

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2009

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

Writ Petition No.34625 of 2006
(O.A.No.3145 of 1998)

S.Pattammal

..Petitioner/Applicant

vs.

1. Government of Tamil Nadu,
rep. By the Secretary to Government,
Animal Husbandry and Fisheries Dept.,
Fort St. George, Chennai.
 2. The Commissioner for Milk Production
and Dairy Development Department,
Madhavaram Milk Colony, Chennai.
 3. The Managing Director, Tamilnadu
Co-operative Milk Producers'
Federation Ltd., Chennai.
- ..Respondents/Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus to direct the respondents to issue an order stating that the petitioner has retired as a Government Servant on voluntary retirement on the afternoon of 30.6.93 and she be allowed all consequential retirement benefits.

For Petitioner : Mr.K.V.Srinivasaraghavan

For Respondents : Mr.R.Neelakantan, G.A./RR1 & 2
: Mr.R.Madanagopal for R-3

ORDER

The petitioner was working as a Superintendent in the Government Dairy Farm at Madhavaram, which was originally a Government Department under the Commissioner for Milk Production. Subsequently, the Government formulated Tamil Nadu Dairy Development Corporation, in which the erstwhile Government servants were sent on deputation. The petitioner worked under the Corporation. Thereafter, the Government took a policy decision to wind up the Corporation and to form a Co-operative Milk Producers' Federation, viz., Tamil Nadu Co-

operative Milk Producers' Federation (TNCMPF). The erstwhile Government servants and the newly recruited corporation employees were also sent to the Federation. It was, at that stage, the Government issued G.O.Ms.No.1921, Agriculture Department, dated 8.11.1983, terminating the lien of the Government servants and made them to get absorbed in the corporation/federation. It was, at this juncture, several employees, who are originally the Government servants, filed writ petitions before this Court being W.P.No.11943 of 1986 and other cases.

2. In view of the constitution of the Tribunal, the writ petitions were sent to the Tribunal and re-numbered as Transfer Applications. The Tribunal decided the matter in favour of the employees on the ground that a Government servant cannot be forced to snap his lien with the Government without his consent. Aggrieved by the same, the respondent-State filed an appeal before the Supreme Court and the matters were dealt with by the Supreme Court in Civil Appeal Nos.1387 to 1395 of 1993. The arguments raised in the present writ petition were also advanced before the Supreme Court and the Supreme Court allowed the State appeal. The following passages found in the said judgment of the Supreme Court may be usefully extracted below:-

"We agree with Mr.Chidambaram that a government servant cannot be deprived of his status as a "civil servant" without his consent. This proposition of law is unexceptionable. But at the same time the facts and circumstances of this case leave no manner of doubt that the only course left for the respondents - employees is to accept the service under the Federation as permanent employees. The Corporation was created in the year 1972 and 762 posts were transferred to the Corporation by the State Government. Obviously, all these posts constituted the Dairy Development Department of the Government. There may not be as many posts left in the Dairy Development Department to accommodate these employees who decline to opt for permanent absorption in the service of the Federation. Therefore, the only practical way to solve the problem at this point of time and in the special facts and circumstances of this case, would be to hold that all the employees shall be deemed to have opted to join the service of the Federation. We are, however, inclined to examine the question as to whether the terminal benefits offered in GO 1921 are reasonable or are arbitrary in any respect.

..

We may now examine the terminal benefits offered in GO 1921. We have already enumerated in detail the said benefits in earlier part of the judgment. We are of the view that except the provisions regarding family pension and application of Future Liberalised Pension Rules (item 3(c) and 3(f) of GO 1921) all other provisions of the said GO are

reasonable and no fault can be found therewith. We are of the view that once an optee for permanent absorption in the Federation is entitled to prorata pension in respect of the period of service rendered by him under the Government, he is also entitled to the benefit of the family pension. We, therefore, strike down para 3(c) of the GO and direct that the respondents shall be entitled to the benefit of family pension on the basis of prorata pension given to them. Similarly, we see no justification why the employees, after their permanent absorption in the service of the Federation, be not given the benefit of further liberalisation of pension rules, if any, in respect of the pension which they are already drawing from the Government. This provision is also on the face of it arbitrary. We, therefore, strike down para 3(f) of the said GO and held that the employees after their permanent absorption with the Federation shall be entitled to the benefit of the liberalised pension rules, if any, in future. All other provisions of the GO 1921 are reasonable and as such we uphold the same.

We make it clear that all those employees who have retired after February 1, 1903 they shall be deemed to have opted to join the service of the Federation permanently and, as such, they would be entitled to terminal benefits in terms of GO 1921."

3.It is significant that the petitioner was not a party in those cases before the Supreme Court, but she preferred to stay out of that litigation and at the tail end of her service, viz., at the age of 57 years, she filed the present O.A. being O.A.No.3145 of 1998 before the Tamil Nadu Administrative Tribunal seeking for a direction to treat her as a Government servant on being voluntarily retired from service on 30.6.93 and to allow the consequential benefits. It must be noted here that the petitioner's request for voluntary retirement was accepted by the federation and not by the Government. Anyhow, the petitioner filed the O.A. raising identical contentions, which were dealt with by the Supreme Court in the judgment referred to above.

4.In view of the abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P.No.34625 of 2006. On notice from the Tribunal, the respondent-State has filed a detailed counter-affidavit dated 24.2.99 rejecting the request of the petitioner. After relying heavily on the judgment of the Supreme Court, it is stated that the State Government did not give any option forum for the employees to opt to serve in the Government service or to get absorbed permanently in the Federation. On the other hand, there are no posts left in the Milk Dairy project and therefore, there is no option for the petitioner except to serve the Federation. It is also stated in paragraph 22 that the interim order of the Supreme Court is fully applicable to the petitioner on the question

of release of terminal benefits upto 31.1.1981 in accordance with the rules applicable to Government servants read with G.O.Ms.No.1921, Agriculture department, dated 8.11.1983. It was further contended that the petitioner's attempt to file a fresh O.A., that too at the tail end of her service, is nothing but an attempt to re-interpret the order of the Supreme Court by the Tribunal and the attempt of the petitioner cannot be countenanced.

5.Though the learned counsel wanted to argue once again elaborately, this Court, as being bound by the directions of the Supreme Court in the identical matters, is not inclined to hear the arguments of the petitioner except by stating that the petitioner's case is not different from the persons, who are covered by the judgment of the Supreme Court. It is also admitted that the petitioner is receiving pension as a Government servant, though at a reduced rate because of the limited service that has been counted while he was in Government service.

6.In the light of the same, the writ petition will stand dismissed. However, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1. The Secretary to Government,
Government of Tamil Nadu,
Animal Husbandry and Fisheries Department,
Fort St. George, Chennai.
2. The Commissioner for Milk Production
and Dairy Development Department,
Madhavaram Milk Colony, Chennai.
3. The Managing Director, Tamilnadu
Co-operative Milk Producers'
Federation Ltd., Chennai.

1 cc To Mr.R.Madanagopal, Advocate, SR.43894

1 cc To Mr.K.U.Srinivasa Raghavan, Advocate, SR.43808

W.P.No.34625 of 2006

PUR(CO)
SRA(11/9/2009)