(2016) 02 MAD CK 0117

In the Madras High Court

Case No : W.A. No. 1691 of 2015

A.T. Soundarrajan — APPELLANT

Vs

State of Tamilnadu and Others — RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 02 MAD CK 0117

Hon'ble Judges : Satish K. Agnihotri and M. Venugopal, JJ.

Bench : Division Bench

Advocate : T. Saravanan, for the Appellant; A. Shri Jayanthi, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—1. The Appellant has preferred the instant Writ Appeal before this Court as against the Order dated 05.06.2012 in W.P. No. 27116 of 2007 passed by the Learned Single Judge.

2. The Learned Single Judge while passing the Impugned Order (in W.P. No. 27116 of 2007 on 05.06.2012 filed by the Appellant/Petitioner) at Paragraph No. 5 had observed the following:--

"5. Even otherwise, the State Government had passed several orders on the basis of the direction issued by the Tribunal and had considered the case of almost all persons, who had staked their claim. The petitioner cannot sit back and send an appeal especially when he had reached the age of superannuation. Hence, no relief can be given to the petitioner."

and dismissed the Writ Petition without costs.

3. Challenging the Order of dismissal dated 05.06.2012 in W.P. No. 27116 of 2007 passed by the Learned Single Judge, the Learned Counsel for the Appellant submits that the Learned Single Judge had failed to appreciate that the Appellant is a senior citizen and waiting for quite a long period to receive his retirement

benefits.

4. The Learned Counsel for the Appellant urges before this Court that the Learned Single Judge had failed to appreciate that the Appellant was working as a Village Administrative Officer till 30.09.2008 and further it erred in not taking into consideration of a important fact that the Appellant on earlier occasion succeeded in W.P. No. 470 of 1977, which was ordered only on 02.01.1980 and in fact, ought to have regularised him by virtue of the said order. Also that, the Writ Appeal No. 365 of 1980 (preferred against the Order passed in W.P. No. 470 of 1977) against the Appellant was dismissed in favour of the Appellant, but this was not taken into account by the Learned Single Judge at the time of passing the Impugned Order in the Writ Petition.

5. The Learned Counsel for the Appellant takes a plea that the 1st Respondent/ State of Tamilnadu (Rep. By its Commissioner and Secretary to Government) Fort St. George, Chennai had passed G.O. Ms. No. 294 in the year 2001 and therefore, no fault can be attributed in favour of the Appellant as regards the purported latches.

6. The Learned Counsel for the Appellant contends that the 1st Respondent/State of Tamilnadu has disowned its own order of relief given not only to the individual, who approached the Tribunal, but to all the Ex-Officers, who had not approached the Tribunal. The Learned Counsel for the Appellant vehemently puts forward an argument that the Learned Single Judge had committed an error in stating that the Appellant/Petitioner had approached the Respondent after 25 years of passing the ordinance, whereas the Tribunal and the Respondents themselves had passed orders after 20 years to disburse monetary benefits to the similarly placed Ex-Village Officers, who were working in the year 1980. Therefore, it is represented on behalf of the Appellant that the aspect of delay in approaching the concerned authorities or approaching this Court does not arise.

7. Lastly, it is the submission of the Learned Counsel for the Appellant that the Learned Single Judge should have considered the case of the Appellant on par with similarly benefited persons and allowed the Writ Petition.

8. At this stage this Court very relevantly refers to the G.O.(Ms) No. 828 Revenue (E.SPL.1) Department dated 23.08.1996 issued by the Government of Tamil Nadu whereby and whereunder at Paragraph Nos. 6 to 9 mentioned as follows:--

"6. Accordingly, the Government direct that:--

(i) the Civil Appeal No. 6062/1994 in the Supreme Court of India against the orders of Tamil Nadu Administrative Tribunal in R.A. No. 25/92, dated 12.11.1993 in TA.164/90 directing the payment of pension to the Ex-Village Officers be withdrawn.

(ii) a sum of Rs. 175/- per month with attendant benefits be paid as pension to the living Ex-Village Officer who lost their service on 14.11.1980 by the Tamil

Nadu Ordinance No. 10/80.

(iii) a sum of Rs. 100/- per month be paid as family pension to the family of the deceased Ex-Village Officers who lost their service on 14.11.1980 by the Tamil Nadu Ordinance No. 10/80.

(iv) The pension and the family pension sanctioned under item Nos. (ii) and (iii) above be paid with effect from 05.12.1986, the date on which the W.P. No. 11773/86 was filed in the High Court, Madras originally.

7. Separate instructions to the Tamil Nadu Government, Advocate on Record, Supreme Court of India, for taking necessary action before the Supreme Court of India for withdrawal of the Civil Appeal No. 6062/94 will be issued.

