BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.13253 of 2024

Subbulakshmi ... Petitioner

vs.

1.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi, Thoothukudi District.

2.The Assistant Director,
Local Fund Audit,
Thoothukudi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to provide the retirement benefits including the monthly pension to the petitioner within the time stipulated by this Court.

(R2 is impleaded vide Order of the Court dated 21.06.2024 in W.P.(MD)No.13253 of 2024)

For Petitioner : Mr.S.Louis

For Respondents : Mr.N.Ramesh
Government Advocate for R1
Mr.N.Anandakumar
Standing Counsel for R2

O R D E R

Heard Mr.S.Louis, learned counsel appearing for the petitioner, Mr.N.Ramesh, learned Government Advocate appearing for the first respondent and Mr.N.Anandakumar, learned Standing Counsel appearing for the second respondent. Mr.N.Anandakumar, learned Standing Counsel takes notice for the newly impleaded respondent.

2. The petitioner has filed this petition seeking to issue a Writ of Mandamus directing the first respondent to provide the retiral benefits including the monthly pension to her within a stipulated time. Though the petitioner did not include the Local Fund Audit as a party to the writ petition, in the interest of justice I feel that the Assistant Director, Local Fund Audit, Thoothukudi can be *suo motu* impleaded for issuing directions, if any.

3. The petitioner who worked as a Sanitary Worker in the first respondent Corporation was allowed to retire on 01.06.2020 on her attaining the age of superannuation. But, her retiral benefits including the pension have not been paid to her. On enquiry, the petitioner learnt that there is an objection raised by the Local Fund Audit that there is no clarity in her date of birth in the Service Register since the same reflects two different date of births *i.e.,* 08.03.1960 and 01.07.1962.

4. Mr.S.Louis, learned counsel appearing for the petitioner submitted that the first respondent has received an audit objection and on the said basis, the petitioner has sought a clarification from the Revenue Divisional Officer to ascertain her date of birth and submit a report.

5. An individual who has joined service is required to produce the Certificates evidencing her/his date of birth and all educational qualifications and in fact, the appointment order itself will be released only after verification of those Certificates. If there is any contradiction in the Certificates or the particulars furnished by the individual, action will be taken then and there by withholding the order of appointment.

6. In the instant case, none of the such steps have taken place and the difficulty has arisen only in view of some discrepancy in the entries in the petitioner's Service Register Book as date of birth is shown as 08.03.1960 instead of 01.07.1962. In fact, the above discrepancy has been noticed as early as in the year 2020 itself and the Sanitary Inspector, Thoothukudi Municipality has made an endorsement stating that his enquiry would reveal that the petitioner had given a Medical Certificate at the time of appointment, which reflects her date of birth as 01.07.1962 and the entry made in the Service Register is wrong. So, what is stated by the Sanitary Inspector after verifying the records produced by the individual at the time of her appointment, would hold good for all purposes including the entries to be made in the Service Register.

7. If an employee who was incharge of making entries in the Service Register had committed a clerical error and thereby caused a confusion, the petitioner who is victimized, cannot be allowed to run from pillar to post. It is for the first respondent Corporation to verify whether a mistake had really occurred and if so, to resolve it at the earliest. In the instant case, the mistake has come to the knowledge of the controlling officer, who has made due enquiries and thereafter, made a note entry seeking further orders from the first respondent Corporation. Had the first respondent Corporation considered and passed an order and thereafter, submitted the papers for disbursement of retiral benefits and pension, there would not have been any confusion. The Officers at the helm of the affairs were reluctant to take up the responsibility and pass appropriate orders at the appropriate time and they had simply passed the papers to other authorities for sanctioning the benefit. But, it is the petitioner who got affected now.

8. In certain cases, even when the officer incharge satisfies himself about the relevant entries and other details of the individual employee and submits the papers, the Local Fund Audit finds out some discrepancy and returns the papers. If such event occurs, it is the responsibility of the appointing authority to give satisfactory clarification to remove the objection for proceeding with the papers further. In many of the cases, the appointing authority does not take the risk of giving any clarification by perusing the records and appraising the Local Fund Audit about the genuineness or correctness of action or entries. Instead, the appointing authority once again starts the exercise which ought to have been started at the time of appointment of individual.

9. In this case also, the first respondent Corporation instead of offering their clarification by sustaining the enquiry made by the Officer concerned with regard to the erratic entry that has been made in the Service Register and re-submit the papers, had taken steps to cause further delay and hence the petitioner was prompted to knock the doors of this Court. Since the confusion in the entries of the date of birth of the petitioner in the Service Register has already been resolved at the Office of the first respondent Corporation itself, there need not be any further confusion with regard to the petitioner's date of birth. Hence, I feel that the first respondent shall give appropriate clarification in this regard and re-submit the papers for disbursement of retiral benefits of the petitioner including pension.

10. In view of the above observations, the writ petition is **disposed of** and the first respondent is directed to give appropriate clarification with regard to the date of birth of the petitioner to the second respondent within a period of four weeks from the date of receipt of a copy of this order and re-submit the papers for disbursement of the retiral benefits of the petitioner including her pension. On receipt of such clarification, the second respondent shall accept the same and pass appropriate order for disbursing the retiral benefits including the pension of the petitioner within a period of two weeks thereon. No costs.

21.06.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

1.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi, Thoothukudi District.

2.The Assistant Director,
Local Fund Audit, Thoothukudi.

<u>R.N.MANJULA, J.</u>

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21.06.2024