
(2015) 02 MAD CK 0399

In the Madras High Court

Case No : Writ Petition (MD) No. 16049 of 2014, M.P. (MD) Nos. 1 and 2 of 2014

R. Kesavan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0399

Hon'ble Judges : K. Ravichandra Babu, J

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant; M. Rajarajan, Advocates for the Respondent

Judgement

K. Ravichandra Babu, J.—This writ petition is filed challenging the order of the second respondent dated 05.07.2012 and the consequential proceedings of the fifth respondent dated 16.07.2013 and 10.09.2013 and consequently for a direction to the respondents to sanction and disburse the pension benefits due to the petitioner.

2. The case of the petitioner is as follows:-

He joined the service on 10.09.1985 as Electrician on daily- waged basis at the sixth respondent Town Panchayat. He was absorbed as Electrician Grade-II with effect from 01.09.2000 on a consolidated pay. Later, his appointment was regularized in the cadre of Electrician Grade - II and I with effect from 23.06.2006 through proceedings of the sixth respondent dated 11.08.2006. Therefore, he has put in 25 years and 7 months and 20 days of service. He retired from service on 30.04.2011 on attaining the age of superannuation. The sixth respondent submitted pension proposals along with the service records of the petitioner to the fifth respondent for sanctioning and disbursing the pensionary benefits. The sixth respondent also sent proposals to the second respondent. However, the second respondent passed the impugned order stating that the petitioner is not entitled for pensionary benefits in view of G.O. Ms.No.

259 (Finance - Pension Department) dated 06.08.2003.

3. Counter affidavit is filed by the sixth respondent, wherein it is stated as follows:-

It is not true that the petitioner had joined service on 10.09.1985 as Electrician on daily-waged basis. There is no office record in this regard. It is true that the petitioner was appointed by Executive Officer through proceedings dated 30.08.2000 and joined duty on 01.09.2000 on consolidated pay. It is true that the petitioner was regularized in service with effect from 23.06.2006. The petitioner is not entitled for contributory pension scheme since there was no deduction of contribution from the petitioner's salary.

4. Mr. Isaac Mohanlal, learned counsel appearing for the petitioner submitted that only reason stated in the impugned order is that the petitioner is not entitled to the pension under the old scheme, since he was regularized in service on 23.06.2006 and therefore, such reason cannot be sustained in view of the decision made by this Court reported in *S. Mary Sherly Vs. Secretary to Government, Education Department and Others*, (2013) 3 MLJ 56 . The learned counsel further submitted that admittedly the petitioner was appointed on consolidated pay on 01.09.2000 much earlier to G.O. Ms.No. 259, dated 06.08.2003 and therefore, the respondents are not justified in relying on the said G.O. to deny the benefit of pension to the petitioner.

5. Per contra, the learned Government Advocate appearing for the respondents submitted the petitioner's service was regularized only with effect from 23.06.2006, by that time, G.O. Ms.No. 259, dated 06.08.2003 came into force and therefore, the impugned order has been passed rightly denying the benefit of pension to the petitioner.

6. Heard both sides.

7. The only point for consideration in this case is as to whether the reasons stated in the impugned order denying the pension to the petitioner relying on G.O. Ms.No. 259, dated 06.08.2003 is sustainable or not.

8. The G.O. Ms.No. 259, dated 06.08.2003 contemplates that new Contributory Pension Scheme based on defined contribution will be introduced to the newly recruited employees? and that the same will apply to all employees, who are recruited on or after 1.4.2003. Needless to say that the words *orecruited employees?* used in the said Government Order would mean that the same is applicable to the person who are selected and appointed to the service on or after 01.04.2003 not in respect of person, who joined the service either as temporary or consolidated pay much earlier to the date of the said G.O. The very same issue was considered by this Court in a decision reported in *S. Mary Sherly Vs. Secretary to Government, Education Department and Others*, (2013) 3 MLJ 56 and clause 3(i) of the said G.O., was taken up for consideration therein. Paragraphs 19 and 20 of the said decision read as follows:-

"19. At any event, I have already found that very order of appointment appointed the petitioner on 26.3.2003. If such appointment was made on 26.3.2003, whether the petitioner can be denied the benefit of the earlier GPF scheme, which was existing prior to the Contributory Pension Scheme is the question to be considered now. While considering the said question, it is necessary to look into G.O. Ms.No. 259, dated 6.8.2003 is the question to be considered now. A perusal of the said Government Order only says that the Contributory Pension Scheme was introduced to the newly recruited employees, who were recruited on or after 1.4.2003. The relevant clause in 3(i) of the said G.O. is extracted hereunder:-

"3(i) A new Contributory Pension Scheme based on defined contributions will be introduced to the newly recruited employees. This will apply to all employees who are recruited on or after 1.4.2003"

20. On going by the language of the said Government Order, more particularly the Clause 3(i), there will not be any difficulty to say that the said Government Order is applicable to persons, who are appointed on or after 1.4.2003. The word "recruited" cannot be construed or taken to mean "joined" Certainly, the word "recruited" has to have a related meaning of the word "appointed". When the "recruitment" is the action of the employer, "joining the duty" is the action of the employee. Both are to be seen with different connotation. When that being the position, in my considered view, the said G.O. No. 259, having been made only in respect of persons, who have been recruited on or after 1.4.2003, the same cannot be applied to the petitioner's case, who was admittedly recruited earlier to 1.4.2003."

9. This Court has found that the word "recruited" cannot be construed or taken to mean "joined" and that the word "recruited" has to have a related meaning of the word "appointed".

10. In this case, it is an admitted fact that the petitioner was appointed on consolidated pay on 01.09.2000, even though the respondents were denied the contention of the petitioner that he joined the service on 10.09.1985 as Electrician on daily-waged basis.

11. Considering the fact that the appointment of the petitioner on consolidated pay was admitted to have been made on 01.09.2000 i.e., much earlier to the cut of date fixed by the G.O. Ms.No. 259 dated 06.08.2003, I am of the view that the reason stated in the impugned order cannot be sustained and the decision reported in S. Mary Sherly Vs. Secretary to Government, Education Department and Others, (2013) 3 MLJ 56 is squarely applicable to the facts and circumstances of the present case.

12. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the respondents are directed to consider the claim of the petitioner for payment of pension and pass suitable orders, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Consequently, connected Miscellaneous Petitions are closed.