

(2010) 03 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 10686 of 2008 and M.P. No. 2 of 2008

Natarajan S.

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Constitution of India, 1950 — Article 162, 166

Citation : (2010) 4 LLJ 314 : (2010) WritLR 472

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : V.R. Rajasekarn, for the Appellant; R. Murali, Government Advocate for Respondent Nos. 1 and 2 and V. Vijayashankar, for the Respondent

Judgement

K.N. Basha, J.—The Petitioner has come forward with this petition seeking for the relief of quashing the Government Letter No.

34947/E7/2002-05 Rural Development Department dated January 9, 2003 and Govt. Letter No. 28725/E4/2007, Rural Development and

Panchayat Raj Department dated March 18, 2008 on the file of the 1st Respondent herein insofar as the same is contrary to G.O. (Ms) No. 85,

Rural Development Department, dated July 10, 2002 and consequently direct the Respondents herein to forthwith re-fix the pension of the

Petitioner herein by counting the two years training period (from June 1958 to May 1960) spent by him in the Rural Extension Training Centre,

Aduthurai as qualifying service for pension and pay arrears of pension and other benefits with due interest.

2. The case of the Petitioner is that he was appointed as Grama Sevak in the year 1958 and he was under training for a period of two years from

June 1958 to May 1960 in Rural Extension Training Centre, Aduthurai.

Thereafter, the Petitioner joined duty on November 19, 1960 as Grama

Sevak Grade II now known as Rural Welfare Officer, Grade II. The Petitioner was promoted to the post of Extension Officer in Rural

Development Department and retired on October 31, 1991.

3. The period of training to be undergone by the Rural Welfare Officers was directed to be counted for the purpose of probation and increment as

per G.O. Ms. No. 535, Rural Development Department, dated July 10, 1986. The Government issued G.O. Ms. No. 164, Rural Development

(E4) Department dated July 30, 1992 directing that the Rural Welfare Officers undergone the training prior to the issue of G.O. Ms. No. 535,

Rural Development Department dated July 10, 1986 be permitted to count the period of training for the purpose of probation and increment. The

Petitioner having completed the training during the year 1960 is entitled to count the two years training period spent by him in Rural Extension

Centre, for the purpose of probation and increment based on G.O. Ms. No. 164, Rural Development Department dated July 30, 1992.

Subsequently Government have issued orders in G.O. Ms. No. 85, Rural Development (E7) Department dated July 10, 2002 directing that the

period spent by Rural Welfare Officers in the training centre shall be counted as qualifying service for the purpose of pension. By virtue of the

aforesaid Government orders, the Petitioner is eligible to count the two years training period (from June 1958 to May 1960) for the purpose of

fixing pension.

4. The Government issued certain clarification in Letter No. 34947/E7/2002-05, Rural Development Department, dated January 9, 2003,

restricting the applicability of G.O. (Ms) No. 85, Rural Development Department dated July 10, 2002 only to those Rural Welfare Officers retired

from service on or after July 30, 1992. In view of such clarification letter of the Government, the claim of the Petitioner for re-fixing his pension

counting the training period has not been considered.

5. The Petitioner preferred a representation dated June 21, 2006 seeking for the relief of extending the benefits given in G.O. Ms. No. 85, Rut-Si

Development Department, dated July 10, 2002. The 2nd Respondent has sent a reply reiterating the clarification issued by the Government on

January 9, 2003 which requires modification as the same was contrary to the

G.O. Ms. No. 85, Rural Development, Department dated July 10, 2002. The Petitioner was constrained to file a writ petition before this Court in W.P. No. 8178/2007, challenging the Government letter dated January 9, 2003 and this Court by order dated July 19, 2007 directed the 1st Respondent herein to consider the representation of the Petitioner dated June 20, 2006 on merits and pass orders within a period of six weeks. The 1st Respondent issued order in Government letter No. 28725/E4/2007, Rural Development and Panchayat Raj department dated March 18, 2008 rejecting the representation of the Petitioner to count the training period for the purpose of pension. Being aggrieved against the said order, the Petitioner is constrained to approach this Court with the above said prayer.

