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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.23087 of 2009

Mr.V.Subbarayan

... Petitioner

vs.

1. The District Collector (The Special Officer),
Office of the District Collector,
Erode - 638 011.
2. The General Manager,
Erode District Milk Producers'
Union Limited, Vasavi College Post,
Erode - 638 316.
3. The Managing Director,
Tamil Nadu Co operative Milk
Producers Federation Limited,
Madavaram, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records in Ref. No.3149/Estt/83/E2 dated 26.02.2009 on the file of the 2nd Respondent and quash the same and issue an order of direction directing the 1st Respondent to extend the period of retirement on superannuation for a further period of 2 years from 28.02.2009 and consequently issue an order of direction directing the 2nd respondent to pay the salary arrears payable to the petitioner from 28.02.2009.

For Petitioner : Mr.S.Kanmani Annamalai for
Mr.T.Arunkumar

For R1 : Mr.S.John J Raja Singh,
Government Advocate

For R2 & R3 : No Appearance



O R D E R

The petitioner was appointed by the National Diary Development Board in 1976 as a cleaner - cum Animal Attendant. He was thereafter re-appointed by the Erode District Co-operative Milk Producers Union/R2 in 1978. He challenges the proceedings of R2 dated 26.02.2009 which requires him to retire from service on the afternoon of 28.02.2009 upon attaining the age of 58 years on superannuation.

2. It is the say of the petitioner that the age of retirement of a Senior Office Assistant would be 60 years and not 58. An application was filed by the petitioner before R1 on 29.12.2008 claiming that he was entitled to be retired in 60th year only, but has come to be rejected by way of the impugned order. Hence, this Writ Petition.

3. Though notice was issued to R2 and R3 and their names printed in the cause list, no panel counsel or any counsel authorised by R2 and R3 have entered appearance. Hence, Mr.S.John J.Raja Singh, learned Government for District Collector (Special Officer), Erode/R1 was requested to obtain clarity on the position as well as to assist the Court.

4. In this regard, he has circulated a decision of a learned single Judge of this Court sitting in Madurai in W.P. (MD) No.14737 of 2016 and batch in S.Nagasubramanian V. The Joint Registrar of Cooperative Societies, Madurai and another order dated 30.08.2016.

5. A similar claim was made by the petitioner in that Writ Petition to the effect that employees of the Cooperative Society would be entitled to retire only at 60 years and not 58 years in light of Rule 56 of the Fundamental Rules of Tamil Nadu (FR 56).

6. I have had occasion to consider the similar issue in the case of C.Ponnusamy and another V. The Commissioner, Salem Corporation, Salem and others (W.P.Nos.14561 and 14562 of 2009 dated 22.09.2021) and taking note of the Fundamental Rule, I have passed the following order accepting the claim of that petitioner that he is entitled to remain in service till the age of 60 years. The order is extracted below to the extent it is relevant in this Writ Petition.

'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



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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 yers. 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



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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



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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.'

.....

7.....

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.'

7. A learned single Judge of this Court in W.P.(MD) No.14737 of 2016 (supra) has passed a similar order to the effect that Fundamental Rule 9 which deals with those categories of service that would fall within the ambit of basic service, such as Office Assistant, Head Office Assistant, Chobdar or Duffadar, Service in posts, the pay for which does not exceed Rs.750/-, would fall within the basic category.

8. Thus services of an Office Assistant, Head Office Assistant, Chobdar or Duffadar or service in any post, the pay for which does not exceed a sum of Rs.750/- would fall within the realm of basic service. All other services will be considered as superior service. Rule 56, extracted in my order in W.P.Nos.14561 and 14562 of 2009 states that those employees falling within the ambit of basic government servants would be entitled to remain in service till the age of 60 years and the date of retirement in such cases would be 60.

9. Upon a combined reading of the aforesaid, it is clear that the petitioner, who admittedly falls within the category of basic government servant, and holds the post of office assistant, would be covered within the category of basic government servant as per the provisions of FR 9 read with FR 56, entitled to remain in service till the age of 60.



10. The impugned order is thus quashed and the Writ Petition allowed. The petitioner is entitled to arrears of pay as well as consequential benefits for the period 58 to 60 and the same shall be computed and paid over to him within a period of eight weeks from today. No costs.

11. Let this order be communicated to R2, being the General Manager, Erode District Milk Producers' Union Limited, Vasavi College Post, Erode - 638 316 by Mr.Singh to enable them to take necessary action as aforesaid within the stipulated time frames.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sl/kbs

To

1. The District Collector (The Special Officer),
Office of the District Collector,
Erode - 638 011.
2. The General Manager,
Erode District Milk Producers'
Union Limited, Vasavi College Post,
Erode - 638 316.
3. The Managing Director,
Tamil Nadu Co operative Milk
Producers Federation Limited,
Madavaram, Chennai.

+1CC to Mr.R.Amardeep, Advocate, Sr.No.50762
+1CC to Mr.Government Pleader, Sr.No.51539

W.P.No.23087 of 2009

SRA (CO)
K.RK. (12.10.2021)