
(2014) 09 MAD CK 0224

In the Madras High Court

Case No : Writ Petition No. 21522, 28539, 10832 and 16294 of 2011 and M.P. No. 1 of 2011

S.R. Veeraiyan

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2015) LabIC 126

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—The petitioners in W.P. Nos. 21522, 28539 and 16294 of 2011, while seeking issuance of a writ of certiorarified mandamus, challenge the impugned letter, dated 15.06.2011, issued by the first respondent vide No. 2159/M.P.II/2010, in and by which, the said authority/Government declined to treat the petitioners, who were the employees of the Tamil Nadu Co-operative Milk Producers" Federation, as "Government Servant" and to grant them pensionary benefits other than the pro-rata pension being drawn by them, by holding that the pension scheme as applicable to Government Employees is not in vogue in any of the Public Sector Undertakings. The petitioner in W.P. No. 10832 of 2011 challenges the impugned letter No. 23103/M.II(2)/2010-1, dated 18.03.2011, of the first respondent, issued in same lines.

2. Inasmuch as all the four writ petitions revolve around common issues on the plea that the petitioners, for the purpose of sanction of full pension in their favour, should be treated as Government Servants based on,

a) G.O. Ms. No. 1921, Agriculture (MP.1) Department, dated 08.11.1983, whereunder, absorption of Government Servants like the petitioners in WP Nos. 21522, 28539 and 16294 of 2011 served on deputation with the Tamil Nadu Co-operative Milk Producers" Federation on "permanent basis" is contemplated in terms of the option to be obtained from the Government Servants concerned, and

b) G.O. Ms. No. 126, Animal Husbandry & Fisheries Department, dated 04.08.2000, where-under, the Government ordered certain employees similarly placed like the petitioner in W.P. No. 10832 of 2011, retired from the Tamil Nadu Co-operative Milk Producers" Federation during 1996-97, to be treated as Government Servants so as to get full pensionary benefits by reverting them back to their parent Departments-Animal Husbandry and Rural Development respectively, they have been heard together and now, disposed of by this Common Order.

3. At the first instance, it would be of much relevance to recollect below certain core factual aspects relating to the operational vigor of G.O. Ms. No. 1921, Agriculture (MP-I) Department, dated 08.11.1983, so as to consider the case and claim of the petitioners revolving around the said G.O.

During 1974, the Tamil Nadu Dairy Development Corporation (hereinafter referred to as Dairy Corporation) was formed by divesting the commercial activities of the Dairy Development Department and, as a result, the employees then working under the Dairy Development Department were taken on deputation basis in the Dairy Corporation on Foreign Service basis. Thereafter, by virtue of G.O. Ms. No. 555, Agriculture Department, dated 31.03.1980, the Government formed the Tamil Nadu Co-operative Milk Producers" Federation (hereinafter referred to as "Federation") by specifically ordering that the staff of the Dairy Corporation both at Head-quarters and the Districts would be absorbed by the Federation and its District Unions respectively. Since most of the absorbed staff in the Federation were deputationists from various Government Departments like Animal Husbandry, Labour, Co-operation, etc., an issue relating to their absorption on "permanent basis" into the services of the Federation arose and it was observed that the Federation being a Co-operative Institution and not a Public Sector Undertaking, the terminal benefits contemplated in G.O. Ms. No. 284, Finance, dated 31.03.1980, would not apply to the Government Servants to be permanently absorbed in the Federation. While so, the Managing Director of the Federation had made a request for extension of the terminal benefits specified in G.O. Ms. No. 284, dated 31.3.1980, for the Government Employees who opt for permanent absorption in the Federation. The Government, after examining the request of the Federation, issued the Government Order in G.O. Ms. No. 1921, Agriculture (MP.I) Department, dated 08.11.1983, directing that the Government Employees who opt for permanent absorption in the Federation shall be given,

a) transfer of GPF Accumulation to the PF Account under the Federation;

b) immediate Cash Payment of Gratuity;

c) pension in respect of the period spent in Government Service to be calculated at the time of transfer but payable by the State Government only on retirement of the employee from the Federation. The employee on retirement from the Federation would be entitled to commute upto 1/3rd value of pension like

government employees who retire from Government Services;

d) in the case of industrial workers who do not opt for service in the Federation would be reverted to their parent department and if there is no post to accommodate them in the parent Department, they would be paid retrenchment compensation in terms of Labour Laws;

