



WEB COPY



W.P.Nos.2316 of 2009 & 10730 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.2316 of 2009

H.Janaki

...Petitioner

Vs

1.The Director,
Regional Coffee Research Station,
Coffee Board, Thandigudi,
Dindigul District.

2.The Presiding Officer,
The Central Govt. Industrial
Tribunal – cum – Labour Court,
No.26, Haddows Road,
Shastri Bhavan, Chennai – 6.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Certiorarified Mandamus to call for the entire records connected with the impugned award of the 2nd respondent passed in I.D.No.37 of 2005, dated 25.07.2006, in so far as denying the 50% of backwages to the petitioner and quash the same and direct the 1st respondent to pay the 100% of backwages to the petitioner from the date of alleged premature retirement 31.12.2002 till the reinstatement in service.

For Petitioner : Mr.S.N.Ravichandran

For R1 : Mr.N.R.Rajagopal

For R2 : Court



W.P.Nos.2316 of 2009 & 10730 of 2007

W.P.No.10730 of 2007

WEB COPY

The Director,
Regional Coffee Research Station,
Coffee Board, Thandigudi,
Dindigul District.

...Petitioner

Vs.

1.H.Janaki

2.The Secretary,
The Central Govt. Industrial
Tribunal – cum – Labour Court,
No.26, Haddows Road,
Shastri Bhavan, Chennai – 6.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Certiorarified Mandamus to call for the entire records on the file of the second respondent in I.D.No.37 of 2005 dated 25.07.2006 and quash the same.

For Petitioner : Mr.N.R.Rajagopal

For R1 : Mr.S.N.Ravichandran

For R2 : Court

COMMON ORDER

W.P.No.2316 of 2009 has been filed to call for the entire records connected with the impugned award of the 2nd respondent passed in I.D.No.37 of 2005, dated 25.07.2006, in so far as denying the 50% of backwages to the petitioner and quash the same and direct the 1st



W.P.Nos.2316 of 2009 & 10730 of 2007

respondent to pay the 100% of backwages to the petitioner from the date of alleged premature retirement 31.12.2002 till the reinstatement in service.

2.W.P.No.10730 of 2007 has been filed to call for the entire records on the file of the second respondent in I.D.No.37 of 2005 dated 25.07.2006 and quash the same.

3.One Smt.H.Janaki raised an industrial dispute in I.D.No.37 of 2005, on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai. The dispute referred to the Tribunal was *“Whether the claim of Smt.H.Janaki for reinstatement with backwages against the Management of Regional Coffee Research Station (RCRS) Coffee Board, Thandigudi, Dindigul is legal and justified? If so, to what relief the workman is entitled?”*

4.The case of the petitioner is that she joined as an adult Mazdoor in the respondent/Management management and she was made permanent on 10.07.1972. On 06.12.2002, respondent/Management



W.P.Nos.2316 of 2009 & 10730 of 2007

issued a memo stating that she attained the age of superannuation on completion of 58 years on 31.12.2002 and therefore, she would be retired on that date. Petitioner is an illiterate lady and she did not know her date of birth. She was paid a sum of Rs.11,046/- towards service gratuity. Management forwarded her papers for pension under the Employees Provident Fund scheme. The Employee Provident Fund Organisation, by a letter dated 21.03.2003 stated that it is difficult to settle the P.F. amount to the petitioner for the reason that petitioner has not attained the age of superannuation and she would attain the age of 58 years only in February 2014. Therefore, petitioner gave a representation on 06.05.2003 along with the letter dated 21.03.2003 to the respondent/Management Management seeking reinstatement. Despite several representations, respondent/Management Management denied reinstatement and sent a letter dated 28.05.2003 stating that she was superannuated based on the documents and medical certificate. The alleged medical certificate was not produced by the respondent/Management. The Doctor has not conducted any test on the petitioner to ascertain the age of the petitioner. After raising the industrial dispute before the Assistant Labour Commissioner (Central), Madurai, petitioner filed this Writ Petition after



W.P.Nos.2316 of 2009 & 10730 of 2007

the conciliation efforts failed. Meanwhile, petitioner was asked to appear on 22.03.2005. On 08.04.2005, the respondent/Management Management offered her employment on temporary basis till the age of 50 years for getting EPF pension on the condition that she will not claim continuity of service, forego the back wages etc. She was not agreeable for that. Therefore this writ petition.

