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W.A.No.257 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal No.257 of 2024

The Commissioner,
Pollachi Municipality,
Pollachi, Coimbatore District.

... Appellant

Vs.

1.S.Thiyagarajan

2.The Secretary to Government,
Municipality Administration and Water
Supply Department,
Fort St.George,
Chennai – 15.

3.The Commissioner of Municipal Administration,
Chepauk, Ezhilagam, Chennai – 600 005.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the Writ Appeal by setting aside the order of the learned Judge dated 23.06.2023 in W.P.No.837 of 2019 and dismiss the writ petition.



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For Appellant : Mr.A.S.Thambuswamy

For R1 : Mr.S.Venkatesh

For R2 & R3 : Mrs.P.Rajarajeswari
Government Advocate

J U D G M E N T

(Judgment of this Court delivered by S.M.SUBRAMANIAM,J.)

The writ appeal has been instituted against the order dated 23.06.2023 passed in W.P.No.837 of 2019.

2. The Commissioner, Pollachi Municipality, Coimbatore District, is the appellant before us. The 1st respondent/employee has instituted the writ proceedings in W.P.No.837 of 2019, challenging the Government Order issued in G.O.Ms.No.390, Municipality Administration and Water Supply Department dated 01.10.2018 and to direct the appellant herein to include half of the service rendered by the petitioner in the temporary post, as per the award of the Labour Court in I.D.No.168 of 1998 dated 08.08.2000 and as per G.O.Ms.No.437 Finance (Pension) Department dated 23.06.1988 and sanction pension and other terminal benefits with effect from 01.05.2018 with 12% interest.

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3. Since the learned Single Judge has disposed of the writ petition by directing the Commissioner, Pollachi Municipality to include the half of the services of the petitioner, as per the award of the Labour Court in I.D.No.168 of 1998, the Commissioner, Pollachi Municipality has chosen to file the present Writ Appeal.

4. Mr.A.S.Thambuswamy, learned Counsel for the appellant would submit that the award passed in I.D.No.168 of 1998 dated 08.08.2000 cannot be the basis for filing the writ petition. After award was passed, the writ petition was filed in W.P.No.9430 of 2003, which was dismissed on 20.03.2022. Challenging the writ order, the Commissioner, Pollachi Municipality filed a writ appeal in W.A.No.3282 of 2004. The appeal was also dismissed on 01.09.2004. During the implementation of the award, the first respondent/employee has executed a declaration in a stamp paper, which is duly notarized stating that the 1st respondent will not claim any continuity of services as per the award passed by the Labour Court and the arrears of monetary benefit or another other benefit. Based on the declaration given by the 1st respondent/employee, a proposal was submitted by the Commissioner, Pollachi Municipality to appoint the 1st respondent. The proposal submitted



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by the Municipality was considered by the Government and G.O.No.249, Municipal Administration and Water Supply Department dated 11.07.2011 relaxed the relevant rules and permitted the Municipality to appoint the 1st respondent as Record Clerk in Kangeyam Municipality, in the existing vacancy. The relevant rules for appointment i.e., 3 (c) (i) of Tamil Nadu Municipal General Service Rules, 1970 was relaxed in favour of the 1st respondent. The Government Order was passed considering the fact that the 1st respondent waived his service rights for claiming continuity of the service or other benefits by way of notarized declaration dated 18.02.2010. Considering all the facts and circumstances, the Government relaxed the Rule in favour of the 1st respondent and appointed him as Record Clerk in Kangeyam Municipality.

5. Mr.S.Venkatesh, learned Counsel for the 1st respondent would oppose the said contention by stating that the Declaration in Stamp Paper, which was notarised was obtained at the instance of the Municipality and therefore, the said declaration cannot be held against the employee at this length of time. Under certain circumstances, the 1st respondent has executed the declaration. The Labour Court passed an award in his favour granting



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continuity of service and monetary benefits. Award was also confirmed by the Writ Court and Writ Appeal Court. That being so, the Declaration cannot be taken against the 1st respondent for the purpose of depriving him to get the monetary benefits and continuity of service including pension.

6. Service between the employer and employee is contractual in nature. An employer has got every right to waive the service benefits at his choice. Once promotion is relinquished or service rights are waived at the instance of the employer, he cannot turn around and claim such benefits at belated point of time.

7. In the present case, in order to secure an appointment in another municipality, in view of the fact there was no vacancy in Pollachi Municipality during the relevant point of time, a proposal was submitted to accommodate the 1st respondent in any other Municipality. The relevant service rules were relaxed by the Government in G.O.Ms.No.249, in favour of the 1st respondent, so as to accommodate him in the Post of Record Clerk at Kangeyam Municipality. When a concession was extended by the Government by relaxing the relevant Service Rules for the purpose of



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accommodating the 1st respondent based on the undertaking given by him in a Stamp Paper, which is notarized, after appointment to the said post and working for few years, the 1st respondent cannot file the writ petition seeking the benefit, which he had already waived by executing the Declaration.

8. In the present case, the 1st respondent admittedly executed the declaration dated 08.02.2010, which was considered by the Government and he was accommodated in Kangeyam Municipality. That being the factum, the learned Judge has not considered these vital facts while issuing the direction to settle the pensionary and other benefits.

9. Thus, we are inclined to interfere with the order impugned and consequently, the order dated 23.06.2023 passed in W.P.No.837 of 2019 is set aside. For the services rendered by the 1st respondent, if any benefits are due to him, the same alone is to be settled.



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10. Accordingly, the Writ Appeal stands allowed. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
14.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

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2.The Commissioner of Municipal Administration,
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