8. All the District Collectors are requested to send necessary proposals direct to the Accountant General, Madras-18 to issue pension payment orders to the individual concerned.

9. This order issues with the concurrence of the Finance Department vide its U.O. No. 4115/ADS (TP)/96-1 dated 23.08.1996."

9. It is to be noted that the Appellant, earlier filed W.P. No. 470 of 1977 against 1. O.M. Sundararaja Gounder, Temporary Village Headman of Peddakallupalli, North Arcot District and the Board of Revenue (Commissioner of Land Reforms), Madras - 5, praying for passing of an Order passed by this Court in calling for the records B.P. Rt. No. 795A on the file of the 2nd Respondent and to quash its order dated 19.02.1977. As a matter of fact, this Court on 02.01.1980 in W.P. No. 470 of 1977 had inter alia observed the following:--

"....In effect, therefore, the first respondent was not holding the post of Village Headman of the regrouped village on 16.12.70 under any valid order made under the Board''s Standing Order. Rule 18(b) is therefore clearly not applicable to the facts of this case. The Board''s order is therefore liable to be set aside and is accordingly set aside. It may be mentioned that if the case of the first respondent is to be considered under the rules he is not eligible for such appointment as he was overaged..... "

and resultantly allowed the Writ Petition and made the rule nisi absolute and set aside the Order of Board of Revenue and that of the Sub-Collector and restored the Order of the District Revenue Officer.

10. It is not disputed that the Writ Appeal No. 365 of 1980, (filed against the Order dated 02.01.1980 in W.P. No. 470 of 1977) preferred against the present Appellant (In W.A. No. 1691 of 2015) was dismissed on 28.01.1981. It comes to be known that in G.O.(Ms). No. 294 Revenue (Ser.VII) Department dated 30.08.2001 at Paragraph No. 3 it is stated as follows:--

"3. The Tamilnadu Administrative Tribunal in its Judgement dated 11.08.2000 (In O.A. Nos. 979, 2178, 40404/98 and 440, 1418/99) has held that the G.O. (Ms)No.2361 Revenue dated 09.10.1978 has made the Applicants to retire from service, since the age as on 30.09.80 should be completed 60 years as per the provisions of the Service Rules 1978. Further as the Rule dated 8.10.78 and Government order were quashed by the Judgement passed by the Honourable High Court on 10.08.80 and the order compelling to retire the applicants has been nullified, the applicants service were extended till 14.11.80 and should be considered as retired on 14.11.80. Further the Tribunal has ordered that the applicants should be paid special family pension who were not in serice on 14.11.80, by dismissing the Government Letter No. 16062/ser-VII-1/97-2 Revenue dated 7.8.97.

As according to the above order of the Tamilnadu Administrative Tribunal, I have observed the same and ordered to pay enhanced special pension as per reference 3 mentioned order for the village officers who were made to retire on 30.9.1980 for completing the age of 60 years as per the reference 1 mentioned order. The competent persons are eligible to get the arrears from 5.12.1986. This benefits were extended not only to the persons who obtained through reference 1 mentioned order but also to others who were retired without filing cases."

11. That apart in G.O.(Ms) No. 232 dated 24.06.2005 at Paragraph Nos. 5 to 7, it is stated as follows:--

"5. In the meantime, it is submitted through letter dated 10.07.2002 sent by Auditor General that the petitioner Tmt. Lakshmiammal''s husband Thiru. Sundharesa Iyer has expired on 02.06.1972 who was one among 13 persons obtained order from Tamil Nadu Administrative Tribunal and sent for clarification to Government whether the G.O.(Ms)No.294 Revenue dated 30.08.2001 will be applicable to the above person since the said person Thiru. Sundharesa Iyer has died even before 30.09.1980 as the GO says that special pension shall be paid to the persons who have completed an age of 60 years as on 30.09.1980. After thoroughly going through the order of Tamil Nadu Administrative Tribunal dated 11.08.2000 in order to execute the pension to Tmt. Lakshmi Ammal W/o. Late. Thiru. V. Sundharesa Iyer who was earlier worked as village officer.

6. Subsequently, special family pension was granted to the above said person vide letter of Auditor of Chennai dated 05.03.2004. Further several persons sent representations to grant pension who has completed 60 years of age before 30.09.1980, hence as per the request of the state auditor to grant pension as ordered to Tmt. Lakshmiammal and there must be few number of person who claim for family pension as the case after 23 years and hence, it is recommended to grant special family pension to the Ex-Village Officers and the deceased Ex-Village officers.

