed in the Rules and pay them to the petitioner. It is also made clear that if there is any unexplained and inordinate delay in payment, the petitioner would be entitled to get interest as per rules on the same. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar ()

// True Copy //

/ /2020
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 to Government,
Personnel and Administrative Reforms (S) Department,
Secretariat, Chennai-9.

2.The Commissioner,
Revenue Administration Department,
Ezhilagam, Chepauk, Chennai.

3.The District Collector,
Thoothukudi District,
Thoothukudi.

Order made in
W.P.(MD)No.6623 of 2020
Dated:10.06.2020

SDS (17.06.2020) 5P-4C