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G.Ebinazer Vs. Managing Director Tanhoda

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Court : Chennai

Decided On : Feb-22-2013

Judge : The Hon'Ble Mr.Justice K.Chandru

Appellant : G.Ebinazer

Respondent : Managing Director Tanhoda

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

22. 02.2013 CORAM: THE HONBLE MR.JUSTICE K.CHANDRU W.P.No.18920 of 2012 and M.P.Nos.1 to 3 o

1. G.Ebinazer 2.N.B.Nanjundan 3.B.K.Chandran ... Petitioners Vs. 1.The Managing Director, TANHODA, Chepakam, Chenna

005. 2.The Joint Director Horticulture Department, Krishnagiri. 3.The Assistant Manager Horticulture Department, Nilgiri. ...Respondents Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus, calling for the records of the first respondent in No/FBM.887/DATED 26 11.2009 and quash the same in so far as it stipulates the date of retirement of farm employees as 58 years and consequently direct the respondent to permit the petitioners to continue in service till the petitioner attains the age of 60 years in accordance with law. For Petitioners : Ms.S.Esai Rani For Respondents : Mr.V.Subbiah, Spl.G.P. O R D E R The petitioners in this writ petition, seek to

challenge a communication dated 26.11.2009 sent by the Managing Director of TamilNadu Horticultural Development Agency (for short TANHODA) addressed to the Joint Director of Horticulture, Udagamandalam, Krishnagiri and other farms, in so far as the said communication has fixed 58 years as the age of superannuation for employees, whose services were regularised and brought under the control of Horticulture Department.

2. When the writ petition came up on 20.07.2012, this Court directed the learned Additional Government Pleader to get instructions from the respondents. Accordingly, a counter affidavit dated Nil (October 2012) has been filed on behalf of the second respondent.

3. The case of the petitioners were as follows:- The State Government took a policy decision to regularise the persons, who were working in various Horticulture farms for more than 10 years and decided to appoint them as workers under the TANHODA, had issued G.O.Ms.No.494 Agriculture Department, dated 29.11.2007, wherein and by which, 1083 daily wage labourers working in various farms were directed to be regularised and they were brought under time scale of pay of Rs.1300-20-1500-25-2000 with effect from the date of the said Government Order. The petitioners are covered by the said Government Order. Subsequent to the order issued by the State Government, the petitioners were brought under scale of pay and employed at State Horticulture Farm, Nanjanad. Pursuant to the GO, the Managing Director of TANHODA, the first respondent sent a communication to the second respondent on 26.11.2009 (impugned in the writ petition), wherein and by which, certain directions and clarification pertaining to the service conditions of farm employees were issued. By the said order, it was stipulated that the total hours of work per day will be 8 hours and from Monday to Saturday, they will have to work and and Sunday will be a holiday. In respect of their age of retirement, it was fixed as 58 years. They are eligible for one increment after completion of 10 years and also annual increment.

4. Subsequent to the said communication, the Association to which the petitioners belong sent a representation to the first respondent stating that the age of retirement for Mazdoor working in the same department, with salary of Rs.4800/

was fixed as 60 years, and therefore, they demanded that the same retirement age as extended to the Mazdoor namely 60 years to be fixed even for persons who were brought under time scale of pay.

5. The petitioners were aggrieved that based upon the guidelines issued by the first respondent, several workers working in the farm were sought to be retired at the age of 58 years and therefore, they have come forward to file the present writ petition, challenging the impugned communication.

6. In the counter affidavit filed by the second respondent, it was stated that the petitioners are not categorised under "Tamil Nadu Basic Servants". They are only "Farm employees" and they have no right to compare themselves with persons belonging to Tamil Nadu Basic Services. Since they are doing farm work, they will lose their stamina to work hard at the age of 60 years and hence, fixation of 58 years was legally justified.

7. The petitioners services were already regularised by G.O.Ms.No.494 dated 29.11.2007. Dearness Allowance and the pay was fixed on par with employees under the Noon Meal Scheme. It is in the light of these rival contentions, it has to be seen whether the petitioners are entitled for the relief as prayed for.

8. The question raised in this writ petition was also raised by the employees who were brought under time scale of pay in the Sericulture Department vide G.O.Ms.No.25, Handloom, Handicrafts, Textiles and Khadi Department, dated 23.02.2010. Even in that writ petition, the respondent State raised a contention that inasmuch as the persons are not brought under Tamil Nadu Basic Service, they are not eligible for retirement at the age of 60 years. This Court rejected the said contention in a batch of writ petitions in W.P.Nos.14977 of 2011 and batch cases [K.Gowran and others v. State of Tamil Nadu) dated 24.01.2013. In paragraphs 8 to 14, this Court observed as follows:- "8. Thereafter, the last Writ Petition, namely W.P.No.1231 of 2013 came to be filed challenging an order dated 20.6.2011 passed by the State Government, wherein the proposal sent by the Commissioner for Sericulture (Development) was negatived by the State Government. In the said communication, it was stated that regularisation was effected by the State Government in terms of G.O.Ms.No.25 Handlooms,

Handicrafts, Textiles and Khadi Department dated 23.2.2010. Even though the employees who come under the provisions of the Tamilnadu Basic Service were allowed to retire at the age of 60 years, for the present petitioners whose service was regularized in terms of the G.O, no Special Rules have been created and if the proposal of the Commissioner is accepted, it is likely to create different claims by different sections and therefore, the proposal was negatived. It is only when the said Writ Petition came up, all the connected Writ Petitions were grouped together and posted before this Court as noted already.

