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W.P.(MD)No.3516 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.3516 of 2016
and
W.M.P.(MD)No.3119 of 2023

K.Rakku

... Petitioner

vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Commissioner/Block Development
Officer,
Paramakudi Panchayat Union,
Paramakudi, Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to Na.Ka.No.A3/0258/2014, dated 10.12.2015, passed by the Commissioner, Paramakudi Panchayat Union and to quash the same and consequently, to direct the respondents to disburse the balance



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monthly salary and retirement benefits available to the petitioner.

For Petitioner : Mr.S.Siva Thilakar
For Respondents : Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 10.12.2015 passed in Na.Ka.No.A3/0258/2014 by the Commissioner, Paramakudi Panchayat Union and consequently, to direct the respondents to disburse the balance monthly salary and retirement benefits available to the petitioner.

2. The petitioner joined the service as Noon Meal Assistant on 01.08.1992 for monthly salary of Rs.65/- and retired on 30.06.2012 due to superannuation. The respondents have not allowed the petitioner to retire, since there were some audit objection as well as there was a dispute in her date of birth and hence, the petitioner did not receive any



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retirement benefits. The petitioner submitted a representation to the District Collector on the grievance day for the above prayer and also to pay Rs.20,000/- and monthly pension, etc. The second respondent, vide proceedings, dated 22.12.2008, had issued memo informing the petitioner as well as other similarly placed Noon Meal Assistants to start fresh service register for those who are working in Paramakudi Panchayat Union. The said memo was issued based on the audit objections, which had found negligence on the part of the officials for not opening the service register. The said memo also indicated huge loss was caused by the second respondent office because of the mistake committed by the second respondent for not opening the service register and maintained them properly. Nearly 39 persons' names were mentioned in which the petitioner is in serial number 24. But by the time the petitioner had attained superannuation, but the respondents had not disbursed retirement benefits, hence, the petitioner submitted a



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representation, dated 28.11.2012. Even then the respondents have not issued any retirement benefits, hence, the petitioner had filed W.P. (MD)No.1268 of 2014. Pending writ petition, the respondents have sent a communication dated 15.05.2015, allowing the petitioner to retire from 30.06.2008. In the said order, the respondents have not stated any retirement benefits payable to the petitioner, hence, again the petitioner filed W.P.(MD)No.18678 of 2015 to direct the respondents to disburse the retirement benefits available to the petitioner from 30.06.2008 pursuant to the communication, dated 15.05.2015. This Court directed the respondents to consider the representation and pass orders. Pursuant to the direction, the present impugned order is passed directing to recover the amount of Rs.85,377/- from the petitioner. Aggrieved over the same, the present writ petition is filed.

3. The contention of the respondents is that the petitioner has indicated that her superannuation age is 31.01.2012, by concealing



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the fact that she would attain superannuation on 01.07.2008 itself, thereby the petitioner has received salary for the past 43 months to the tune of Rs.85,377/-. The said amount of salary was paid in spite of the fact the petitioner had attained superannuation on 01.07.2008, which is against the rules and regulations. Therefore, the said amount was directed to be recovered from the petitioner. The further contention of the respondents is that earlier service register was opened by mentioning the date of retirement as 03.06.2008 but the service register was lost, therefore, it was directed to recreate the service register. The petitioner was directed to produce any evidence to show her age and the petitioner submitted a Doctor's certificate. Based on the Doctor certificate, the respondents have created the new service register by indicating that the petitioners age of superannuation as 31.04.2012, thereby the respondents have allowed the petitioner to work from 01.07.2008 to 31.01.2012. After creation of this new service register, the old service register was



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found after diligent search. In the old service register it has been mentioned that the petitioner's date of superannuation is 30.06.2008. In the meanwhile, the petitioner was allowed to work from 2008 to 2012 and received salary for the said period, since the same is against service rules, the amount was directed to be recovered.

4. On perusal of the records it seen that the petitioner is not entitled to any pension based on G.OMs.No.391, dated 15.09.2008. Since pension is granted to Noon Meal Assistant Rs.500/-, Noon Meal Assistant Grade-I Rs.600/-, Noon Meal Organiser is Rs.700/- but the said pension is disbursed from the date of issuance of the G.O., but the benefits would be granted from 15.11.2008. The G.O., has issued on 15.09.2008 but the monetary benefits will be disbursed from 15.11.2008. Since the petitioner has retired on 30.06.2008 itself, prior to the issuance of G.O. and her superannuation is on 30.06.2008, the petitioner is not



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eligible to the benefits granted under G.OMs.No.391, dated 15.09.2008.

5. Prior to this G.O.Ms.No.391, the government was granting Special Provident Fund-cum-Gratuity to the Noon Meal employees. Hence, the petitioner is entitled to Special Provident Fund-cum-Gratuity to the tune of Rs.20,000/-. Since the petitioner has not service under any pensionable service, the petitioner is not entitled to pension. If the same is available, then this Court would have directed to recover the amount in instalment from the monthly pension. When the monthly pension is not available, this Court is of the considered opinion that there is no means to recover the said amount of Rs.85,377/-, from the petitioner. It seen that the salary is paid, since the petitioner has rendered service from 2008 to 2012. Generally by applying the principle of “No Work No Pay” the Courts would decline payment of salary for the period the employee had not worked. By applying the said principle



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conversely for “work extracted and disburse salary” is applicable. Therefore it would be illegal if the amount is directed to be recovered.

6. Even though the petitioner has given wrong date of birth, at this point of time such huge amount cannot be recovered from the petitioner, when she has no means. But for the wrong intimation of date of birth the petitioner is liable for deduction of amount. It is seen that the petitioner is eligible for “Special Provident Fund-cum-Gratuity” which she is entitled to as per the said rules. Therefore, the respondents shall pay the said amount after deducting Rs.1000/- for wrong intimation of date of birth and the balance amount shall be disbursed to the petitioner within a period of 4 weeks from the date of receipt of a copy of this order.

7. With the above said observation and directions, the writ



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petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

25.04.2023

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To

- 1.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 2.The Commissioner/Block Development
Officer,
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Paramakudi, Ramanathapuram District.



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S.SRIMATHY, J

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