6. Mr. V.R. Rajasekaran, learned Counsel appearing for the Petitioner contended that, as per G.O. Ms. No. 85, Rural Development (E7)

Department dated July 10, 2002, the Petitioner is entitled and eligible to count the two years training period from June 1958 to May 1960 for the

purpose of fixation of pension. It is contended that contrary to the said order, the Government have issued the clarification letter dated January 9,

2003, restricting the said benefit to be given only to those Rural Welfare Officers who retired from service on or after July 30, 1992. It is

contended that the clarification issued by the Government cannot be given effect to and the same cannot have any statutory force and the said

clarification letter cannot override the Government Orders issued in the name of the Governor. In support of his contention, the learned Counsel for

the Petitioner placed reliance on the decision of this Court in K. Sampath v. State of Tamil Nadu and Ors. (2006) 4 MLJ 1027. The learned

Counsel for the Petitioner also placed reliance on the decision of the Hon"ble Supreme Court in Col. (Retd.) B.J. Akkara Vs. The Govt. of India

and Others, . The learned Counsel for the Petitioner further brought to the notice of this Court that, this Court in an unreported order dated

January 18, 2010 in W.P. No. 37345/2007 held that G.O. Ms. No. 164, Rural Development Department, dated July 30, 1992 issued for the

purpose of counting increment, seniority and pensionary benefits would applicable prospectively for all pensioners irrespective of the date of

retirement whether it is before July 30, 1992 or afterwards.

7. Mr. V. Vijayashankar, learned Counsel appearing for the third Respondent submitted that the third Respondent already forwarded a letter to

the Government of Tamil Nadu by the office letter No. Pen 30/III/3-1/21617 dated December 17, 2009, recommending the Government to

extend the benefit of counting the training period as qualifying service for the purpose of pension to those who retired even prior to July 30, 1992.

It is submitted that, in view of the clarification letter issued by the Government on January 9, 2003, the third Respondent thought it fit to send such

a letter dated December 17, 2009 as the said clarification letter is contrary to the G.O. Ms. No. 85, Rural Development Department, dated July

10, 2002.

8. Heard the learned Government advocate on the submissions made by the learned Counsel for the Petitioner and also the learned Counsel for the

third Respondent.

9. I have given my careful consideration to the rival contentions put forward by either side and also perused the entire materials available on record

including the impugned order.

10. The crux of the question involved in this matter is to the effect that, whether the Petitioner is entitled and eligible to count the two years training

period i.e., from June 1958 to May 1960, for the purpose of fixation of pension and other benefits. The fact remains that the Government passed

an order in G.O. Ms. No. 85, Rural Development (E7) Department dated July 10, 2002 which is applicable to all Rural Welfare Officers including

those who have already retired prior to July 10, 2002. The said G.O was sought to be clarified by the Government by its letter No.

34947/E7/2.002-05, Rural Development Department, dated January 9, 2003, restricting the applicability of G.O. Ms. No. 85, Rural Development

Department, dated July 10, 2002 only to those Rural Welfare Officers retired from service on or after July 30, 1992. The Petitioner having retired

on October 31, 1991, has been aggrieved against the said letter, earlier filed a writ petition in W.P. No. 8178/2007 and this Court by Order dated

July 19, 2007 directed the first Respondent to consider the representation of the Petitioner dated June 20, 2006 on merits and pass orders in

accordance with law. But the first Respondent by simply placing reliance on the clarification letter dated January 9, 2003 denied the benefit to the

Petitioner, ignoring and overlooking the Government order in G.O. Ms. No. 85, Rural Development Department dated July 10, 2002, which is

applicable to all Rural Welfare Officers including those who have retired prior to July 10, 2002.

11. It is needless to state that it is well settled principle that the Government order issued in the name of the Governor cannot be nullified or

modified and cannot be overridden by any subsequent clarification letter of the Government. This Court in a similar situation in *K. Sampath v. State*

of Tamil Nadu and Ors. (*supra*), held hereunder:

9. The reason stated in the impugned order stating that in view of the subsequent clarification issued by the Government by letter dated October 4,

2000 clarifying G.O. Ms. No. 118 dated February 14, 1996, is totally illegal since the Government order issued with the executive power of the

Government in the name of the Governor cannot be clarified by a letter of the Secretary to the Government. Admittedly no amendment to G.O.

