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WA Nos.943 and 944 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos.943 and 944 of 2021
and
CMP.Nos. 5651 and 5656 of 2021

P.Uma

.. Appellant
in WA.No.943 of 2021

N.Rajeshwari

.. Appellant
in WA.No.944 of 2021

Versus

1. The District Registrar / The Joint Director (Tea)
Department of Industries & Commerce
Govt. of TN,
INDCOSERVE Campus, Coonoor - 643 101
The Nilgiris District.

2. The Managing Director
The Salisbury Industrial Co-operative Tea Factory Ltd
Gudalur - 643 212, The Nilgiris District.

.. Respondents

Writ Appeals filed under Clause 15 of Letters Patent praying to set aside
the order dated 21.10.2019 made in WP.Nos.23788 and 23789 of 2019.



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For Appellants : Mr.K.Lavan

For Respondents : Mr.Silambannan, Additional Advocate General
assisted by Mr. C. Selvaraj,
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Both these writ appeals have been filed against the common order dated 21.10.2019 passed by the learned Judge in W.P.Nos.23788 and 23789 of 2019.

2.The appellants herein joined duty in the second respondent Tea Factory in 1983 as grader and packer. In the year 1999, Special Bye-Laws relating to the service conditions of the employees of the second respondent were framed and the same have been approved by the District Registrar of Industrial Cooperative Society, Nilgiris District on 13.07.1999. The appellants sent representations requesting them to permit to continue in service till their completion of 60 years of age. Since the same were rejected by the second respondent by order dated 30.06.2019, the writ petitions from which these writ appeals have emanated, have been filed by the appellants.



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3.It was put forth on the side of the appellants before the writ Court that Rule 56(i) of the Fundamental Rules, states that all basic servants shall retire on attaining the age of 60 years and the appellants belonged to last grade basic servants and hence, they are entitled to continue their services till they attain the age of 60 years (i.e.) on 30.06.2021, however they were superannuated on 30.06.2019, on reaching the age of 58 years. The representations made by them claiming the said relief, were rejected by the second respondent. Therefore, the appellants filed writ petitions seeking to set aside the rejection order and to extend their service till their completion of 60 years. On the other hand, the learned Special Government Pleader appearing for the respondents contended that as per the Common Standing Orders, all the employees working in the factory have been superannuated, on attaining the age of 58 years and hence, the request of the appellants cannot be considered by the respondent authorities.

4.The learned Judge, taking note of the order passed by the Madurai Bench of this Court in W.P.(MD)No.14737 of 2016 etc. batch on a similar issue, has held that as per the Common Standing Orders, the appellants have neither produced any document to show that they were working as basic servants nor



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shown anything as to their eligibility on par with basic servants retiring at the age of 60 years and accordingly, dismissed the writ petitions, by common order dated 21.10.2019.

5.Challenging the aforesaid order passed in the writ petitions, the present appeals have been filed by the writ petitioners.

6.The learned counsel for the appellants submitted that Rule 12(A) of the Special Bye-Law of the respondent Tea Factory states that in the matter of age of retirement from service of the society, the rules applicable to the Government Servant has to be followed; and that, Rule 56(i) of the Fundamental Rules states that all basic servants shall retire on attaining the age of 60 years. Further, it is not the case of the respondents that the appellants were not working as basic servants in the second respondent Tea Factory. However, the learned Judge without properly considering the said aspects, dismissed the writ petitions. The learned counsel further submitted that permanent employee is not a post and to deny the benefit of retirement at the age of 60, the appellants were not specially designed with any specific post by the second respondent. It is also submitted



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that the special bye-laws relating to the service conditions of the employees of the second respondent were framed and approved on 13.07.1999 by the District Registrar of Industrial Cooperative Society, Nilgiris District and hence, the common standing orders are not applicable to the appellants herein.

7.The learned Additional Advocate General appearing for the respondents submitted that the appellants are permanent workers in the second respondent Tea Factory and they are governed by the Factories Act, 1947 and the Common standing order certified by the Joint Commissioner of Labour, Coimbatore and therefore, the claim of the appellants that they were working in basic service and they are entitled to remain in service till the age of 60 years, cannot be considered. It is further submitted that the appellants have to retire from service at the age of 58 years as per Rule 27 of the Common Standing Order certified by the Joint Commissioner of Labour, Coimbatore, in terms of Section 5(3) of the Industrial Employment (Standing Orders) Act, 1946. Thus, according to the learned counsel, the order passed by the learned Judge is a well considered one and hence, the same need not be interfered with by this Court.



