



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4406 of 2021

1 R.Chinnasamy
S/o.Ramasamy
D.No.211/a moola Kola Kottai,
Thimmapuram (village And Post),
Krishnagiri- 635112. ... Petitioner

Vs.

1 The State Of Taminadu
Rep By Its Additional Chief Secretary
Finance (pay Cell) Department,
Fort St.George, Chennai- 600 009.

2 The Principal Accountant General (A And E),
361, Anna Salai, Teynampet,
Chennai- 600 018.

3 The District Collector
O/o. The District Collector,
Krishnagiri- 635 001.

4 The Block Development Officer
O/o. Kaveripattinam Panchayat Union,
Kaveripattinam- 635 112, K
Krishnagiri- District And Taluk. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent in G.O.Ms.No.348 Finance (Pay Cell) Department dated 28.11.2017 and to quash that portion (Clause 9) of the Government Order that is shall take effect from 1.10.2017 and consequently to direct the Respondents 1 to 4 to grant Special Monthly Pension/lumpsum Payment as provided in G.O.Ms. No.348 Finance (Pay Cell) Department dated 28.11.2017 to the petitioner.

For Petitioner : Mrs.A.Subadra
For Respondents : Mr.P.Balathandayutham
Special Government Pleader



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O R D E R

According to the petitioner, the petitioner was appointed as Sweeper on consolidated pay in Thimmapuram Village Panchayat Council under the 4th respondent from 5.10.1984 and retired on 30.4.2017. On 1.10.2010, the first respondent/Finance (Pay Cell) Department has issued G.O.Ms.No.385 through which the service of the sanitary workers on daily wages/consolidated pay and who have completed 3 years of service was regularized and granted special time scale of pay. Further, on 28.11.2017, the first respondent has issued G.O.Ms.No.348 and directed that all employees in both Government Department and Locabodies in special time scale of pay shall be granted Special monthly Pension/Lumpsum payment at the time of retirement. The aforesaid G.O.Ms.No.348 dated 28.11.2017 is effective from 1.10.2017 i.e., the workers who retired/expired on or after 1.10.2017 alone are eligible for special Pension/lumpsum payment. Since the petitioner retired from service on 30.4.2017 i.e. prior to 1.10.2017, the benefit under the aforesaid G.O.Ms.No.348 dated 28.11.2017 was rejected by the respondent. Challenging the aforesaid G.O.Ms.No.348 dated 28.11.2017, the present writ petition has been filed before this Court.

2. Counter affidavit has been filed on behalf of all the respondents, wherein it is stated that in G.O.Ms.No.385, Finance (Pay Cell) Department, dated 1.10.2010, it has been ordered that the Sanitary Workers working on daily wages/consolidated pay who have completed 3 years of service shall be granted Special Time Scale of Pay of Rs.1300-3000 + G.P.300/- with effect from 15.9.2010. Further, they were also allowed D.A., H.R.A., C.C.A. And annual increments as applicable to the regular Government employees. The services of the petitioner have been regularized and the pay and allowances were paid to the petitioner from the State Finance Commission grant released by the Government to the Village Panchayats. As per G.O.Ms.No.348, dated 28.11.2017, the Sweeper/Sanitary workers/Scavengers working in all Government departments/Local bodies shall be granted a special monthly pension of Rs.2000/- and a lumpsum payment of Rs.50,000/- at the time of their retirement and the said order shall take effect from 1.10.2017. The representation of the petitioner, dated 16.4.2019 has already been scrutinized and rejected by the third respondent through Na.Ka.No.9246/2019/m3, dated 7.5.2019 on the ground that the said G.O.Ms.No.348 dated 28.11.2017 is effective from 1.10.2017 only and the petitioner who had retired on 30.4.2017 itself is not eligible for special Pension. In the counter affidavit, the respondents, placed reliance on the



decision of the Hon'ble Supreme Court in Government of Andhra Pradesh s. N.Subbarayudu reported in (2008) 14 SCC 702 wherein the Hon'ble Supreme Court upheld the fixing of cut off date.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. The sole issue in the instant writ petition is that whether any cut off date can be introduced by the Government in the matter of applying different Pension Scheme.