7. In the reference 1 mentioned Government Order it is stated that the village officers who have completed 60 years of age and retired village officers as on date and as on 2004 and the legal heirs (wife) will be few at the age of 84, but their numbers were not known at present, hence grant of special pension/family pension if paid to the existing persons, the expenses will be minimal to the

government. Considering the order passed by Special Commissioner and Revenue Administrative Commissioner and Government Order were corrected in order to grant special pension/family pension to the legal heirs of deceased village officers and retired Ex-Village officers."

12. The clear cut stand of the Appellant is that he served in the post of Village Head Man at Bethakallupalli Village from 07.09.1976 in temporary status and was posted in permanent status with effect from 14.04.1979 to 30.11.1980 and while he was serving in the post of Village Head Man, his Co-Worker, O.M. Sundararaj Gounder challenged his appointment before the District Revenue Officer, Vellore by way of an ''Appeal'' and the same was dismissed and on ''Appeal'' to the Board of Revenue, an Order was passed in favour of the said O.M. Sundararaj Gounder. Being aggrieved against the said Order, the Appellant filed W.P. No. 470 of 1977 before this Court and the Order of the Board of Revenue dated 19.02.1977 was quashed by this Court on 02.01.1980 and he was not given the said Post inspite of several request made by him and indeed he was not in service on 14.11.1980 for no fault of his and that he had completed 58 years on 15.07.2002 and requested the Government of Tamil Nadu to grant him pension and other documents through his Representation/Appeal dated 25.03.2005, as given to other Village Officers.

13. The relief sought for by the Appellant in W.P. No. 27116 of 2007 before this Court is to direct the Respondents to consider his Representation/Appeal dated 25.03.2005 submitted to them and pass appropriate Orders to pay allowances from 02.01.1980 to 14.11.1980 and the pensionary benefits from 14.11.1980 onwards. In this regard, the pivotal plea taken on behalf of the Appellant/ Petitioner is that if the Respondents had put him in service, immediately after receipt of the Order passed by this Court in W.P. No. 470 of 1977 dated 02.01.1980, he should have continued in service on the date of abolition of said post by the Government through its Order dated 14.11.1980. In fact, the bone of contention of the Appellant is that he should have been considered as if he was in service on the date of abolition of Village Head Man Post with effect from 14.11.1980.

14. Conversely, it is the submission of the Learned Special Government Pleader for R1 and R2 that the Impugned Order of the Learned Single Judge in W.P. No. 27116 of 2007 dated 05.06.2012 among other things to the effect that "the Petitioner cannot sit back and send an Appeal especially when he had reached the age of superannuation. Hence no relief can be given" etc., is a correct one and as such, the same need not be interfered with by this Court at this distance point of time sitting in Appellate Jurisdiction.

15. On a careful consideration of respective contentions and in view of the fact that the Appellant had filed W.P. No. 470 of 1977 before this Court wherein the Order of the Board of Revenue dated 19.02.1977 was quashed on 02.01.1980 and bearing in mind the yet another fact that the Writ Appeal filed against the said Order in W.P. No. 470 of 1977 was also dismissed, the Appellant should have

been considered as if he was in service on the date of abolition of Village Head Man Post with effect from 14.11.1980 and inasmuch as he was not put back in Employment/Service soon after the receipt of the Order passed in W.P. No. 470 of 1977 dated 02.01.1980 and subsequently after the dismissal of the Writ Appeal filed against the Order passed in W.P. No. 470 of 1977, this Court comes to an inevitable and irresistible conclusion that the Respondents are duty bound in Law to consider the Representation/Appeal of the Appellant dated 21.03.2005 addressed to the Secretary and Commissioner, Revenue Department, Secretariat, Chennai and accordingly, this Court to prevent an aberration of justice and to promote substantial cause of justice, directs the Respondents to consider the Appellant''s Appeal dated 25.03.2005 (As regards Pay and Allowances from 02.01.1980 to 14.11.1980 and pensionary benefits from 14.11.1980) on merits by passing a reasoned speaking order in a dispassionate manner, untrammelled and uninfluenced by any of the observations made by this Court in this Writ Appeal, (of course by providing adequate opportunity to the Appellant by adhering to the Principles of Natural Justice) within a period of eight weeks from the date of receipt of copy of this Order.

Viewed in that perspective, the Writ Appeal succeeds. In view of the foregoings, the Writ Appeal is allowed, leaving the parties to bear their own costs. The Order of the Learned Single Judge in W.P. No. 27116 of 2007 dated 05.06.2012 in dismissing the Writ Petition (filed by the Appellant) is hereby set aside for the reasons assigned in this Appeal.

