



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No. 14561 & 14562 of 2009

1.C.Ponnusamy	...Petitioners in WP.No.14561 of 2009
2.M.Govindan	...Petitioners in WP.No.14562 of 2009

Vs.

1.The Commissioner
Salem Corporation,
Salem-1

2.The Assistant Commissioner,
Ammapettai ward Office 3,
Salem Corporation, Salem

3.The Secretary to the Government of Tamil Nadu,
(Municipal Administration and Water Supply Department)
Secretariat, Chennai-9

4.The Director of Municipal Administration,
Chepauk, Chennai-5

(* Prayer amended as per order dated

01.09.2009 in M.P.No.3/2009 in W.P.No.14561 & 14562/2009)

...Respondents in both WPs

Prayer in WP.No.14561 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for orders (1) Na.Ka.No.L7/265/09 dated 09.02.2009 of the fourth respondent and (2) Na.Ka.No.L7/265/2009 dated 31.07.2009 of the first respondent quash the same and to direct the respondents to allow the petitioner to continue to serve in his post in the Salem Corporation till he attains the age of sixty years and to retire him from service only on his attaining the age of sixty years with all consequential service and monetary benefits as such grant declaration that the petitioner's retirement shall be on attaining the age of sixty years.

Prayer in WP.No.14561 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for orders (1) Na.Ka.No.L7/266/09 dated 09.02.2009 of the fourth respondent and (2) Na.Ka.No.L7/266/2009 dated 31.07.2009 of the first



respondent quash the same and to direct the respondents to allow the petitioner to continue to serve in his post in the Salem Corporation till he attains the age of sixty years and to retire him from service only on his attaining the age of sixty years with all consequential service and monetary benefits as such grant declaration that the petitioner's retirement shall be on attaining the age of sixty years.

For Petitioners : Mr.M.Ravi
For Respondents : Mr.G.Sankaran (R1 and R2)
Standing Counsel
Mr.C.Selvaraj (R and R4)
Government Advocate

ORDER

These petitioners were appointed as Road Gang Mazdoors in the Municipal Administration and Water Supply Department in 1976. The post was later re-designated as Road Maintenance Worker. The petitioners challenge orders issued by R3 to the effect that they would be retired from service on 31.07.2009, upon their attaining the age of 55 years. The petitioners would contend that their retirement age as basic servants is 60 years, in accordance with the Fundamental Rules of the Tamil Nadu Government (FR). They are aggrieved by the act of the respondents imposing premature retirement upon them.

2. This issue is covered by earlier decisions of this Court in the case of V.Krishnamurthy Vs. The Commissioner of Municipal Administration (W.P.No.7485 of 2009), order dated 18.08.2009, wherein this Court considered the case of a Mazdoor working in the Salem City Municipal Corporation. Reference was made therein to a case decided in Madurai in re. T.Pandaram (W.P. (Md).No.1771 of 2007) wherein a learned Single Judge, by order dated 19.04.2007, accepted the contention of that petitioner to the effect that the age limit fixed for one cadre of basic employees in the Government will be equally applicable for others who are performing similar/identical work.

3. Both in the cases of T.Pandaram as well as V.Krishnamurthy, the Municipal Corporation had, on instructions from the Government, retired employees on Non Muster Rolls (NMRs) at the age of 58 years. In V.Krishnamurthy's case, this Court categorically held that Instructions obtained from the State could hardly override the Fundamental Rules, specifically FR 56, in terms of which the retirement age of Basic Servants would be 60 years. Any instructions/order contrary to the FR would not be liable to be accepted or applied.



4. At para 4, the Bench states in V.Krishnamurthy's case, also relying upon the earlier decision in the case of T.Pandaram, as follows:

'4.Admittedly, the NMRs working in Municipal Corporations are in the cadre of basic servants. As per FR 56, the retirement age of basic servants is admittedly 60 yrs. Therefore, there can be no doubt that the petitioner's retirement age must only be 60 years. But, the only contention raised in the additional counter affidavit by the 2nd respondent is that the Government has directed the Corporations to retire the NMRs at the age of 58 years and that is the reason why the petitioner has to retire in the age 58 years. In my considered opinion, the said Government Order, which is only an administrative instruction cannot override the statutory rule (i.e.) FR 56. Therefore, the 2nd respondent cannot neglect to enforce the Fundamental Rules by giving preference to the administrative instructions. It is needless to say that whenever there is a conflict between the administrative instructions and the statutory rules, the respondents are bound only by statutory rules and they have to follow only the statutory rules by ignoring the administrative orders. In an identical situation, the Madurai Bench of this Court in W.P.(MD)No.1711 of 2007 filed by one T.Pandaram by order dated 19.04.2007 directed as follows:-

"13.In my opinion, on wrong assumption and presumption this impugned order is passed. Apart from this, as rightly contended by the learned counsel for the petitioner and decided in number of other cases, different age of retirement cannot be followed for the incumbent on particular cadre, when they are executing and performing similar and identical work.

