



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.7338 of 2020

and

WMP(MD) Nos.6787 and 6788 of 2020

(Through Video conferencing)

M.Alagappan

...Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Rep. by its Chief Secretary to Government,
Personnel & Administrative Reforms (S) Department,
Secretariat, Fort St. George, Chennai - 600 009.
- 2.The State of Tamil Nadu,
rep. by its Chief 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 - 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.the Chief Educational Office,
Virudhunagar,
Virudhunagar District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorari and Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in G.O.Ms.No.51 Personnel and Administrative Reforms (S) Department dated 07.05.2020 insofar 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 1st respondent in Letter No.11308/S/2020-1 dated 14.05.2020 and quash the same as illegal and consequently to direct the respondents 1 to 5 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.S.Bharathy Kannan
For Respondents : Mrs.S.Srimathy, Spl.G.P.

ORDER

The prayer in this writ petition is for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in G.O.Ms.No.51 Personnel and Administrative Reforms (S) Department dated 07.05.2020 insofar 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 1st respondent in Letter No.11308/S/2020-1 dated 14.05.2020 and quash the same as illegal and consequently to direct the respondents 1 to 5 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.

2.The issue raised in this writ petition is in a very narrow compass as already number of writ petitions have been on the same issue decided by this Court.

3.The State Government during the COVID 19 situation has come forward to issue a Government Order in G.O.Ms.No.51 Personnel and Administrative Reforms (S) Department dated 07.05.2020, thereby, the superannuation age of the State Government employee, which including teaching and non teaching staff of the schools is enhanced by one year i.e. from 58 years to 59 years. In order to appreciate the said Government Order, the entirety of the Government Order is extracted herein:

"G.O.Ms.No.51

Dated 07.05.2020

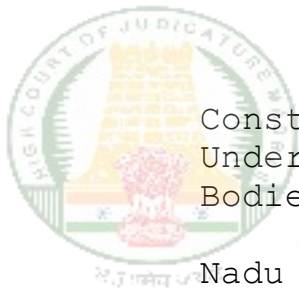
சர்வாரி - சித்திரை 24
திருவள்ளூர் ஆண்டு - 2051

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

ORDER:

The Government have decided to increast 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.Subsequent to the said Government Order, a consequential order by way of Government Letter No.11308/S/2020-1. Dated 14.05.2020 has also been issued, thereby, it has been clarified that the benefit of extension of one year to superannuation period from 58 years to 59 years by amending the relevant rule viz., 56 of the Tamil Nadu Fundamental Rules would be extended only to those who are not superannuated on or before 31.05.2020, which means, those, who are in service on 31.05.2020 alone shall be entitled to have the extension of one year superannuation period i.e. from 58 years to 59 years by virtue of the impugned G.O.Ms.No.51 dated 07.05.2020. In these circumstances, the grievance of the petitioner is that he was working as a teacher and she superannuated on 29.02.2020. However, as per the present policy of the Government, in order to facilitate the students, who are imparted teaching by the teachers of the Government schools and aided schools in order to get continuous imparting without any disturbances till the academic year, those teachers who are superannuating during the middle of the academic year will be given re-employment on request basis by way of contract, of course, after the verification of medical fitness and other aspects of such teachers and those contractual reemployment period upto the end of the academic period shall not be treated as extension of service. But, at the same time, during the reemployment period also, the teachers who get re-employment till the end of academic year will get the same salary. It is only because of the welfare of the students and it cannot be treated as extension of any service benefit to the teachers.

5.In this context, the petitioner since has superannuated on 29.02.2020 has subsequently been re-employed upto 31.05.2020 i.e., till the end of the academic year 2019- 20 and therefore, according to the petitioner, on 31.05.2020, he was in service and hence, the extension of superannuation of one year from 58 years to 59 years under Rule 56 of Fundamental Rules shall be extended to the petitioner also i.e., by extending the benefit of the import of G.O.Ms.No.51 referred to above.



6. With similar prayer, already number of writ petitions have been filed before this Court and insofar as a group of writ petitions with the lead case 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, the learned Judge of this Court, by a common order dated 08.06.2020 has discussed this issue elaborately and ultimately concluded that those petitioners, who have been reemployed after superannuation as on 31.05.2020 would not be eligible to get the benefit of import of G.O.Ms.No.51 and accordingly, their plea raised to similar that of the present writ petitioner was rejected. To appreciate the said decision of the learned Judge referred to above, in Germani Isabella case, dated 08.06.2020, the relevant portions of the judgment are usefully extracted herein:

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."

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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.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)



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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,
State of Tamil Nadu,
Personnel & Administrative Reforms (S) Department,
Secretariat, Chennai - 9.
- 2.The Chief Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.
- 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 Office,
Virudhunagar,
Virudhunagar District.

Order made in
W. P. (MD) No. 7338 of 2020
08.07.2020

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