

(2013) 08 MAD CK 0078
In the Madras High Court
Case No : Writ Petition No. 46415 of 2002

M. Kathaperumal

APPELLANT

Vs

The Commissioner and The District Collector, Thiruvarur

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0078

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : V. Chandrasekaran, for the Appellant; V. Subbarayan for R-1 and Mr. R. Lakshmi Narayanan, Addl. Govt. Pleader for R-2, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-

The petitioner submits that he was appointed as Cholera Masthoor by the first respondent herein on 19.12.1964 on daily wages basis and he was

continued for several years without any break in his service. However, on 11.03.1987, he was terminated from service by the order of the first

respondent. Therefore, the petitioner and others filed a writ petition in W.P. No. 3783 of 1987, challenging the order of termination before this

Court and obtained an order of interim injunction and continued to work. Ultimately, the said writ petition was allowed by this Court on

17.04.1996. While the said termination order was passed in respect of them, the other persons with lesser experience were given alternative

employment on permanent basis, in different Panchayat Unions, where the vacancies existed on the basis of absorption. Hence, taking note of this

the said writ petition was allowed by this Court. In the year 1997, by an order

dated 20.12.1997, the first respondent again terminated the services of the persons who were given protection under the said judgment of this Court. Hence, contempt petition was filed by the writ petitioners in W.P. No. 3783 of 1987. The said contempt petition was allowed since the respondent has not resisted the contempt petition and reinstated them into service. This Court directed the respondents to pay the back-wages for the period of termination from 20.12.1997 to 20.08.1998 and further, directed this period should be treated as duty period. Hence, there is not even any break in his service right from the date of his employment and he has put in nearly 40 years of continuous service and he is deemed to have been regularized based on the various judgments of this Court and that of the Hon"ble Supreme Court of India.

The petitioner further submits that the respondents continued to pay him salary only on daily wage basis which he used to draw in consolidated form at the end of every month. His services were continuously required for the respondent and his length of service would prove it and in view of the continuous requirement, he sincerely worked under the respondents not for one or two years, but for 40 years with a huge amount of legitimate expectation that his services would be suitably rewarded. Since the respondents continuously engaged him even without any break, he was never made to think of any other job, though he is fit enough to continue in service. To his shock and surprise, the first respondent passed an order dated 28.02.2001 retiring him from service with effect from 28.02.2001, on attaining the age of superannuation. However, the said order was silent about his terminal benefits. Therefore, he made several representations to the respondents herein to pay his retirement benefits.

2. The petitioner further submits that there is no provision for retirement of a daily wage worker and the issuance of the retirement order at the age of 60 years would show that the first respondent treated him as a last grade servant in which case the retirement age is 60 years and they are eligible for retirement benefits. Therefore, he is entitled for his terminal benefits. Further, the issuance of the retirement order would show that he was treated as a regularized employee. However, the various representations sent to the respondents were finally replied in the form of an impugned order passed by the first respondent in O. Mu. No. 991/2002/A5,

dated 19.03.2002, which states that there is no provision to pay the pension for a worker who worked on daily wage basis and even this impugned order was not passed by the first respondent on his own on the representation made by him, but it was only after he submitted a Memorandum on the grievance day to the second respondent on 12.01.2002 and 18.03.2002, who in turn directed the first respondent to pay his retirement benefits as per the rules. If the first respondent treats him as a daily wage worker, then he is duty bound to state under which provision of rules, he was retired from service. There is no retirement age for a daily wage worker and he ought to have been engaged continuously in service unless declared medically unfit to hold the post. In other words, unless he is medically invalidated from service he should continue to work as a daily wage worker since he has been service from 1964. His length of service would prove that there is a permanent demand for it and there is no dispute about his physical fitness or his insufficiency of service. Hence, he made further representation to the first respondent on 04.05.2002 and 20.06.2002, after his request for pension and other benefits were rejected. All his representations were also forwarded to the second respondent for proper action. The impugned order had been passed without any legal basis and has affected his fundamental rights. Hence, the above writ petition has been filed challenging the impugned order passed by the first respondent.

3. The writ petition has been filed in the year 2002. As of now, the respondents have not filed their counter statements. Hence, this Court is constrained to pass a final order, after scrutinizing the petitioner's affidavit, annexure and arguments advanced by the learned counsels on all sides.