9. The contentions raised by the petitioner were two-fold. Firstly, when they were made regular Government servants in terms of the G.O, no retirement age has been fixed and they have not been shown under which category they will be fixed. Secondly, the pay fixed in respect of the regularised employees were admittedly lower than the basic pay available to the persons working under the Tamil Nadu Basic Service. While in respect of the persons working under the Basic Service, their pay was fixed in the scale of pay of Rs.4800-10000 plus Rs.1300 Grade pay, the petitioners' total salary was only betweeen Rs.4500 and 5000 and they were lowest in the category of Government Servants working in the State considering the scale of pay fixed.

10. Reference was made to the Fundamental Rules, more particularly, Rule 9-A, wherein 'basic service' is defined and it includes all service shown in the said Sub Rule unless declared by Government to be superior service. The basic service includes a) Service as peon, head peon, chobdar or duffadar, b) Service in posts the pay of which does not exceeed Rs.720/- (at the time of G.O..Ms.1071, P&AR Department dated 31.10.1986), c) Service in posts in the Raj Bhavan household establishment. The State Government had also issued clarification in G.O.Ms.No.3580, LA dated 21.9.1937 and G.O.Ms.No.320, Finance dated 8.5.1930, wherein it is stated that the question whether a Government servant is in superior or basic service should be decided with reference to the pay actually drawn by the Government servant at the time.

11. Ms.Lesi Saravanan, learned counsel for the petitioners also referred to the fact that when Official Committee of 2009 recommended the scales of pay for various

posts, pursuant to the Sixth Central Pay Commission, the State Government vide G.O.Ms.No.234, Finance (Pay Cell) Department dated 1.6.2000 had fixed the salary for Noon Meal Organizers and Anganwadi Workers and their salary was fixed at Rs.2500-5000+Rs.500/-. The petitioners were also given the same scale of pay. In respect of those workers, their retirement age is 60 years. Hence, there is no need to discriminate the petitioners since they were drawing the lowest pay than the basic servants' pay. Merely because in the G.O, by which their services were regularized, their retirement age is not indicated, as per FR.9, their service must be treated as basic service.

12. In response to the same, in the counter affidavit filed by the respondents, it was agreed that their retirement age was not specifically mentioned in the regularisation G.O, but it it was contended that they do not come under the Basic Service and the retirement age of 60 years will not be applicable to them. It is also stated that Anganwadi Workers and Noon Meal Organizers also do not come under the Tamilnadu Basic Service. Apart from stating that no upper age of retirement is fixed in the order regularising their service, the respondents have not come out with specific stand as to whether the petitioners can be fitted as basic service.

13. The Fundamental Rule as well as the Government Order framing the Rule clearly says that the scales of pay to a particular post will be a relevant criteria for determining whether a person is coming under the superior service or under the basic service.

14. In the present case, as agreed in the counter affidavit, the State Government fixed the pay lower than the scale of pay available to basic service, certainly they will be treated either under the basic service or below the basic service. It cannot be said that the petitioners are coming under the superior service, considering the scale of pay fixed to them. Since the Government has admittedly fixed the sale of pay to the petitioners below the persons working under the basic pay, it has to be taken that they are also coming under the basic service or something below the basic service. If the employees under the basic service are entitled to get retired at the age of 60 years, there is no reason for the persons like the petitioners who are

drawing scale of pay lesser than the pay of the basic servants, to reject their contention that they should be retired at the age of 60 years, unless the petitioners' service was declared as superior service. When their pay is fixed below the pay of the basic service, they belong to basic service." 9. In the light of the same, the petitioners are bound to succeed. The writ petition stands allowed. In so far as the impugned direction viz., fixing the age of superannuation as 58 years is set aside. It is further directed that the persons who are covered by G.O.Ms.No.494 Agriculture Department, dated 29.11.2007, are entitled to continue in service till the age of 60 years. No costs. Connected miscellaneous petitions are closed. 22.02.2013 Index:Yes/no Internet:Yes/no svki To 1.The Managing Director, TANHODA, Chepakam, Chenna

005. 2.The Joint Director Horticulture Department, Krishnagiri. 3.The Assistant Manager Horticulture Department, Nilgiri. K.CHANDRU,J.

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