5. In the case on hand, learned counsel appearing for the petitioner contends that the fixing the cut-off date whereby dividing a section of retiring employees into two different classes i.e. those who retired after 1.10.2017 and those who retired prior to 1.10.2017 is arbitrary, discriminatory, unreasonable, irrational and unsustainable and also violative of Articles 14 and 16 of the Constitution of India and contrary to the judgment of the Hon'ble Supreme Court in D.S.Nakara and Others v. Union of India reported in AIR 1983 SC 130. The learned counsel appearing for the petitioner also relied on the decision of the Hon'ble Supreme Court in THE STATE OF GUJARAT & OTHERS VS. TALSIBHAI DHANJIBHAI PATEL [S.L.A. (C) No.1109 of 2022] to contend that fixing the cut-off date whereby dividing a section of retiring employees into two different classes i.e. those who retired after 1.10.2017 and those who retired prior to 1.10.2017 is arbitrary, discriminatory, unreasonable, irrational and unsustainable and also violative of Articles 14 and 16 of the Constitution of India, thereby the petitioner was deprived the benefit granted in G.O.Ms.No.348 dated 28.11.2017.

6. The Hon'ble Supreme Court in the aforesaid case has held that the adhoc employees who have completed 30 years of continuous service cannot be denied pensionary benefits on the fault of State. Whereas the challenge in the instant case is fixing a cut-off date to extend the benefit of special monthly pension of Rs.2000/- and a lumpsum payment of Rs.50,000/- at the time of their retirement and the said order shall take effect from 1.10.2017, whereas the petitioner retired from service prior to the said date. Therefore, the aforesaid case is not covered by the facts of the present case.

7. The issue raised herein has already been decided by the Hon'ble Supreme Court in the decision in Government of Andhra Pradesh and Others v. N.Subbarayudu and Others [(2008) 14 SCC 702] wherein it was held as under:



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"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See [State of Punjab v. Amar Nath Goyal](#) (2005) 6 SCC 754)

6. No doubt in [D.S. Nakara v. Union of India](#) [(1983) 1 SCC 305] this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in [State of Punjab v. Amar Nath Goyal](#).

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide [State of Bihar v. Ramjee Prasad](#) [(1990) 3 SCC 368], [Union of India v. Sudhir Kumar Jaiswa](#) [(1994) 4 SCC 212] (vide SCC para 5), [Ramrao v. All India Backward Class Bank Employees Welfare Assn.](#) [(2004) 2 SCC 76] (vide SCC para 31), [University Grants Commission v. Sadhana Chaudhary](#) [(1996) 10 SCC 536], etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14



unless the said cut-off date leads to some blatantly capricious or outrageous result.

(emphasis supplied)

9. As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P. v. P. Laxmi Devi the court must maintain judicial restraint in matters relating to the legislative or executive domain."

8. The decision cited supra squarely applies to the case on hand. The above decision lays down the proposition that "cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary ; There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection".

9. Keeping in mind the ratio laid down in the above cited decision, this Court is of the view that the decision of the Government in fixing cut off date for extending pensionary benefits is purely a policy decision of the Government taking into account the financial, administrative or other considerations and this Court cannot interfere over the same, unless the same appears to be on the face of it blatantly discriminatory and arbitrary and therefore, the challenge made by the petitioner on the impugned G.O.Ms.No.348 dated 28.11.2017 cannot be countenanced by this Court.

10. The writ petition stands dismissed accordingly. No costs.

Sd/-

Assistant Registrar (CS -IX)

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Sub Assistant Registrar

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To

- 1 The Additional Chief Secretary ,
State of Tamil Nadu,
Finance (pay Cell) Department,
Fort St.George, Chennai- 600 009.
- 2 The Principal Accountant General (A And E),
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- 3 The District Collector
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- 4 The Block Development Officer
O/o. Kaveripattinam Panchayat Union,
Kaveripattinam- 635 112,
Krishnagiri- District And Taluk.

+1cc to Mr.M.Malar, Advocate SR.No.12717
+1cc to the Government Pleader SR.No.12765

W.P.No.4406 of 2021

KK(CO)
GN(09/03/2022)