5.The case of the 1st respondent is that, it is true that the petitioner was appointed as Adult Mazdoor in 1972. On the medical examination done by the medical officer, it is proved that she attained the age of superannuation on 31.12.2002. All the office records maintained by the respondent/Management shows that the petitioner was due to retire on 31.02.2002. She never raised any dispute with regard to her date of birth before her retirement. The claim made by her on the basis of communication from the EPF organisation is not maintainable. The medical examination conducted on 17.12.2002 establishes that the age of the petitioner is 58. Therefore, petitioner was rightly superannuated on attaining the age of the superannuation.



W.P.Nos.2316 of 2009 & 10730 of 2007

WEB COPY

6.The Central Government Industrial Tribunal cum Labour Court, Chennai framed the following points for consideration.

(i) Whether the claim of the petitioner for reinstatement with backwages against the respondent/Management is legal and justified?

(ii) To what relief the petitioner is entitled ?

7.On the basis of the oral and documentary evidence, the Presiding Officer of the Tribunal found that the petitioner is entitled for the relief of reinstatement in service as Mazdoor with continuity of service and all other attendant benefits and with 50% of the backwages.

8.Challenging the order of the reinstatement and award of 50% of backwages, the 1st respondent filed W.P.No.10730 of 2007. Questioning the denial of 50% of the backwages, petitioner filed W.P.No.2316 of 2009. Since both writ petitions have been filed challenging the Award, passed in I.D.No.37 of 2005, on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai, both writ petitions are taken up together for consideration.



W.P.Nos.2316 of 2009 & 10730 of 2007

WEB COPY

9.It is the submission of the learned counsel for the petitioner that at the time of joining with the 1st respondent, petitioner has not produced any age certificate. Petitioner was an illiterate woman, she studied upto only 1st standard. Her husband was employed with the same respondent/Management. When the petitioner was superannuated, her husband continued to serve with the 1st respondent. Only when she received the communication from the EPF organisation stating that her claim could not be settled for the reason that she attains 58 years only on February 2014, she came to know that she was to be retired in the year 2002, which is 12 years before her actual retirement due. Therefore, she made representation and she produced the transfer certificate to show that she was born on 05.06.1957. After seeing her explanation and transfer certificate, 1st respondent decided to take her back by offering only temporary employment. That was not acceptable to the petitioner. In the said circumstances, an industrial dispute was raised. The Presiding Officer of the Tribunal had rightly ordered reinstatement with award of 50% of backwages. Petitioner though awarded with reinstatement, denial of 50% of backwages is not just and proper.



W.P.Nos.2316 of 2009 & 10730 of 2007

WEB COPY

10. Against this submission, it is the submission of the learned counsel for the 1st respondent that the records available with the 1st respondent shows that petitioner had attained the age of superannuation in the year 2002. During her service or prior to her retirement, she had never disputed her age. Records available with the 1st respondent and the medical certificate issued by the Doctor clinchingly prove that she was 58 years in 2002 and therefore, she was superannuated. Record sheet has not been produced at any time before her retirement. Only after retirement, after receiving all the terminal benefits, she produced this record sheet and filed this case. The Tribunal was not right in denying the evidence produced by the 1st respondent with regard to the age of the petitioner and accepting the record sheet of the petitioner to conclude that she was born on 05.06.1957.

11. Considered the rival submissions and perused the records.

12. From the case of the parties, submissions of the learned counsel appearing for the parties and the records available, it is to be decided as



W.P.Nos.2316 of 2009 & 10730 of 2007

to whether petitioner was prematurely retired or she was rightly retired in 2002. On going through the documents produced, especially, Ex.W6, communication from the EPF organisation to the petitioner, we can gather that the EPF organisation denied the payment of EPF claim stating that petitioner would have attained the age of retirement i.e., 58 years only in February 2014. Only thereafter, petitioner made representations seeking reinstatement vide Exs.W7 & W8. A reply was sent through Ex.W9 stating that on the basis of the medical certificate, she had completed 58 years on 2002 and therefore, her request cannot be considered. Again petitioner sent W10 representation stating that she was wrongly, rather prematurely retired from the service. She raised an industrial dispute before the Assistant Labour Commissioner (Central), Dindigul, under Ex.W11. She was directed under Ex.W12 to approach the Central Labour Dispute Officer. Thereafter, she raised an industrial dispute with the Assistant Labour Commissioner (Central), Madurai. That was contested by the 1st respondent. Since the conciliation efforts failed, the Assistant Labour Commissioner (Central), Madurai, sent a failure report on 31.04.2004. Thereafter petitioner made representation to the Secretary to the Government of India, Ministry of Labour, New