e) in the case of non-industrial workers, who do not opt to serve the Federation, they would be reverted to their parent Department and if there is no post in the parent Department to accommodate them, they would be given compensation-pension as provided under the Tamil Nadu Pension Rules;

f) since the individuals opting for permanent absorption in the Federation would cease to be a government servant, the Government's liability for family pension would cease;

g) the employee would be paid by Government-cash equivalent of 50 percent of the quantum of earned leave at his credit as on the date of promotion and the balance of credit will be transferred with full leave liability thereof being paid to the undertaking by Government to meet the leave salary payable to the employees absorbed in the undertaking;

h) Other kinds of leave on absorption of the employee in the Federation, the Government's liability towards leave on medical certificate and leave on private affairs will cease.

i) Any further liberalization of pension rules decided by the Government for government employees after the permanent absorption of a government servant in the Federation would not be extended to them; and

j) in cases where an employee, at the time of absorption, has less than ten years" service in government and is not eligible to pension, he will be eligible only to proportionate service gratuity in lieu of pension and death-cum-retirement gratuity based on the length of service.

This Government Order, which came to be issued in the above background, also made it clear that the crucial date for calculating the terminal benefits in respect of the Government servants who joined in the Federation would be from the date of formation of the Federation or from the date of continuous service of the Deputationists in the Federation whichever is later.

The said Government Order in G.O. Ms. No. 1921, dated 08.11.1983 was challenged on various grounds by way of three Writ Petitions and those petitions were ultimately transferred to the Tamil Nadu Administrative Tribunal, which was functional then, and by Orders dated 26.06.1992, the Tribunal quashed the G.O. by holding that the Government Order requires re-consideration in the light of the observations made by the Tribunal in its Order. The said Order passed by the Tribunal was challenged by the Government before the Honourable Apex Court in Civil Appeal Nos. 1387 to 1395 of 1993. By Judgment, dated 18.07.1994, the

Apex Court struck down para Nos. 3(c) and 3(f) of the G.O. holding those clauses as arbitrary, and except those clauses, in all other aspects, the validity of the G.O. was upheld as "reasonable". While holding so, the Honourable Apex Court made a specific observation to the following effect:-

We make it clear that all those employees who have retired after February 1, 1983, they shall be deemed to have opted to join the service of the Federation permanently and, as such, they would be entitled to the terminal benefits in terms of G.O. 1921.

4. In the light of the above factual background pertaining to G.O. Ms. No. 1921, dated 08.11.1983, this Court heard the submissions of either side.

5. Mr. K.S. Viswanathan, learned counsel appearing for the petitioners in W.P. Nos. 21522 and 28539 of 2011 and Mr. N.R. Chandran, learned Senior Counsel appearing for the petitioners in W.P. Nos. 10832 and 16294 of 2011, would highlight at the first instance that the Honorable Supreme Court, in the Judgment dated 18.07.1994, while striking down the arbitrary clauses of the G.O. under para Nos. 3(c) and 3(f), specifically made it clear that all those employees, who have retired after February 1, 1983, shall be deemed to have opted to join the service of the Federation permanently and, as such, they would be entitled to the terminal benefits in terms of G.O. 1921; therefore, it is implicit that the authorities were not given any exemption from the provisions of the G.O. as to the procedure to be followed when such an option was deemed to have been exercised. In other words, the authorities should have, in the light of the judgment of the Apex Court exhaustively interpreting the tenor and vigor of the G.O., followed the procedure outlined under paragraph Nos. 5 and 6 of the G.O. in dealing with the option deemed to have been exercised by the petitioners by-

- a) accepting or rejecting the same;
- b) placing the matter before the Board of the Federation;
- c) on acceptance, passing specific orders of absorption in respect of each of the petitioners;
- d) obtaining due concurrence from the Government relating to cut off their lien with the parent Departments concerned; and
- e) wherever it is decided not to accept the option, reverting the individuals concerned to their respective Parent Departments.

Inasmuch as the Federation failed to take up the above exercise which ought to have been done subsequent to the Judgment of the Apex Court, the petitioners were merely retained till their retirement without any order of absorption/termination of lien and thereby, they were unjustly deprived of the full pensionary benefits due to them as per G.O. Ms. NO. 1921, dated 08.11.1983. In such a situation, in terms of Rule 14-1 of the Fundamental Rules of the Government of Tamil Nadu which provides that the lien of a Government Servant

in the permanent post under Government will stand terminated only from the date of permanent absorption in a non-Government post, and in the absence of any order of permanent absorption, this Court may have to hold that the lien of the petitioners in government service can never be said to be terminated. Resultantly, they should be treated only as Government Servants and paid full pension along with all other accrued terminal benefits on their retirement. But unfortunately, the respondents, by purposely keeping the petitioners in a lurking position without any proper identity between the two ends, endeavour to draw further mileage from their unjust actions by depriving the petitioners of the benefits legitimately due to them under the G.O. Such endeavour may have to be very seriously viewed by this Court, they pleaded.

