



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) Nos. 24971 and 25115 of 2016 and
WMP(MD) .No.18157 of 2016

J. Johm Ranjith Kumar : Petitioner in
W.P (MD) .No.24971/2016

K.Anandham : Petitioner in
W.P (MD) .No.25115/2016

.vs.

1.The Government of Tamil Nadu,
rep. By its Secretary to Government,
Animal Husbandry, Dairying and Fisheries,
Department, Fort. St. George,
Chennai - 600 009.

2.The Commissioner of Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.

3.The Tamil Nadu Co-operative Milk
Producers Federation Ltd.,
rep. By its Managing Director,
Madhavaram Milk Colony,
Madhavaram, Chennai - 600 051.

4. The General Manager,
Madurai District Co-operative Milk Producers
Union Limited,
Sathamangalam,
Madurai - 625 020.

: Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the
Constitution of to issue a Writ of Certiorarified Mandamus calling
for the records which is on the file of the respondents in
Na.Ka.No.2782/Pa.Ku.4/2015-1 and Na.Ka.No.5813/Pa.Ku.4/2015, dated



23.07.2015 & 30.12.2015 and quash the same as illegal and unconstitutional and direct the respondent to consider the petitioner's representations dated 10.08.2016 and 11.08.2016 respectively for re-appointment to the post as Senior Mazdoor with all the monetary benefits.

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For Petitioner
in both W.Ps

: Mr.S. Samuel James Devasagayam

For R1 to R3
in both W.Ps.

: Mr.P. Thilak kumar
Government Pleader

For R4 in both W.Ps. : No appearance

C O M M O N O R D E R

These Writ Petitions have been filed to quash the impugned order passed by the respondents in Na.Ka.No.2782/Pa.Ku.4/2015-1 and Na.Ka.No.5813/Pa.Ku.4/2015, dated 23.07.2015 respectively and direct the respondents to consider the petitioners representations dated 10.08.2016 and 11.08.2016 for re-appointment to the post as Senior Mazdoor with all the monetary benefits.

2. The petitioner in W.P. (MD) No. 24971 of 2016 was appointed as Casual Labourer in Madurai District Cooperative Milk Producers Union Limited on 01.12.1998 and on completion of 480 days the petitioner was permanently absorbed as a last grade servant in the cadre of Mazdoor and subsequently, the petitioner was regularized by the respondents on 01.02.2002 as Junior Labourer in the Scale of Rs.18/- and other allowances. Thereafter, on 28.09.2007 promoted to Senior Mazdoor and the service were regularized on 13.10.2014 and he joined the duty as Senior Mazdoor on 14.10.2014 in the 4th respondent office. The petitioner retired from the post of Senior Mazdoor. He claims that the petitioner was continuing in the Mazdoor Post for years together and lastly before retirement, the post was upgraded in the same cadre as selection grade Mazdoor and then Senior Mazdoor on the ground that the Mazdoor post has no promotional opportunity.

3. The petitioner in W.P. (MD) No. 25115 of 2016 was appointed as Casual Labourer in Madurai District Cooperative Milk Producers Union Limited on 22.02.1998 and on completion of 480 days he was permanently absorbed as a last grade servant in the cadre of Mazdoor and subsequently the petitioner was regularized by the respondents on 29.09.2007 as Junior Labourer in the Scale of Rs.18/- and other allowances. Thereafter, on 28.09.2007 promoted to Senior Mazdoor and the service were regularized on 27.07.2008 and the petitioner joined the duty as Senior Mazdoor on 31.07.2008 in the 4th respondent office. The petitioner retired from the post of Senior



Mazdoor. He claims that the petitioner was continuing in the Mazdoor Post for years together and lastly before retirement, the post was upgraded in the same cadre as selection grade Mazdoor and then Senior Mazdoor on the ground that the Mazdoor post has no promotional opportunity.

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4. The petitioners submit that the government has constituted a High Level Committee in G.O. (D) No. 18 Animal Husbandry, Dairying and Fisheries (M.P.II) dated 31.01.2007 which has submitted a report on 26.09.2007 in respect of bye-laws in respect of administration. The 2nd respondent has approved the draft bye-laws vide Resolution No. 572, dated 19.12.2007 and the government approved the same in G.O. Ms. No. 6 Animal Husbandry, Dairying and Fisheries (M.P.II) Department dated 10.01.2008, which has come into effect on 11.01.2008. The bye-law has increased the retirement age to 60 years.

5. The petitioners claim that the retirement age of the basic servant, who comes under Tamil Nadu Basic Services is 60 years. The Basic Servants are like that of Mazdoor in the 4th respondent society and hence like the basic servants, the Mazdoor is entitled to increase the age to 60 years and cannot retain in 58 years.