W.P.Nos.2316 of 2009 & 10730 of 2007

WEB COPY

Delhi for reference of the dispute under the Industrial Dispute Act, 1947 for adjudication.

13.It is further seen from the records that as per the demands of the 1st respondent to produce the documents to confirm the date of birth, she produced the record sheet issued by the Head master of the Panchayat Union Middle School, Kuttupatti. This certificate was issued on the basis of the certificate issued by the VAO, who gave the certificate, after verification, that she studied in Panchayat Union Middle School, Kuttupatti. Record sheet was marked as W22. It shows that the petitioner's date of birth as 05.06.1957. Thereafter, there was an offer from the 1st respondent stating that the petitioner would be temporarily taken into service; her claim of permanent employment cannot be entertained. This is subject to withdrawal of the industrial dispute and not raising any future dispute. That was not acceptable to the petitioner.

14.From the records available, it is clear that petitioner was superannuated mainly on the basis of the Doctor's certificate, who gave the certificate that petitioner had completed the age of 58 years. It is not



W.P.Nos.2316 of 2009 & 10730 of 2007

known on what basis the Doctor had given the certificate with regard to the age of the petitioner. The Doctor is not a Government Doctor, but a Doctor serving under the 1st respondent. With regard to fixing the age of a person, birth certificate is the first and foremost document to be relied. In the absence of birth certificate, school certificate has to be relied. In the absence of both certificates, the medical certificate can be relied. Medical certificate with regard to the age of a person should reflect or explain on what basis the age of a particular person was fixed. Whether any ossification test was conducted for ascertaining the age? However, none of these procedures had been followed by the Doctor, who had issued the certificate stating that petitioner had attained the age of 58 years in 2002. Therefore, retiring petitioner on the basis of the Doctor's certificate cannot be appreciated and it is not correct. Petitioner's age was entered into the Register of the 1st respondent on its own without any application or without any intimation given by the petitioner. Therefore, when better evidence in the form of record sheet is available to show that petitioner was born on 05.06.1957, only this document can be relied for fixing the age of the petitioner.



W.P.Nos.2316 of 2009 & 10730 of 2007

WEB COPY

15.This Court finds from the order of the Presiding Officer that he has considered every aspect in detail and rightly concluded that record sheet can only be relied for fixing the age of the petitioner. Therefore, he came to the conclusion that petitioner would retire only in February 2014 and she is entitled for reinstatement with continuity of service and 50% of backwages. This Court is in total agreement with the reasons given by the Presiding Officer in reaching this conclusion. Therefore, the order of the Presiding Officer passed in I.D.No.37 of 2005 dated 25.07.2006 is confirmed.

16.Withregard to the prayer for claiming 100% backwages, I find that there is no evidence produced in support of her case that she was not gainfully employed during the period of non employment. Therefore, I am of the view that giving 50% of the backwages with reinstatement into service with continuity of service is right. It is not necessary to further enlarge the relief by granting 100% backwages.

17.Further, this petition was filed in the year 2009. Even if the petitioner had been reinstated, she would have retired in 2014. Now, we



W.P.Nos.2316 of 2009 & 10730 of 2007

are in 2024 therefore, there is no question of reinstatement now.

However, petitioner is entitled for notional reinstatement and all the monetary benefits that is associated with the reinstatement, from the date of her premature retirement along with all attendant benefits with 50% of backwages, after deducting the amount already paid, if any.

18. Accordingly, both writ petitions are disposed of. Parties are directed to bear their own costs. Consequently, connected miscellaneous petitions if any are also closed.

21.02.2024

sli

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No



WEB COPY



W.P.Nos.2316 of 2009 & 10730 of 2007

G.CHANDRASEKHARAN, J.

sli

W.P.Nos.2316 of 2009 & 10730 of 2007

21.02.2024