Mr. N.R. Chandran, learned Senior Counsel, with reference to the case of the petitioner in W.P. No. 10832 of 2011, would specifically point out that similarly placed persons who worked along with the said petitioner made representations and, by considering their claim, the Government issued G.O. Ms. No. 126/MP1/Animal Husbandry and Fisheries Department/2000, dated 04.08.2000, and reverted four employees, who continued on deputation in the Federation and allowed to retire as employees of the Federation, back to their parent Departments of Animal Husbandry and Rural Development, enabling them to get full pensionary benefits in their parent Department and, consequent to the said G.O., they got full pensionary benefits. But unfortunately, the petitioner is singled out and, in the light of the clear fact that he never opted for any permanent absorption in the Federation nor his services were regularized by the Federation and again, the lien with the parent Department being unbroken, the petitioner cannot be legally reckoned to be a Federation employee, rather, he is a Government Servant eligible for full pensionary benefits.

6. Mr. K.S. Viswanathan, by citing other Government Orders under G.O. Ms. No. 66, Labour and Employment Department, dated 24.03.2004 and G.O.M.s. No. 96, Social Welfare and Nutritious Meal Programme, dated 09.06.2004, vehemently contended that the Government selectively discriminated between the petitioners and certain other similarly placed employees, who retired from the services of the Federation during 1996-97 by granting them full pension. Ironically, those orders were passed in the case of certain employees in the year 2004 much later to their retirement. Reference was made to different orders passed by this Court including an order, dated 02.07.2010, passed by me in W.P. No. 39114 of 2006(T) (P. Thiagarajan v. State of T.N. and two others), wherein, by contrasting the case of one Mr. K. Sivagaminathan, an employee of the Federation and who was awarded full pension, with that of P. Thiagarajan/petitioner therein, it was held thus:-

6..... the Government also, subsequently, by taking into account the case of K. Sivagaminathan, whose lien was earlier suspended by the parent Department along with the petitioner has granted the benefit of pension to K. Sivagaminathan as Government servant, therefore, this Court finds no reason as

to why the petitioner, namely Thiyagarajan's request for payment of pension on par with K. Sivagaminathan should not be considered. In fact, the lien of Thiyagarajan was also kept under temporary suspension by the Labour Department along with K. Sivagaminathan by order dated 28.07.1986, when the Government have already granted the benefit of pension to K. Sivagaminathan, a similarly placed person, as Government servant, equally, the same benefit has to be extended to the petitioner as well.....

Since this Court has already considered positively the claim of similarly placed persons, the petitioners whose lien also was never cut off from the parent Department, thereby, it is clear that they retired only as Government Servants, there may not be any impediment for this Court to grant the relief in the same line, they further pleaded.

7. By pointing out that the petitioners, through the Tamil Nadu Dairy Development Retired Officials Association, submitted representations to the respondents on 18.07.2002, 16.06.2004, 08.04.2007 and 22.01.2010, highlighting their grievances due to the discrimination shown between similarly placed employees in the matter of grant of pension and, for those representations being made from the year 2002, only in the year 2011, by the present impugned letters, the petitioners were informed that their request for grant of full pensionary benefits cannot be acceded to. Therefore, it is pleaded that the point of delay may not be put against them as they had legitimate expectation that their grievance would be properly and timely addressed; as otherwise, they would be put to irreparable damage in the present scenario where the cost of living has gone up manifold and, with the meager pro-rata pension, the petitioners are struggling to plainly run their livelihood at the old age. Hence, it is pleaded that the relief sought for may be granted to the petitioners.

