

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 12.09.2022****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.110 of 2019 and
W.M.P.(MD)No.83 of 2019**

V.Mahalingam

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Revenue Department,
St. George Fort, Secretariat,
Chennai.
 2. The Additional Principal Secretary
and Revenue Administrative Commissioner,
Ezhilagam, Chepauk,
Chennai.
 3. The Accountant General (A&E),
Teynampet, Chennai – 15.
 4. The District Collector,
Dindigul District,
Dindigul – 624 004.
 5. The Tahsildar,
Oddanchathiram Taluk,
Oddanchathiram – 624 619,
Dindigul District.
- ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to consider and pay the arrears of minimum pension from the date of retirement of the petitioner for the period from 01.03.2007 to 07.04.2015 (8 years two months 7 days) along with interest based on the petitioner's representation dated 29.10.2018 in the light of G.O.Ms. No.756, dated 17.08.1993.

For Petitioner : Mr.T.R.Janarthanam,
for Mr.M.Venkatesan.

For R-1,R-2,R-4
and R-5 : Mr.N.Satheesh Kumar,
Additional Government Pleader.

For R-3 : Mr.P.Gunasekaran

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner worked as a part time Village Munsif / Karnam from 11.11.1978 to 16.03.1979. The said posts came to be abolished by Act No.10 of 1980 with effect from 14.11.1980. The persons who lost their jobs filed writ

petitions before the Madras High Court and the matter eventually went before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the decision reported in **1982 AIR 1107 1982 AIR SC 1107 (K. Rajendran & Ors. Vs. State of Tamil Nadu & Ors.)** held as follows:-

“ 51. ...

(i) The State Government will give effect to the memorandum filed on its behalf which is incorporated in this judgment in the case of those who possess the minimum general qualifications prescribed under the Act and the Rules made thereunder and who were holding the posts of part-time village officers immediately before the Act came into force. The State Government shall reemploy all such persons who have not crossed the age of superannuation and who are selected as per the memorandum in the new cadre within four months from today. Until they are so selected, they will not be paid any remuneration. Even if they are re-employed, the amount paid to them pursuant to the interim orders will not be recovered from them. ... ”

3. Subsequently, the Government of Tamil Nadu implemented the aforesaid decision of the Hon'ble Supreme Court. It so happened that some of the persons were re-appointed retired even before completing ten years of service. As a result, they could not get even minimum pension. To address the concerns of such employees, the Government issued G.O.(Pt)No.756 Revenue Department dated 17.08.1993. The essence of the Government Order is that their service should be counted with effect from 14.11.1980 when the employee concerned lost his employment till the date of their retirement. If the said period comes to 10 years, then they should be given minimum pension. The petitioner herein was re-appointed on 15.11.2000 and he retired from service on 28.02.2007. The case of the petitioner is that he was also entitled to pension in view of the aforesaid Government Order. The petitioner also contended that several similarly placed persons were given the benefit of the said Government Order. The petitioner's request was considered by the Government which issued G.O.(Permanent)No.158 Revenue (Work-8(2) Department dated 08.04.2015. Minimum pension was ordered

to be issued to the writ petitioner also. In the said Government Order, it was made it clear that the said benefit will come into effect only from date mentioned in the Government Order and not from the date of the petitioner's retirement. Aggrieved by the same, the petitioner submitted representation. Since it was not considered, the present writ petition came to be filed.

4. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

5. He also drew my attention to G.O.(Pt)No.148 Revenue (Work-8(2)) Department dated 20.04.2011 and G.O. (Pt)No.299 Revenue (Work-8(2)) Department dated 27.08.2012. According to the petitioner, under those Government Orders, conferment of minimum pension was granted with effect from the date of retirement of the employee also. According to him, denying the benefit of minimum pension with effect from the date of retirement will amount to discrimination and there is breach of Article 14 of the Constitution of India.

6. Per contra, the learned Additional Government Pleader submitted that no relief can be granted in this writ petition and that the writ petition itself is not maintainable.

7. I carefully considered the rival contentions and went through the materials on record.

8. A mere look at G.O.(Pt)No.158 Revenue (Work-8(2)) Department dated 08.04.2015 would indicate that it invokes G.O.(Pt)No.756 Revenue Department dated 17.08.1993. In other words, if the aforesaid Government Order cannot be applied to the writ petitioner, the very ground of minimum pension payable to the petitioner would be an act of grace and bounty shown by the Government and not a matter of right.

9. Let me now have a look at G.O.(Pt)No.756 Revenue Department dated 17.08.1993. It clearly states that minimum pension can be granted, if ten years had lapsed between 14.11.1980 and the date of retirement of the employee

concerned. There is a further requirement that the employee concerned must have lost his job on 14.11.1980. Since this itself pertains on the dates, I asked the second respondent as to whether the petitioner was holding the post of part time Village Munsif / Karnam on 14.11.1980. The answer is in the negative. I am more than satisfied that G.O.(Pt)No.756 Revenue Department dated 17.08.1993 cannot have an application to the petitioner.

10. The petitioner derives his right to receive minimum pension only by virtue of G.O.(Pt)No.158 Revenue (Work-8(2)) Department dated 08.04.2015. It came into force only with effect from the date of Government Order and not from the date of retirement of the petitioner. If the petitioner felt aggrieved, he should have challenged that portion of the Government Order which set out the date when it came into force. Without doing so, the petitioner cannot independently file a writ of mandamus. This writ petition is not maintainable for not having challenged the relevant portion of G.O.(Pt) No.158 Revenue (Work-8(2)) Department dated 08.04.2015.

11. The petitioner's grievance is that similarly placed persons have been granted the benefit that has been denied to him. This contention is no doubt attractive. But the Hon'ble Full Bench of Madras High Court in the decision reported in **2019 (6) CTC 705 (The Government Of Tamil Nadu V. R. Kaliyamoorthy)** had held as follows:-

“44. The aforesaid Judgment of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons, like the writ petitioners, it will not operate as res judicata or it will preclude the State Government from, questioning those orders, in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in

accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons.”

The Hon'ble Supreme Court in the decision reported in ***(2013) 14 SCC 81 (Basawaraj & Another V. Special Land Acquisition Officer)*** had held as follows:-

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.

Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality

and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/ decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.

(V i d e : Chandigarh Administration and Anr. V. Jagjit Singh and Anr. MANU/SC/0136/1995 : AIR 1995 SC 705, Anand Button Ltd. V. State of Haryana and Ors. MANU/SC/1054/2004 : AIR 2005 SC 565; K.K. Bhalla V. State of M.P. and Ors. MANU/SC/0234/2006 : AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab MANU/SC/0411/2010 : AIR 2010 SC 1937).“

12. In this view of the matter, I am not inclined to grant relief. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2022

Index : Yes / No

Internet : Yes/ No

PMU

To:

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St. George Fort, Secretariat,
Chennai.
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and Revenue Administrative Commissioner,
Ezhilagam, Chepauk,
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4. The District Collector,
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Dindigul District.

G.R.SWAMINATHAN,J.

PMU

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