



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2020

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.7696 of 2020

WEB COPY

S. Marichamy

...Petitioner

-Vs-

1.The Registrar of Co-Operatives,
170, E.Ve.Ra.Periyar Road,
Kilpauk,
Chennai-10.

2.The Joint Registrar of Co-operatives,
Theni Division,
Theni,
Theni District.

3.The President,
D.D.106, Nagalapuram Primary
Agricultural Co-operative Credit Society,
Nagalapuram,
Theni Taluk,
Theni District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to extend the retirement age of the petitioner from 58 years to 59 years in pursuance of G.O(Ms)No.51, Personnel and Administrative Reforms (s) Department dated 07.05.2020 on the basis of the petitioner's representation, dated 30.06.2020 and pass such further or other orders.

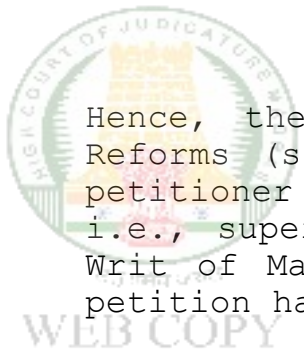
For Petitioner : Mr.R.Shankar Ganesh

For Respondents : Mr.A.Thiyagarajan,
Government Advocate

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents to extend the retirement age of the petitioner from 58 years to 59 years in pursuance of G.O(Ms) No.51, Personnel and Administrative Reforms (s) Department, dated 07.05.2020 on the basis of the petitioner's representation, dated 30.06.2020 and pass such further or other orders.

2. The petitioner had been working at the respondents department and on attaining the age of superannuation he retired from service on 30.04.2020. Thereafter, it seems that subsequently, he has been taken back for re-employment due to COVID-19 situation. Therefore, according to the learned counsel for the petitioner as on 31.05.2020 since the petitioner has been re-employed, he was in actual service.



Hence, the benefit of G.O(Ms)No.51, Personnel and Administrative Reforms (s) Department, dated 07.05.2020 shall be extended to the petitioner also, by thus, he seeks extension of his service period i.e., superannuation period from 58 to 59. Therefore, he seeks a Writ of Mandamus to that effect and accordingly, the present writ petition has been filed.

3. Heard Mr.R.Shankar Ganesh, learned counsel appearing for the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents.

4. Similar prayers have already been made by a number of such persons, especially, in the Department of Education, where the teaching faculties, who are working in Government School and Government Aided School, superannuated during the middle of the academic year on the age of superannuation i.e., completion of 58 years. Those teachers, who are superannuated during the middle of the academic year would be retained on such superannuation, only, in order to avoid the disturbance of imparting education to the children during the middle of the academic year. Those teachers would be re-employed till the end of the academic year i.e., 31st of May of that year.

5. In such circumstances, those teachers who have been re-employed during the academic year 2019-2020 and have been re-employed upto 31.05.2020, had approached this Court and a number of writ petitions have been filed taking a stand that due to the re-employment, their services had been extended upto 31.05.2020. Therefore, as on 31.05.2020, they have been in actual service, hence, the benefit of G.O(Ms)No.51, Personnel and Administrative Reforms (s) Department, dated 07.05.2020 can be extended to those teachers also, thereby the superannuation age can be enhanced from 58 to 59 as in the case of other employees for whom, G.O(Ms)No.51, Personnel and Administrative Reforms (s) Department, dated 07.05.2020 had already been passed.

6.The said stand taken by those teachers/employees in number of writ petitions having been considered were rejected by this Court and one of such order passed by myself is in W.P(MD)No.7338 of 2020 in the matter of *A.Alagappan vs. State of Tamil Nadu*, dated 08.07.2020 and the relevant portion of the order is extracted hereunder:

"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."

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 off 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.

7. Therefore, the issue has already been decided and concluded in a number of cases where it was held that the benefit of extension of superannuation age from 58 to 59 as has been provided in G.O(Ms) No.51, Personnel and Administrative Reforms (s) Department, dated 07.05.2020 can only be extended to those, who are in regular service as on 31.05.2020 and not those, who are in re-employment.

8. Here in the case on hand, it is the admitted case of the petitioner that he retired from service on attaining the age of superannuation on 30.04.2020 and thereafter, even though he might have been re-employed for the reasons best known to the respondents/employer that will not *ipso facto* confer any right on the petitioner to claim the benefit of extension of superannuation age from 58 to 59 as provided under G.O(Ms)No.51, Personnel and Administrative Reforms (s) Department, dated 07.05.2020.

9. Therefore, in that view of the matter, this Court is not inclined to accept the prayer sought for in this writ petition. Accordingly, the writ petition fails and it is dismissed. No costs.

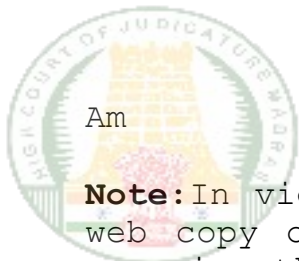
Sd/-

Assistant Registrar ()

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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 Registrar of Co-Operatives,
170, E.Ve.Ra.Periyar Road,
Kilpauk,
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- 2.The Joint Registrar of Co-operatives,
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- 3.The President,
D.D.106, Nagalapuram Primary
Agricultural Co-operative Credit Society,
Nagalapuram,
Theni Taluk,
Theni District.

**Order made in
W.P. (MD)No.7696 of 2020**

**Dated:
20.07.2020**

SPU(30.07.2020)6P 4C