14.For there reasons, this impugned order is set aside and the respondents are directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order and the petitioner is also entitled for all the monetary



and other benefits till he reaches the age of superannuation."

5. The learned Special Government Pleader appearing for the 2nd respondent would submit that until the government takes decision to amend the Fundamental Rule, the Municipal Corporations cannot take a different view. In my considered opinion, the said contention cannot be accepted. As I have already stated supra, the respondent City Municipal Corporation is bound to follow the statutory rule viz., FR 56. At the same time, with a view to maintain uniformity so as to extend the same benefit to the similarly placed persons, who are working in the Municipal Corporations, it is advisable for the Government to make an appropriate rule prescribing the retirement age uniformly for all such persons.'

5. The case of the Corporation in the present matter is one step worse insofar as instructions have only been sought from the State and are yet awaited. Had instructions, been issued by the State the same would be liable to be eschewed and the age limit as set out under FR 56, liable to be accepted and applied.

6. When the matter had come up for admission, miscellaneous petitions filed seeking an order of interim injunction restraining the respondents from retiring the petitioners from service on 31.07.2009 were heard by this Court and order passed on 12.01.2010 to the following effect:

'These Miscellaneous Petitions are filed seeking an order of interim injunction restraining the respondents from retiring the petitioners from 31.07.2009 in order to enable them to continue in service till they attain the age of 60 years.

2. As on date, there is no interim order in favour of the petitioners. Besides, under similar circumstances, the Hon'ble First Bench of this Court, in M.P.No.1 of 2009 in W.A.No.1629 of 2009, has only passed an order that in the event of success of the writ petitioner therein, he is entitled to the monetary benefits and in the event of his failure, wages paid for the period he has worked should not be recovered. There is no direction or any kind of interim order in favour of the writ petitioner therein also so as to enable him to continue in service during the pendency of the writ petition. Apart from this, in the case in hand, the petitioners were relieved from service on 31.07.2009. As such,



the question of granting interim injunction does not arise at all. However, in the event of the petitioners' success in the writ petition, they are entitled to consequential benefits.

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3. With the above observations, these M.Ps. are disposed of.

4. According to the learned counsel for the petitioners, though the writ petitioners were ready to retire on 31.07.2009, the pension papers were not forwarded and with regard to other terminal benefits also, papers were not moved.

Taking into consideration the above submission made by the learned counsel for the petitioners, the respondents are directed to take appropriate steps with regard to payment of pension to the petitioners and also other terminal benefits to the petitioners within a period of two weeks from the date of receipt of a copy of this order.'

7. The aforesaid order dated 12.01.2010 stands complied as confirmed by the learned counsel for the petitioner. However, the petitioners have been unfairly forced into premature retirement consequently losing the benefit of employment with connected monetary benefits. The Corporation is bound to compensate the petitioners for the same. Let the benefits due to the petitioners for the remaining period of employment that they would have been entitled to, had they not been forcibly retired, be computed and paid over, deeming the petitioners to have been in service for the period as computed aforesaid, within a period of four weeks from the date of uploading of this order.

8. These writ petitions are allowed. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner
Salem Corporation,
Salem-1



2.The Assistant Commissioner,
Ammapettai ward Office 3,
Salem Corporation, Salem

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3.The Secretary to the Government of Tamil Nadu,
(Municipal Administration and Water Supply Department)
Secretariat, Chennai-9

4.The Director of Municipal Administration,
Chepauk, Chennai-5

+1 CC to Mr. Ravi, Advocate sr 48859

+1 CC to Mr. Sankaran, Advocate sr 49155

+1 CC to The Government Pleader sr 49008.

W.P. No. 14561 & 14562 of 2009

MG(CO)
SP(20/10/2021)