8. Per contra, Mr. S.V. Doraisolaimalai, learned Additional Government Pleader appearing for the State, would vehemently object to the grant of the prayer on the ground that the extreme and inordinate delay on the part of the petitioners in approaching the Court immediately after the judgment of the Apex Court rendered on 18.07.1994 serves as the sufficient ground to in limine dismiss all the four writ petitions. He would submit that, in fact, the clarification made by the Apex Court in the Judgment dated 18.07.1994 to the effect that all the employees, who had retired from 01.02.1983, shall be deemed to have opted to join the services of the Federation permanently was well taken note of by the Government and that the Judgment has been duly implemented in its entirety, therefore, the question of the Federation deviating from the judgment of the Hon'ble Apex Court is neither possible nor tenable. According to him, consequent to the Judgment of the Apex Court, the staff of the Dairy Development Department retired only in the capacity of the employees of the Federation and they were not allowed to retire as Government Servant, thus, there was no necessity for the respondents to act upon the deemed option individually.

Further, the said employees were made entitled to terminal benefits in terms of G.O. Ms. No. 1921 dated 08.11.1983 and once they had received the pro-rata pension without any objection and did not come up with any claim immediately after the judgment of the Apex Court, they are estopped from canvassing what they now plead before this Court. It is specifically pointed out that the employees from other Departments were reverted to their parent Departments consequent to their acceptance by the Parent department for their reversion, while the petitioners from the Dairy Development Department retired only as Federation Employees. Therefore, the question of extension of pensionary benefits on par with the other department employees could not be considered. Among handful of decisions, reference was specifically made to the Order dated 31.08.2009 passed by this Court in WP No. 34625 of 2006 (S. Pattammal v. Government of Tamil Nadu and two others), dismissing similar claims as made by the present petitioners for payment of pensionary benefits. It was pointed out that the said order was passed by referring to the Judgment, dated 18.07.1994, of the Apex Court in C.A. Nos. 1387 to 1395 of 1983. Therefore, apart from the ground of laches, even on merits, the petitioners' case has no edifice to stand and hence, the writ petitions may have to be dismissed.

Mr. K.N. Pandian, learned counsel appearing for the Federation, has endorsed the above submissions made by the learned Additional Government Pleader.

9. Even though this Court proceeded to record the realm of submissions made on behalf of the petitioners in the entire stretch so as to place on record their case and claim despite the serious objections made by the other side on the ground of laches, unfortunately, this Court is at a loss to appreciate those submissions touching the much-projected grievance since the petitioners themselves are not serious and conscious enough even to place all relevant/crucial particulars for consideration by this Court.

10. It seems that some of the petitioners retired in the year 1991, for instance, the petitioner in W.P. No. 10832 of 2011 took pain and care to at least indicate his date of retirement as 30.04.1991. The Judgment of the Honorable Apex Court came to be passed in the year 1994. It is not known as to why the petitioners have been keeping quiet for more than two decades from the year of retirement and for about one and a half decade from the date of judgment of the Apex Court from seeking judicial remedy. In an instance where a person approached the Court after keeping quiet for 18 years after termination of his services, the Honourable Apex Court, in the decision reported in C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, commented thus:

11. The present case is a typical example of "representation and relief". The petitioner keeps quiet for 18 years after termination. A stage is reached when no record is available regarding his previous service. In the representation which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the

cause of action..... We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service.... The learned single Judge dealt with the matter as if the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to "consider" a representation relating to a false issue.

While commenting so, the Honourable Apex Court observed that if the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing consideration of such claims, and sharply remarked about the failure of the appellant therein to produce the material particulars, in the following terms:

The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite of being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry....

In the present case also, unfortunately, the affidavits filed before this Court are completely bereft of material particulars. None of the four affidavits filed on behalf of about 137 petitioners exhaustively indicate -

I) as to on what date, each of the petitioners entered the Government Service or directly the service of the Dairy Development Department and thereafter, to Dairy Corporation;

II) date of absorption in the Federation;

III) break-up details relating to the period of service rendered in the parent department and the Federation;

IV) date of retirement pertaining to each of the petitioners,

V) Difference between the rate of pensionary benefits/pension now drawn by each petitioner and the claim under full pension scheme, etc.

When this Court has been fair enough to consider their grievance by taking note of the fact that the petitioners are all senior citizens, advanced in age and they find it difficult to manage with the pro-rata pension in the present scenario of much-escalated cost of living, the petitioners are not self-helping even to submit the basic necessary particulars at their disposal, enabling this Court to take a decision either way. Since the petitioners withheld the basic requisite materials

which action, in other words, may be called "suppression of materials" and equally, they are also guilty of laches in sleeping over the matter for about two decades, this Court is at a loss to appreciate the various points raised and canvassed on their behalf.

11. In the result, Writ Petitions fail and they stand dismissed as devoid of any merit. No costs. Connected Miscellaneous Petition stands closed.