4. The highly competent counsel for the writ petitioner submits that the first respondent had issued superannuation retirement order to the writ petitioner on 28.02.2001 without disclosing retirement benefits and other service awards. Therefore, he made representations to the second respondent herein, who in turn, referred the representation to the first respondent to consider. The first respondent had issued an order on 19.03.2002 stating that the persons who were working under the Nannilam Panchayat Union as Cholera Masthoors on daily wage basis are not entitled to any retirement benefits as per Government Rules. Both these orders

did not disclose any details pertaining to service regarding pension benefits. The one line order has proved prejudicial to the interest of the petitioner who has put in 37 years of continued service. The very competent counsel further pointed out that as per this Court order passed in a contempt petition in Cont. P. No. 241 of 1998 in W.P. No. 3783 of 1987, the respondent paid back-wages for the termination period from 20.12.1997 to 20.08.1998 and this was treated as duty period. In the said writ petition filed by the four employees, who are all in the same cadre, benefits paid to them has not been disclosed and they are all co-employees who had put in less service when compared with that of the petitioner. Therefore, the contention of the respondent that no benefits were paid to him as he was not a regular employee and he was working under a daily wage basis is without any foundation. Hence, the learned counsel entreats the Court to give a suitable order to the respondent and direct him to pay the retirement benefits to the petitioner who has been working under them for the past 37 years without any break.

5. The very competent Additional Government Pleader submits that the second respondent being the Collector of the District, received the representation from the petitioner and it has been referred to the first respondent herein for his personal and suitable orders to the petitioner since the service particulars of the petitioner and other connected records are available on the first respondent's file who is the employee of the writ petitioner. Further, the petitioner has been working on daily wage basis.

6. The very competent counsel for the first respondent vehemently argued that the petitioner was appointed on 19.12.1964 as a disinfectant mazodoor on a daily wage of Rs. 2/-. Till his service, he was working on the same cadre as a daily wage employee. He was not paid any regular salary so far. Hence, there is no provision as per the Tamil Nadu Government Pension Rules. As such, the petitioner is not entitled to receive any pension benefits from the first respondent. In the absence of provision, the first respondent is not liable to pay any service award since he was employed on daily wages. The very competent counsel further submits that the petitioner was paid back-wages from 20.12.1997 to 20.08.1998 as per this Court's order. The first respondent is a dutiful officer and as such, he complied with the judicial order and paid the back wages as per

daily wage basis. On the basis of this judicial order, the petitioner cannot seek any relief from the first respondent. The petitioner has served as a disinfectant mazdoor through out his service. Hence the character of being a daily wage employee will not alter. Therefore, the learned counsel entreats the Court to dismiss the above writ petition.

7. From the scrutiny of the arguments made by counsels on both sides, this Court is of the view:-

(i) The first respondent is an employer to the writ petitioner and is the competent person to disclose the petitioner's service particulars and salary

particulars to this Court as well as to the writ petitioner. Therefore, this Court is unable to take a precise decision in this case.

(ii) The first respondent's order dated 28.02.2001 discloses that the petitioner has attained superannuation retirement and he was permitted to

leave the service. This order did not indicate any particulars regarding the petitioner's emoluments.

(iii) The writ petitioner and other three similar employees have moved a writ petition in W.P. No. 3783 of 1987 before this Court since the first

respondent removed the four employees from service on 11.03.1987. This writ petition was allowed and the order of the first respondent was

quashed. Subsequently, the writ petitioner and three others have been reinstated and paid back-wages. It is evident that the petitioner was in

service continuously for more than 37 years without any break. Therefore, the first respondent herein is bound to pass a detailed order to the

petitioner regarding his services, category of employment, salary particulars, period of service and also the details regarding the capacity in which,

the first respondent employed the writ petitioner on daily wage basis for more than 37 years. With these particulars, the first respondent has to

pass a detailed order to the writ petitioner within a period of three months from the date of receipt of a copy of this order.

8. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the affidavit

of the petitioner and annexed documents and this Court's view listed as (i) to (iii), as mentioned above, this Court allows the writ petition and

quashes the impugned order with a direction to the first respondent to pass a fresh comprehensive order within a period of three months from the

date of receipt of this order. In the result, the above writ petition is allowed with the above direction. Consequently, the earlier impugned order in

Na. Ka. No. 6634/97/A5, dated 28.02.2001 and O. Mu. No. 991/2002/A5, dated 19.03.2002, on the file of the first respondent are quashed.

Accordingly ordered. There is no order as to costs