6. The respondents have submitted that the said issue is already considered in W.P. (MD) No. 14737 of 2016 vide order dated 30.08.2016 and confirmed in W.A. (MD) No. 460 to 462 of 2011 vide order dated 21.08.2018, wherein the claim of the writ petitioners were rejected. The relevant portion of the order passed in W.P. (MD) No. 14737 of 2016 is culled out hereunder:

19. Although the petitioners are correct in contending that Rule 149(3) of the Tamil Nadu Cooperative Societies Rules, 1988, says that in the matter of appointment and retirement of the co-operative employees, the rules applicable to the Government servant shall be followed, therefore the first proviso to Rule 56(1)(a) of the Fundamental Rules of the Tamil Nadu Government, stating that all basic servants shall retire on attaining the age of 60 years alone would apply to the case of the petitioners, as rightly contended on behalf of the respondents, the posts which the petitioners are holding namely, Salesman, Selection Grade Senior Factory Assistant, Selection Grade Mazdoor and Special Senior Mazdoor respectively, do not fall within the classes and categories of Government servants relating to Tamil Nadu Basic Service, as extracted supra. Further, Fundamental Rule 9(iii) shows that Basic Service includes all services in the following



appointments unless declared by Government to be superior:-

- a) Service as Office Assistant, Head Office Assistant, Chobdar or Duffadar;
 - b) Service in Posts the pay of which does not exceed Rs.750/-
- All other service is superior.

20. Therefore, the petitioners who are working in the abovesaid posts which do not fall within the classes and categories of Basic Service, cannot seek a prayer to direct the respondents to allow them to work up to 60 years, as per Rule 149(3) of the Tamil Nadu Cooperative Societies Rules, 1988, read with first proviso to Rule 56(1)(a) of the Fundamental Rules.

Accordingly, all the Writ Petitions are dismissed."

7. The relevant portion of the order passed in W.A. (MD) Nos. 460 to 462 of 2011 is culled out hereunder:

"The appellants are employed as Selection Grade Mazoodrs in the factory and classification has been changed as Senior Factory Assistants, with the grievance that the appellants should be allowed to be continued upto the age of 50, they have filed Writ Petitions. The Writ Petitions were dismissed holding that even as per the byelaws, the appellants are not entitled to serve upto 60 years as they are covered under the Factories Act. Challenging the same, the present Writ Appeals have been filed.

2. During pendency of Writ Proceedings and writ appeals, the appellants have enjoyed the benefit of interim order. Now, they attained the age of superannuation, even assuming the age is 60 years.

3. It is submitted that for the work done between 58 years and 60 years, the appellants were paid salary. Therefore,, the only question for consideration is computation of pension and other retiral benefits.

4. We do not find any error in the order passed by the learned Single Judge. Admittedly, the appellants were working in the manufacturing unit. Therefore, they come in the purview of Factories Act. Even the appellants clearly indicate that their designation as Senior Factory Assistants was not



brought under the Factories Act, the same would not begone the byelaws. Therefore, we are of the view that the appellants are not entitled to have counting service from 58 to 60. However, the respondents cannot recover any amount paid for the services rendered by them, after the date of their superannuation till they attained 60 years. Inasmuch as retiral benefits are not granted to the appellants, the respondents are directed to make payment within a period of eight weeks from the date of receipt of a copy of this order, by treating the age of superannuation as 58 years.

5. The Writ Appeals are disposed of accordingly. No costs."

8. Heard Mr. S. Samuel James Devasagayam the counsel for the petitioner and Mr. P. Thilakkumar, the Learned Government Pleader appearing for the respondents 1 to 3.

9. It is seen in the present case the petitioners have attained the age of superannuation while they were working as Senior Mazdoor. Therefore, as held in the W.P. (MD) No. 14737 of 2016 vide order, dated 30.08.2016 and confirmed in W.A. (MD) Nos. 460 to 462 of 2011 vide order, dated 21.08.2018 the post of Senior Mazdoor is not coming under the Tamil Nadu Basic Servants, hence not entitled to claim the retirement age as 60. Therefore the petitioners are not entitled to the prayer and hence the writ petition is liable to be dismissed.

10. Therefore, these writ petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

trp

To

1.The Government of Tamil Nadu,
rep. By its Secretary to Government,
Animal Husbandry, Dairying and Fisheries,
Department, Fort. St. George,
Chennai - 600 009.



2.The Commissioner of Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Madhavaram,
Chennai - 600 051.

3.The Tamil Nadu Co-operative Milk
Producers Federation Ltd.,
rep. By its Managing Director,
Madhavaram Milk Colony,
Madhavaram, Chennai - 600 051.

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Madurai District Co-operative Milk Producers
Union Limited,
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Madurai - 625 020.

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