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8. Heard the learned counsel on either side and perused the records.

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9. It is not in dispute that the appellants were working in the Tea Factory as grader and packer. According to the appellants, they are basic servants and hence, they are entitled to remain in service till the age of 60 years, but they were superannuated on reaching the age of 58 years. Whereas, it is the stand of the respondent authorities that Certified Common Standing Orders of the Joint Commissioner of Labour, Coimbatore, states that every workman shall retire from service on attaining the age of 58 years, which shall be the age of superannuation. But, it does not specifically state anything about the basic servants. Rule 12(A) of the Special Bye-Law of the respondent Tea Factory states that in the matter of age of retirement from service of the society, the Rules applicable to the Government Servant have to be followed. This is very specific as this is the Bye-Law of that particular Tea Factory. If it is stated that the Rules applicable to the Government Servant have to be followed, then, Rule 56(i) of the Fundamental Rules will come into play, which states that all basic servants shall retire on attaining the age of 60 years. At this juncture, it is important to point out that special bye-laws relating to the service conditions of



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the employees of the second respondent, were framed and approved by the District Registrar of Industrial Cooperative Society, Nilgiris District on 13.07.1999, whereas the certified common standing orders were enacted in the year 1990 much prior to the framing of special bye-laws. Further, it is not the case of the respondents that the appellants were not working as basic servants in the second respondent Tea Factory. While so, the observation made in the impugned order that the appellants have neither produced any document to show that they were working as basic servants nor shown anything as to their eligibility on par with basic servants retiring at the age of 60 years, does not merit acceptance.

10. That apart, the concept of 'basic servants' has been dealt with by a Division Bench of this court in the judgment dated 24.01.2013 rendered in W.P.Nos.14977 of 2011 etc. cases in the case of *K.Gowran and others vs. State of Tamil Nadu* and Paragraphs 8 to 14 of the same are quoted below for better appreciation:

"8. Thereafter, the last Writ Petition, namely WP.No.1231 of 2013 came to be filed challenging an order dated 20.6.2011 passed by the State Government, wherein the proposal sent by the Commissioner for Sericulture (Development) was negatived by the State Government. In the said communication, it was stated that regularisation was effected by the State Government in terms of G.O.Ms.No.25 Handlooms, Handicrafts, Textiles and Khadi Department dated



23.2.2010. *Even though the employees who come under the provisions of the Tamilnadu Basic Service were allowed to retire at the age of 60 years, for the present petitioners whose service was regularised in terms of the G.O, no Special Rules have been created and if the proposal of the Commissioner is accepted, it is likely to create different claims by different sections and therefore, the proposal was negatived. It is only when the said Writ Petition came up, all the connected Writ Petitions were grouped together and posted before this Court as noted already.*

9. *The contentions raised by the petitioner were two-fold. Firstly, when they were made regular Government servants in terms of the G.O, no retirement age has been fixed and they have not been shown under which category they will be fixed. Secondly, the pay fixed in respect of the regularised employees were admittedly lower than the basic pay available to the persons working under the Tamil Nadu Basic Service. While in respect of the persons working under the Basic Service, their pay was fixed in the scale of pay of Rs.4800-10000 plus Rs.1300 Grade pay, the petitioners' total salary was only between Rs.4500 and 5000 and they were lowest in the category of Government Servants working in the State considering the scale of pay fixed.*

10. *Reference was made to the Fundamental Rules, more particularly, Rule 9-A wherein 'basic service' is defined and it includes all service shown in the said Sub Rule unless declared by Government to be superior service. The basic service includes a) Service as peon, head peon, chobdar or duffadar b) Service in posts the pay of which does not exceed Rs.720/- (at the time of G.O.Ms.No.1071, P&AR Department dated 31.10.1986) c) Service in posts in the Raj Bhavan household establishment. The State Government had also issued clarification in G.O.Ms.No.3580 LA dated 21.9.1937 and G.O.Ms.No.320 Finance dated 8.5.1930, wherein it is stated that the question whether a Government servant is in superior or basic service should be decided with reference to the pay actually drawn by the Government servant at the time.*

