

**Pushpa Vs. the Commissioner,**

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**SooperKanoon Citation : [sooperkanoon.com/904132](http://sooperkanoon.com/904132)**

**Court : Chennai**

**Decided On : Sep-24-2010**

**Judge : D.Hariparanthaman, J.**

**Acts : Constitution Of Indian - Article 226**

**Appeal No. : W.P.No.40522 of 2006**

**Appellant : Pushpa**

**Respondent : The Commissioner,**

**Advocate for Def. : Mr.S.Thangaraja, Adv.**

**Advocate for Pet/Ap. : Mr.Mohan Raj, Adv.**

**Judgement :**

1. Heard Mr.Mohan Raj, learned counsel for the petitioner and Mr.S.Thangaraja, learned Government Advocate for the respondent.

2. The petitioner was appointed as a Cook at the Noon Meal Centre under the Nutritious Meal Scheme in Thiagadurgam Panchayat Union on 13.09.1982. Her date of birth is 30.06.1943 as entered in the Service Register. At the time of appointment, the age of the retirement of the Cook under the Nutritious Meal Scheme was 55 years. Hence, she should have retired on 30.06.1998, on reaching the age of superannuation.

3. While the petitioner was in service, the Government issued G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998 enhancing the age of the retirement of the Cook and other employees in the Nutritious Meal Scheme from 55 years to 58 years. Hence, the petitioner is entitled to continue in service upto 30.06.2001. But, the respondent passed the impugned order dated 02.02.2000 retiring the petitioner from service and she was relieved from duty on 03.02.2000. The impugned order refers the aforesaid G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998 as well as the audit report dated 02.02.2000.

4. In these circumstances, the petitioner has filed the Original Application in O.A.No.4214 of 2000 (W.P.No.40522 of 2006), to quash the aforesaid order dated 02.02.2000 and for a direction to the respondent to continue her in service till she attains the age of 58 years and grant her all consequential benefits.

5. The learned counsel for the petitioner submits that the impugned order was passed in blatant violation of principles of natural justice, as the impugned order relies on audit report dated 02.02.2000 and the same was not furnished to the petitioner. It is submitted that as per the Government Order in G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998, the petitioner is entitled to continue upto 30.06.2001. In fact, the petitioner was continued beyond 30.06.1998, in view of the G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998.

6. On the other hand, the respondent filed a reply affidavit stating that the petitioner reached the age of 55 years when the G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998 was issued and therefore the petitioner is not entitled to the benefit of the G.O.

7. In my considered view, the impugned order is opposed to G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998. Clause 6(1) of the G.O.Ms.No.70 is as follows:- "rj;Jzt[ ika';fspy; gzpahw;Wk; rikayh;fSf;Fk; cjtpahsh;fSf;Fk; Xa;t[ bgWk; taJ 55?ypUe;J 58?Mf cah;j;jg;gLfpwJ/"

8. Para 7 of the reply affidavit filed by the respondent is as follows:-

"It is submitted that the 14th Applicant Pushpa is working as Cook at the Noon Meal Centre in Panchayat Union Primary School, Udayanampattu, Thiayagadurgam Block, Villupuram District. She was initially appointed on 13.09.1982. She was born on 30.06.1943. The said date has also been entered in her Service Register." But, in para 9 of the reply affidavit, it is stated that the petitioner attained the age of 55 years before 23.04.1998, the date of issuance of G.O.Ms.No.70, it is not correct. Para 9 of the reply affidavit is as follows:- "It is submitted that all of the applicants attained the age of 55 years, prior to the issue of G.O.Ms.No.70, Social Welfare and Nutrition Meal Programme Department dated 23.04.1998, the age of retirement for Cook and Cook helper working in Noon Meal Centre was 55 years."

9. As per the statement made in para 7 of the reply affidavit, the date of birth of the petitioner is 30.06.1943. She reached 55 years only on 30.06.1998. Hence, the respondent is not correct in passing the impugned order. It is not known as to on what basis the audit report came to the conclusion that the petitioner was continued in service contrary to the G.O.Ms.No.70, Social Welfare and Nutritious Meal Programme Department, dated 23.04.1998. As rightly contended by the learned counsel for the petitioner, the audit report was not furnished to the petitioner. It is well settled that no adverse order could be passed by an authority against any one resulting in civil consequences without hearing the concerned person. In this regard, para 3 of the judgment of the Hon'ble Apex Court in BHAGVAN SHUKLA VS. UNION OF INDIA reported in 1994 (6) SCC 154 is extracted here-under:- "3.We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee

suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.07.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.09.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.07.1991 reducing the basic pay of the appellant from Rs.190 to Rs.181 w.e.f. 18.12.1970."

10. For all the aforesaid reasons, the impugned order is liable to be set-aside and the same is set-aside and the respondent is directed to pay wages upto 30.06.2001 within a period of six weeks from today.

11. The writ petition is allowed on the above terms. No costs.

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