Ms. No. 118 dated February 14, 1996 is issued and therefore the Government order will prevail over the subsequent Government letter.

10(a) In the decision *R.P. Bhardwaj v. Union of India* and Ors. (2005) 10 SCC 244, the issue dealt with was to whether a letter of the Central

Ministry issued by the Secretary will override the Office Memorandum and the Hon"ble Supreme Court held that the Government letter cannot be

acted upon unless a new Office Memorandum is issued. The relevant portion of para 8 is extracted hereunder,

...We have already noticed that the OM dated July 19, 1989 contained instructions to be noted and followed by all concerned. That position was

prevailing when the proposal by means of letter dated November 23, 1989 was mooted. It was not yet issued as OM for compliance by all

concerned as was done in respect of the OM dated July 19, 1989. In our view, it was still at a premature stage and before being final so as to be

circulated by the Government of India for being followed by the authorities and the departments and all concerned, it seems to have been acted

upon by the Service Commission against the OM which was in operation. Even if any implied approval is inferred by the Public Service

Commission, it would be of no consequence since then too it would not be anything more than an approval of a proposal. An approved proposal

would not replace as OM issued by the Government of India. Even after approval of the Government may not issue any OM. The Commission wrongly acted upon the mere proposal.

(b) In an unreported decision in W.P. No. 1713/1988, etc., Batch (sic) by common order dated November 7, 1990, this Court considered similar

issues as to whether the Government letter will prevail over the Government Order or not and held that the Government Order having been

authenticated and expressed to be taken in the name of the Governor, has the sanctity of an order issued under Article 166 of the Constitution of

India and the Government letter issued subsequently cannot supersede the earlier Government Order.

(c) This Court in the decision P. Jeya v. Union of India and Ors. 2004 WLR 805, considered a similar issue as to whether the Government letter

will prevail over the Government Order. The relevant portion of para 34 reads as follows,

In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive

order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by

another executive order, not being issued in the name of the Governor....

12. The principle laid down in the decision cited supra by placing reliance on the decision of the Hon"ble Apex Court, is squarely applicable to the

facts of the instant case, as in this case also, the Government has sought to clarify the G.O. Ms. No. 85, Rural Development Department dated

July 10, 2002 by a letter dated January 9, 2003, restricting the applicability of the said G.O. Ms. No. 85, Rural Development Department dated

July 10, 2002 only to those Rural Welfare Officers retired from service on or after July 30, 1992. Therefore, this Court has no hesitation to set

aside the impugned order on this sole ground.

13. It is also worthwhile to refer to the decision of the Hon"ble Apex Court in Col. B.J. Akkara (Retd.) v. Government of India and Ors. (supra)

wherein the Hon"ble Apex Court has held hereunder:

20. The Principles relating to pension relevant to the issue are well settled. They are:

(a) In regard to pensioners framing a class, computation of pension cannot be by

different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the amendment, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

The well settled principle laid by the Hon"ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case.

14. In view of the aforesaid reasons, this Court is constrained to quash the Government Letter No. 34947/E7/2002-05 Rural Development

Department, dated January 9, 2003 and Government Letter No. 28725/ E4/2007, Rural Development and Panchayat Raj Department dated

March 18, 2008 passed by the 1st Respondent herein insofar as the same is contrary to G.O. (Ms) No. 85, Rural Development Department,

dated July 10, 2002 and consequently direct the Respondents herein to forthwith re-fix the pension of the Petitioner herein by counting the two

years training period (from June 1958 to May 1960) spent by him in the Rural Extension Training Centre, Aduthurai as qualifying service for

pension and pay arrears of pension and other benefits. It is made clear that the above said exercise shall be completed within a period of eight (8)

weeks from the date of receipt of copy of this Order.

15. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.