IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

W.A. No. 2031 of 2021
&
C.M.P. No. 12965 of 2021

1. The Government of Tamil Nadu,
rep.by its Secretary to Government,
Revenue Department,Chennai - 600 005.

2. The Assistant Director,
Land Surveys & Records Dept.,
Kanchipuram - 631 001. ..Appellants/Respondents

Vs.

S. Srinivasan ..Respondent/Petitioner

Prayer: Writ Appeal as against the order dated 05.03.2021 passed in W.P. No. 21070 of 2014.

Prayer in W.P.No.21070 of 2014 : Petition filed under Article 226 of the constitution of India to issue a writ of certiorari Mandamus to quash the G.O.No.168 of Revenue (Ne.A.4(1)) Dept. dated 29.04.2014 of the Secretary to Government Revenue Department the First Respondent herein and consequential letter Na.Ka. A.1/5722/2010 dated 30.04.2014 of the Assistant Director Land Survey and Records Department Kanchipuram the Second Respondent herein and directing the Respondents to grant pension for the service rendered from 1984 to 2014.

For Appellants :: Mr.K.V. Sajeev Kumar
Govt. Counsel

For Respondent :: Mr.J. Ravikumar for
Mr.N. Senthilkumar

J U D G M E N T

(Judgment of the Court was delivered by S. VAIDYATHAN,J.)

The present appeal has been preferred as against the order of the learned Single Judge dated 05.03.2021 passed in W.P. No.21070 of 2014.

2. The respondent herein had challenged the order dated 29.04.2014 passed by the 1st appellant herein rejecting his request to grant exemption from passing the departmental tests and the consequential order dated 30.04.2014 passed by the 2nd appellant terminating the service of the respondent herein. The learned Single Judge, following the order passed by the Madurai Bench of this Court in W.P.(MD) No. 6421 of 2008, involving a similar issue, allowed the writ petition with regard to settlement of terminal benefits, to be disbursed within a stipulated time. Challenging the said order, the present writ appeal has been filed by the Department.

3. Acccording to the appellants, as per the Special rules for Tamil Nadu Survey and Land Records Subordinate Services, the respondent/writ petitioner should pass the departmental tests, either in old pattern or in the revised pattern, so as to enable him to get his probation declared and for promotion. The contention of the appellants is that though the respondent/writ petitioner was given the opportunity to take part in all the four papers of Revenue Draughtsman Test, which are mandatory to be cleared, he could not clear two papers, even after five years of service and in the extended period also, which resulted in removal from service. According to the appellants, though the respondent/writ petitioner sought exemption from passing the test, placing reliance on G.O.Ms. No. 1120 Personnel & Administrative Reforms dated 30.10.1984, there is no evidence produced by the respondent/writ petitioner that he made five attempts prior to attaining 53 years of age and in view of the same, the learned Single ought not to have interfered with the impugned order referring to the earlier judgment of this Court reported in CDJ 2015 MHC 1821 (K. Ramasubramanian V. The Agriculture Production Commissioner & Secretary to Government & Others). In the case referred to by the learned Single Judge, the employee therein had not completed 53 years of age and that it had been held that it was open to the Government to consider his case in terms of G.O. Ms. No. 1120 dated 30.10.1984 after completion of required age and conditions stipulated therein. As the respondent/writ petitioner did not satisfy the conditions with regard to clearance of tests and did not produce hall tickets in terms of the above Government Order to prove the attempts made by him, the order impugned in the writ petition, passed by the 1st appellant is perfectly valid and the interference by the learned Single Judge is uncalled for and the orders passed by the appellants require to be restored.