11. *Ms.Lesi Saravanan, learned counsel for the petitioners also referred to the fact that when Official Committee of 2009 recommended the scales of pay for various posts, pursuant to the Sixth Central Pay Commission, the State Government vide G.O.Ms.No.234, Finance (Pay Cell) Department dated 1.6.2000 had fixed the salary for Noon Meal Organizers and Anganwadi Workers and their salary was fixed at Rs.2500-5000+Rs.500/-. The petitioners were also given the same scale of pay. In respect of those workers, their retirement age is 60 years. Hence, there is no need to discriminate the petitioners since they were drawing the lowest pay than the basic servants' pay. Merely because in the G.O, by which their services were regularised, their retirement age is not indicated, as per FR.9, their service must be treated as basic service.*



12. In response to the same, in the counter affidavit filed by the respondents, it was agreed that their retirement age was not specifically mentioned in the regularisation G.O, but it was contended that they do not come under the Basic Service and the retirement age of 60 years will not be applicable to them. It is also stated that Anganwadi Workers and Noon Meal Organizers also do not come under the Tamilnadu Basic Service. Apart from stating that no upper age of retirement is fixed in the order regularising their service, the respondents have not come out with specific stand as to whether the petitioners can be fitted as basic service.

13. The Fundamental Rule as well as the Government Order framing the Rule clearly says that the scales of pay to a particular post will be a relevant criteria for determining whether a person is coming under the superior service or under the basic service.

14. In the present case, as agreed in the counter affidavit, the State Government fixed the pay lower than the scale of pay available to basic service, certainly they will be treated either under the basic service or below the basic service. It cannot be said that the petitioners are coming under the superior service, considering the scale of pay fixed to them. Since the Government had admittedly fixed the scale of pay to the petitioners below the persons working under the basic pay, it has to be taken that they are also coming under the basic service or something below the basic service. If the employees under the basic service are entitled to get retired at the age of 60 years, there is no reason for the persons like the petitioners who are drawing scale of pay lesser than the pay of the basic servants, to reject their contention that they should be retired at the age of 60 years, unless the petitioners' service was declared as superior service, When their pay is fixed below the pay of the basic service, they belong to basic service."

11. In similar circumstances, a Division Bench of this Court *vide* judgment dated 14.11.2017 in WA.No.753 of 2014, has issued the following direction to the department of Horticulture:

"...the Writ Appeal is disposed of by giving liberty to the 1st respondent to reconsider the entire issue and fix the superannuation age of the petitioners as 60 years. Further, it is made clear that the superannuation age of the petitioners as 60 years will be taken into account only as continuity of service for calculating pensionary benefits and no other monetary benefits on the principle of no work no pay..."



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12.It is also relevant to refer to the proceedings of the Salisbury Industrial Cooperative Tea Factory Limited, Gudalur, The Nilgiris, Tamil Nadu dated 16.02.2009 in RC No.46/2008-2009, wherein a permanent worker has been promoted as Office Assistant as per Rule 149(d) of the Tamilnadu Cooperative Rules, 1988 and Subsidiary Regulations framed under Special By-Law No.IX-A of the Service Conditions of the Employees in the By-Laws of the Factory. A perusal of the said proceedings denotes that a similarly placed employee has been extended the benefit of extension of service for a further period of two years from 58 years.

13.Considering all the above, this Court is of the considered opinion that the order of the learned Judge is liable to be set aside and is accordingly, set aside and the appellants have to be reinstated into service. At the same time, it is seen that the writ petitions were filed in the year 2019 and orders have been passed dismissing their claim on 21.10.2019. Now, about 4 years have elapsed and at this distant point of time, the appellants would have crossed the age of 60 years. Hence, it is hereby ordered that the appellants are not entitled for any backwages for the period they have not worked on the principle of “No work No



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pay”, but they are entitled for continuity of service calculated till their attaining the age of 60 years and consequential service and pensionary benefits.

14.Both the writ appeals are allowed in the above terms. No costs.
Consequently, connected miscellaneous petitions are closed.

[R.M.D., J] [M.S.Q., J]

16.11.2023

Index : Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The District Registrar / The Joint Director (Tea)
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Govt. of TN,
INDCOSERVE Campus, Coonoor - 643 101
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2. The Managing Director
The Salisbury Industrial Co-operative Tea Factory Ltd
Gudalur - 643 212, The Nilgiris District.



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