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W.A(MD)No.507



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A(MD)No.507 of 2017
and
CMP(MD)No.4390 of 2017

1. The Director of Rural Development
and Panchayat Raj,
Panagal Building,
No.151, Jennis Road,
Saidapet, Chennai-600 015.

2. The District Collector,
Virudhunagar District.

3. The Commissioner,
Narikudi Panchayat Union,
Narikudi,
Virudhunagar District.

... Appellants

vs.

Jeeva Santhakumari

... Respondent

Appeal filed under Clause 15 of Letters Patent, against the common order
dated 14.11.2016 in W.P(MD)No.19803 of 2016.

For Appellants : Mr.M.Prakash, Additional Government Pleader
For Respondent : Mr.E.V.N.Siva



J U D G M E N T

(Judgment of the Court was made by V.BHAVANI SUBBAROYAN, J.)

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Challenging the order dated 14.11.2016 made in W.P(MD)No.19803 of 2016, the official respondents have filed this writ appeal.

2. The 1st respondent herein is the writ petitioner. Her husband was appointed as Rural Medical Officer, Iluppaiyur, with effect from 01.01.1986, by the 3rd appellant vide proceedings dated 29.12.1985, on a consolidated pay and he retired on attaining the age of 60 years on 30.06.1997. Only after the retirement, he was placed in the time scale of pay with effect from 01.01.1986, as per G.O.Ms.No.16, Rural Development Department, dated 29.01.1998. In view of the said G.O., the respondent's husband approached the appellants for grant of pension and he was intimated that only after obtaining necessary orders from the Government, pension will be sanctioned. Thereafter, the Government issued G.O.Ms.No.250, Rural Development Department, dated 14.09.2000, declining service benefits to the Rural Medical Officers and after two months of the said G.O., the petitioner's husband died on 01.11.2000. In the interregnum, a batch of writ petitions were filed challenging G.O.Ms.No.250 and a Division Bench, by order, dated 19.04.2006, in W.P.Nos.30003 & 30750 of 2002 etc., batch, held that G.O.Ms.No.250 is invalid, in so far as the denial of service benefits to the Rural Medical Officers are concerned. Thereafter, the Government issued orders in G.O.Ms.No.164, Rural Development Department,



dated 24.09.2007, sanctioning pensionary benefits to the Rural Medical Officers appointed before 14.09.2000. However, pension was denied to several persons.

Similarly placed Rural Medical Officers filed W.P.Nos.8464 and 8469 of 2009 which were allowed on 02.09.2010, directing the respondents therein to disburse the monetary benefits, within a period of four weeks. The writ appeals filed thereagainst were also dismissed on 21.01.2013. Therefore, the respondent contended that in view of the aforesaid orders passed by this Court and based on G.O.Ms.No.164, she is entitled to family pension from 01.12.2000. Though the appellants contended before the Writ Court that as per Rule 43 of the Tamil Nadu Pension Rules, the minimum qualifying service for pensionary benefits is 10 years whereas, the respondent's husband served only for 9 years and 4 months i.e., from 01.06.1986 to 30.04.1995, and hence he is not entitled for pension, the learned Single Judge observing that having extracted work after the age of superannuation i.e., 58 years, it is not proper on the part of the appellants to exclude the extension period of 2 years while calculating the qualifying service for pension. Considering the submission of the respondent that she is prepared to quit her claim of pension but only insisting family pension, the learned Single Judge allowed the writ petition directing the 3rd appellant to submit a proposal for family pension to the 1st appellant, within a period of two weeks with a further direction to the 1st appellant to sanction pension. Hence, this writ appeal by the official respondents.