4. Per contra, the learned counsel for the respondent would submit that the respondent had joined the Survey Department as a Section Writer in the year 1984. In the year 1997, while he was working as Draughtsman, his services were regularised on 10.12.1997. The respondent had to clear the Special Test for Draughtsman Category (Survey Department) within

a period of five years for declaration of probation and future promotion. Eventhough he had cleared Papers I and IV, he could not clear Papers II and III of the Special Test for Draughtsman category, even after attaining the age of 53 years and therefore, sought an exemption which was negatived by the appellants by the impugned order dated 29.04.2014. The said order was interfered with by the learned Single Judge on the ground that the three conditions mentioned in G.O.Ms.No. 1120 dated 30.10.1984 would be squarely applicable to the case of the respondent/writ petitioner and that he would be entitled to all the benefits sought in the writ petition. According to the learned counsel for the respondent/writ petitioner, when the respondent satisfies all the three condtions stipulated in G.O.Ms. No.1120 dated 30.10.1984, the appellants ought not to have terminated his service, thereby stalling his retiral and pensionary benefits. According to the learned counsel, the learned Single Judge was right in allowing the writ petition and no interference is called for.

5. Heard both parties.

6. It is not in dispute that the writ petitioner had joined the service of Survey Department as Section Writer in 1984 and in 1997, he was working as Draughtsman. His service was also regularised on 10.12.1997. As per Tamil Nadu Survey and Land Records Subordinate Service Rules, the respondent/writ petitioner had to pass Revenue Draughtsman Test (4 papers) or Computation Test (2 papers) in the old pattern or Survey Test Part -1 (3 papers) in old pattern so as to get his probation declared and for future promotions. The writ petitioner had passed the Revenue Draughtsman Test Paper I and IV in old pattern in the year 2005, but had not passed Papers II and III even after several attempts. Even the exemption sought by the respondent/writ petitioner from writing the departmental test relying on G.O.Ms. No. 1120 dated 30.10.1984 was negatived by order dated 29.04.2014 by the 1st appellant and he was terminated from service by a consequential order dated 30.04.2014.

7. G.O.Ms. No. 1120 Personnel and Administrative Reforms Department dated 30.10.1984 lays down three conditions for relaxation of rules for granting exemption from passing the departmental test and they are as follows:

> "(i) the official, to whom relaxation is sought, should have crossed 53 years of age;
>
> (ii) the official should have attempted to pass the departmental tests at least 5 times and in support of the attempts made, either necessary entries should have been made or the hall tickets should be setn by the officers concerned; and
>
> (iii) the official should have rendered satisfactory service during the tenure."

Admittedly, the respondent/writ petitioner had crossed 53 years of age and he had made five attempts prior to attaining the age of 53 years. Going by the counter of the appellants in the writ petition, it is seen that the respondent/writ petitioner did not clear two papers even after the lapse of 16 years. However, it is stated across the bar by the learned counsel appearing for the respondent herein that out of remaining two papers,one paper has been cleared after submitting the exemption application and the same is proved by the document at Page No.15. Taking note of the age factor and health grounds, the Government had issued G.O.Ms. No.1120 dated 30.10.1984 and the respondent/writ petitioner fulfills all the conditions stipulated therein. He had made 18 attempts and even after the 18th attempt, he was not successful in clearing all the papers. However, the conditions stipulated in G.O.Ms. No. 1120 dated 30.10.1984, mentioned supra, have been fulfilled by the respondent/writ petitioner and therefore, the Government cannot adopt a different yardstick in respect of the respondent/writ petitioner alone. Hence, we are of the view that the learned single Judge was right in interfering with the order passed by the appellants removing the respondent/writ petitioner from service.

8. In the result, the writ appeal fails and the same is dismissed. If the terminal benefits have not been paid, the same shall be extended to the respondent/writ petitioner within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

nv
To
1. The Secretary to Government,
   Government of Tamilnadu,
   Revenue Department,Chennai -5

2. The Assistant Director,
   Land Survey of Records Department,
   Kanchipuram - 631 101.

+1cc to M/s.N.Senthilkumar, Advocate, S.R.No.48288

W.A. No. 2031 of 2021

AJS(CO)
RGA(26/10/2021)