



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.3145 of 2011

and

M.P. (MD) No. 1 of 2011

The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

... Petitioner

- vs -

1. C.Gomathi

2. The Presiding Officer,
Labour Court,
District Court Buildings,
Madurai.

... Respondents

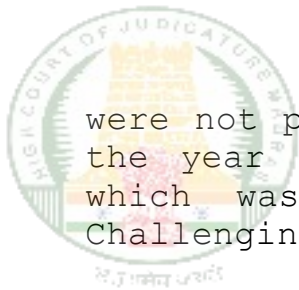
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the Labour Court, Madurai in C.P.No.28 of 2007 dated 27.10.2010 and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondent 1 : No appearance

ORDER

The case of the petitioner is that the first respondent filed a claim petition before the second respondent under Section 33 (C) (2) of Industrial Disputes Act claiming family pension for the period between 01.04.1983 and 31.12.2006 amounting to Rs.3,63,375/-. In that petition, the first respondent stated that her husband Chinnappan joined in service of the petitioner Municipality on 01.06.1944 and retired from service on 31.03.1983 on attaining the age of superannuation of 60 years. In spite of repeated representation, the retired benefits and pension benefits



were not paid to the first respondent wife as her husband died in the year 1991. However, the Labour Court allowed the petition which was filed after 16 years of the alleged retirement. Challenging the same, the present Writ Petition has been filed.

2.The learned Standing Counsel appearing for the petitioner Municipality would submit that though the first respondent claims that the first respondent's husband entered into service in the year 1944 and retired from service on 31.03.1983 on attaining the age of superannuation of 60 years and expired on 15.09.1991. For the said cause of action, the first respondent filed a claim petition before the Labour Court in C.P.No.306 of 1994 and the same was dismissed as not pressed in which the first respondent stated that her husband was retired from service on 30.06.1979. Subsequently, the first respondent filed another claim petition in C.P.No.313 of 1994 for the same cause of action in which the first respondent stated that her husband retired from service on 30.06.1974 and the said petition also dismissed as not pressed. Thereafter, after 14 years, the first respondent filed the present impugned claim petition in C.P.No.28 of 2007 claiming the very same relief which is unsustainable one and the same is suffered on the ground of *res judicata*.

3.Further, the learned Standing Counsel for the petitioner would submit that on earlier two claim petitions the first respondent stated two different dates of retirement of her husband which lead to confusion. Admittedly, the date of birth of the first respondent's husband is 01.07.1915 and he attained the age of superannuation at the age of 60 years on 01.07.1975, however, as per the records available with the petitioner, the said Chinnappan retired on 31.03.1983 and after lapse of 25 years from the date of his retirement and after expiry of 16 years of his death, the present claim petition has been filed which is hit by latches.

4.Though notice was served on the first respondent, no one represented and the name of the first respondent is also printed in the cause list.

5.Admittedly, the facts in the present case is not in dispute. Though the first respondent filed two claim petitions on earlier occasions stating different years of retirement of her husband, the same was dismissed as withdrawn. However, the first respondent has not taken any steps to mark the same as exhibits before the trial Court. Further, the very same issue was raised in the objection petition. Though the second respondent Labour Court discussed the same, the second respondent has not rendered any decision to that effect. The petitioner's claim that the first respondent's husband has not completed the qualifying



service of 10 years to be considered for payment of pension and rendered only 8 years of service and that issue was also not properly discussed by the second respondent Labour Court. Further, there was no proper explanation and convincing ground for filing claim petition after lapse of 16 years from the date of retirement of the petitioner's husband. Hence, all those issues have not been considered properly by the Labour Court. In such circumstances, the order of the Labour Court passed in C.P.No.28 of 2007 dated 27.10.2010 is liable to be quashed.

6.In the result, the Writ Petition is allowed and the order passed by the Labour Court in C.P.No.28 of 2007 dated 27.10.2010 is quashed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Presiding Officer,
Labour Court,
District Court Buildings,
Madurai.

+1 CC to Mr.V.O.S.KALAI SELVAM, Advocate (SR-756[F] dated 11/01/2021)

W.P (MD) No.3145 of 2011

08.01.2021

SRM

AE (01/03/2021) 3P / 3C