3. The main bone of contention of the learned Additional Government

Pleader appearing for the appellants is that as per Rule 43 of the Tamil Nadu Pension Rules, 1978, the qualifying service for pension is 10 years, whereas, the respondent's husband worked only for 9 years and 4 months. Further, the service period after the superannuation age of 58 years should be treated as re-employment period as per Government Letter No.29161/E5/98-1.2 dated 27.09.1999 and it should not to be treated as continuity of service so as to include it in the qualifying service for pension. Therefore, the observation of the Writ Court that having extracted work till the age of 60 years, the appellants were not justified in declining pension to the respondent, is erroneous and contrary to the service rules which prescribes the retirement age of the respondent's husband as 58 years only. It is further contended that since 1995, the year on which the respondent's husband attained 58 years, neither the respondent nor her husband made any representation claiming pension and only after a lapse of 11 years therefrom, the respondent made a representation on 03.03.2016 seeking family pension, as such, the claim of the respondent is hit by delay and laches. Thus, he prayed for interference with the impugned order.

4. Learned counsel for the respondent submitted that though service rules prescribes 58 years as age of superannuation, the respondent's husband was permitted to retire at his age of 60 years. Having allowed the respondent to retire at his age of 60 years, citing the Government Letter issued in 1999 much after the



respondent's retirement, it cannot be contended by the appellants that the service after the age of 58 years should be treated as re-employment period and therefore, that period of two years should be reckoned while calculating the qualifying service for pension. When the service rules prescribes 58 years as superannuation age, it is unfair on the part of the appellants to allow the respondent's husband to retire at his 60 years of age. Therefore, the fault committed by them cannot be whittled down by the Government Letter issued in 1999, as such, the appellants ought to have granted family pension to the respondent. The learned Single Judge has correctly dealt with the same and allowed the writ petition by a reasoned order which does not call for interference by this Court.

5. We have heard the learned Additional Government Pleader for the appellants and the counsel for respondent.

6. The crux of the contention made on either side is that while the appellants contend that as per Rule 43 of the Tamil Nadu Pension Rules, 1978, the qualifying service for pension is 10 years, whereas, the respondent's husband worked for 9 years and 4 months only and that his service period after the age of 58 years should be treated as re-employment period as per Government Letter No. 29161/E5/98-1.2 dated 27.09.1999, as such, he is not entitled to pension, the respondent contends that having extracted work till the age of 60 years, denying



pension citing Government Letter dated 27.09.1999 issued much after the respondent's retirement stating that the service period after 58 years should be treated as re-employment, is very unfair on the part of the appellants and the said contention was rightly dealt with by the learned Single Judge by allowing the writ petition.

7. Be that as it may, sub-rule (1) of Rule 32 of the Tamil Nadu Pension Rules prescribes the superannuation age of the Government Servant in superior service as 58 years. It is relevant to extract below Rule 32:-

"32. Superannuation pension. - A Superannuation pension is granted to a Government servant entitled or compelled, by rule, to retire at a particular age.

Explanation. - For purposes of this rule,-

(1) The date of compulsory retirement of a Government servant in superior service is the date on which he attains the age of [58 years]. The date of compulsory retirement of a Government servant in Last Grade Service is the date on which he attains the age of 60 years.

(2) The age of retirement of trained teachers in the educational institutions under the management of Government is the date on which he attains the age of 58 years.

(3) The date of retirement in the case of persons who had taken part in the freedom struggle and courted imprisonment and who have been, appointed to the posts of social workers up to the end of December 1965, shall be the date on which they attain the age of 60 years."

8. The respondent worked as a Rural Medical Officer which falls in superior service. Thus, in view of the said rule, it is manifestly clear that the retirement age of the respondent is 58 years and as on that age, he served only 9 years and 4 months, as such, he does not satisfy Rule 43 of the Tamil Nadu Pension Rules, 1978, which states that the qualifying service for pension is 10 years and



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therefore, the respondent's husband is not entitled to pension. Consequently, the respondent is not entitled to family pension. Therefore, the contention of the appellants deserves acceptance.

9. Accordingly, the impugned order dated 14.11.2016 made in W.P(MD)No.19803 of 2016 is set aside and the **Writ Appeal is allowed** the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S., J.) (K.K.R.K., J.)
12.03.2024

Index : Yes / No
Neutral Citation : Yes / No
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