



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.2464 of 2013

K.Jayalakshmi

... Petitioner

vs.

1.The Secretary,
Tamil Nadu Manual Workers Welfare Board,
G-133, TNHB Chanthamani Trade Complex,
III Floor, Anna Nagar East, Chennai-600 102.

2.The Labour Officer,
Social Welfare Scheme,
Thainnappa Complex,
No.21, Jawahar Bazaar,
Karur - 639 001.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders in Na.Ka.No.5024, dated 31.01.2012 and Na.Ka.No.5024, dated 25.09.2012 passed by the second respondent and quash the same and consequently, to direct the second respondent to pay the pension amount to the petitioner.

For Petitioner : Mr.G.M.Xavier

For Respondents : Mr.M.Linga Durai

Standing Counsel for Tamil Nadu Government

O R D E R

This Writ Petition is filed to quash the impugned orders passed by the second respondent, dated 31.01.2012 and 25.09.2012 and to direct the second respondent to pay the pension amount to the petitioner.

2.Heard Mr.G.M.Xavier, learned Counsel for the petitioner and Mr.M.Linga Durai, learned Standing Counsel for the respondents.

3.The petitioner states that she was working as a Cooking Master and she joined as a member of Tamil Nadu Manual Workers Welfare Board with effect from 14.03.2000. The petitioner, after attaining the age of superannuation, submitted her application, dated 02.07.2010 to the second respondent for grant of pension. Despite few representations by the petitioner, there was no response from the second respondent initially. However, by the impugned order passed by the second respondent, dated 31.01.2012, the representation of the petitioner was rejected. The second respondent, thereafter, passed another impugned order, dated 25.09.2012, explaining the reason for non payment of pension to the



petitioner. The only reason stated in the impugned order, dated 25.09.2012, is that the petitioner instead of renewing her membership card before 13.03.2002, renewed it only on 29.04.2002, after a delay of 46 days, and that therefore, she is not eligible for pension.

WEB COPY

4.It is the contention of the petitioner that as per Rule of Tamil Nadu Manual Workers Welfare Board, if a person, who is attaining the age of superannuation and completed five years membership in the Tamil Nadu Manual Workers Welfare Board, he/she is entitled to get pension amount.

5.The second respondent has filed counter affidavit. In Paragraph Nos. 7, 9 and 10 in the counter affidavit are extracted hereunder for convenience:

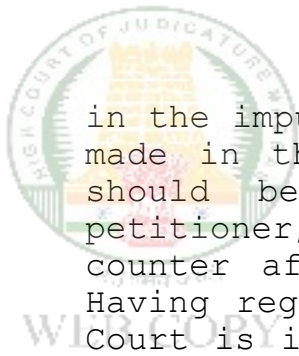
"7.It is humbly submitted that, on 14.03.2000 the writ petitioner had presented an application for registering her membership as Cookie before the Tamil Nadu Manual Worker Welfare Board and at the time of joining the Writ petitioner had given the Doctor certificate of proof of her age. The said Doctor namely R.Manoharan M.B.B.S., F.A.G.E certificate the age was mentioned as 48 years according to the Doctors certificate the Date of Birth was registered as 1.07.1952 in the Registered Card and was handed over to the Writ Petitioner.

8.....

9.It is humbly submitted that, as per the date of Birth which was given by the writ Petitioner and as per the records which was maintained by the Respondent the Date of Birth for the writ Petitioner is 1.07.1952, hence, the eligibility for pension can be prayed only after the completion of the date 30.06.2012 but before the said date she cannot ask for any Pension as per law.

10.It is further submitted that Writ petitioner had not renewed his membership properly and also for the renewal of Membership before the Tamil Nadu Manual Worker Welfare Board the writ petitioner had altered his Date of Birth as 1.07.1950. The original Date of Birth was 1.7.1952 as per the application and as per the certificate given by the Doctor to the writ petitioner the writ Petitioner is not a Law abiding Person she had Malpractice in her records and filed this Writ application with false averments."

6.The reason now stated in the counter affidavit filed by the second respondent is not given while rejecting the petitioner's petition for pension. It is well settled that the respondents cannot supply additional reasons in the counter than what was stated



in the impugned order. In view of the serious allegations, that are made in the counter affidavit, the eligibility of the petitioner should be re-considered after giving an opportunity to the petitioner, as the reason given by the second respondent in the counter affidavit, has come after passing of the impugned order. Having regard to the facts and circumstances indicated above, this Court is inclined to dispose of the Writ Petition in the following lines:

6.1.The impugned order passed by the second respondent, dated 31.01.2012 and 25.09.2012 are set aside. However, the petitioner's applications, dated 02.07.2010 and 27.01.2011 should be considered afresh after giving opportunity to the petitioner to putforth her case about her entitlement to get pension as per the order of Government. The petitioner may treat the counter affidavit filed by the second respondent, as intimation to her about the dispute regarding her date of birth. The petitioner may explain to the respondents, as to how she is eligible to get pension. After giving sufficient opportunity to the petitioner to produce the records and putforth her case, the respondents shall take appropriate decisions in accordance with law within a period of twelve weeks from the date of receipt of such explanation being submitted by the petitioner.

7.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Secretary,
Tamil Nadu Manual Workers Welfare Board,
G-133, TNHB Chanthamani Trade Complex,
III Floor, Anna Nagar East, Chennai-600 102.

2.The Labour Officer,
Social Welfare Scheme, Thainnappa Complex,
No.21, Jawahar Bazaar, Karur - 639 001.

+1 CC to M/s.G.M.XAVIER, Advocate (SR-24875[F] dated 02/08/2021)

+1 CC to M/s.The Special Government Pleader (SR-25080[F] dated 03/08/2021)

W.P. (MD) No.2464 of 2013

12.08.2021

RS (26.08.2021) 3P 5C

<https://hcservices.ecourts.gov.in/hcservices/>