



WEB COPY



W.P.No.26761

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.26761 of 2009

Mr.D.Nithyanandan

...Petitioner

Vs.

1.The Registrar,
Anna University,
Guindy,
Chennai.

2.The Secretary,
Sri Venkateshvara Educational and Health Trust,
No.1/3A, River View Road,
Kotturpuram,
Chennai – 600 085.

3.The Principal,
Sri Venkateswara College of Engineering,
Dr.R.Ramachandran,
Pennalur,
Sriperumbadur – 602 105.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his order dated 30.10.2009 amending the service rules and consequentially leading to the order SVCE/ESTT/2009-2010 dated 03.12.2009 and quash the same as illegal and



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arbitrary and against the principles of natural justice for a direction directing the second respondent to permit the petitioner to continue to work, until he superannuates at the age of 60 as agreed at the time of his appointment.

For Petitioner : Mr.D.Nithyanandan, Party-in-person

For Respondents : R1 – No appearance

Mrs.A.L.Ganthimathi, Senior Counsel
assisted by Mr.L.Palanimuthu for R2 & R3

ORDER

The Writ Petition has been filed challenging the amending service rules as well as the impugned order passed by the second respondent.

2.Heard Mr.D.Nithyanandan, Party-in-person and Mrs.A.L.Gandhimathi, learned Senior Counsel assisted by Mr.L.Palaimuthu, learned counsel appearing for the respondents 2 & 3.

3.The case of the petitioner is that he was appointed as a Draughtsman-Mechanical in the third respondent college and thereafter, he was working as a Senior Draughting Officer & Lab Superintendent Grade – 3 in the Mechanical Department of the third respondent college. He would submit that originally the age of superannuation in the third respondent college was 60 years. But, however, the



said rules were amended reducing the age of superannuation/retirement as 58 years.

Since the petitioner had already completed 58 years of age as on 01.11.2009, the petitioner was sought to be relieved on duty 31.12.2009 and hence he had challenged both the amending service rules and also the order dated 03.12.2009 which relieved him from the duties. He would submit that the rules have been amended which modified the conditions of the service in which the petitioner was appointed. He had not been put on notice of such amendment which had been made detrimental to the interest of the employees. Therefore, he would seek interference with the order of relieving him from service and direct the respondents to pay him back wages as if the petitioner had retired from service on completion of age of 60.

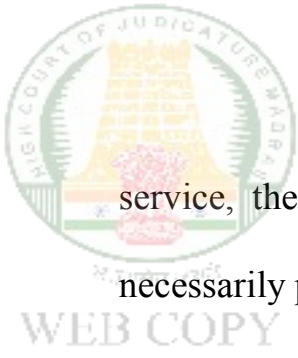
4.Countering his arguments, Mrs.A.L.Gandhimathi, learned Senior Counsel appearing for the respondents 2 & 3 would submit that it is prerogative of the respondents 2 & 3 to amend the service rules and all of the employees who have been in service will be bound by the service rules and they cannot seek to challenge same. She would further submit that even though originally the age of superannuation was 60 years, the petitioner has continued in service beyond the age of 58 years in service. In view of the amendment of the service rules reducing the age of superannuation from the age of 60 to 58 which came to be amended on 30.10.2009, the petitioner cannot be permitted to continue beyond the age of 58. She



would submit that similarly placed persons like petitioner have all been superannuated and no one had challenged or made a claim as like that of the petitioner. She would further submit that if any relief is granted to the petitioner, the same would have a cascading effect on the institution.

5.I have heard the submissions made by the respective counsel appearing on either side and perused the materials available on record.

6.Admittedly, the service rules of the third respondent college seems to have been amended in October 2009. Prior to the amendment, the age of superannuation of the persons employed in the category of non-teaching staff of the third respondent college was 60 years. An amendment had been brought out on 30.10.2009 reducing the superannuation for non-teaching staff from 60 years to 58 years. The rules of the third respondent institution do not have any statutory force. The rules which have been created by a statute or regulation/rules under the statute alone would be binding on both the employer and the employee. In this case, the third respondent is an educational institution run by the second respondent Trust. When the appointments have been made pursuant to the in-house rules of the institution imposing certain conditions of service then any such amendment that is brought out which takes away certain rights or advantages that has given to the employee altering the conditions of



service, then the employees whose interest are being affected would have to be necessarily put on notice.

7.In the present case, admittedly, the rules have been amended by the respondents. Therefore, I am of the view that the petitioner cannot be put to disadvantage of such unilateral amendment of rules. The petitioner is entitled to superannuate only on completion of age of 60. Be that as it may, the petitioner had been relieved on and from 30.12.2009 and his last drawn wages was a sum of Rs.34,480/- and according to him, he would be entitled for 21 months which comes around Rs.7,24,080/-.

8.Learned Senior Counsel appearing for the respondents 2 & 3 would submit that the petitioner had not worked after December 2009 and therefore, applying the principles of "no pay no work", the petitioner is not entitled to any payment. As I have held that the petitioner was entitled to work till he attains the age of 60 and also considering the fact that the petitioner had been out of employment, I feel it proper & appropriate that the petitioner should be adequately compensated. Considering the overall circumstances of the case, I direct the respondents 2 & 3 to pay a sum of Rs.3,00,000/- to the petitioner in lieu of his loss of salary within a period of 12 weeks from the date of receipt of a copy of this order.



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9. In fine, the Writ Petition is disposed of with the aforesaid direction. There shall be no order as to costs.

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Index: Yes/No

Speaking Order/Non-Speaking Order

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To

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Guindy,
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K.KUMARESH BABU, J.

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