

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-06-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 2928 of 2012

Dr. P. Shakunthala
Medical Officer
Tamil Nadu Electricity Board
AE Type Quarters
No.2/262, Kundah Bridge Post
Nilgiris District

... Petitioner

Versus

1. Tamil Nadu Electricity Generation and
Distribution Corporation
Represented by its Chairman
Electricity Avenue
No.144, Anna Salai
Chennai - 600 002

2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation and
Distribution Corporation
Electricity Avenue
No.144, Anna Salai
Chennai - 600 002

3. The Superintending Engineer
Tamil Nadu Electricity Generation and
Distribution Corporation
Kundah Generation Circle
Nilgiris District - 643 219

4. Dr. M.V. Indumathi
Medical Officer, TNEB
Tamil Nadu Electricity Generation and
Distribution Corporation
No.144, Anna Salai
Headquarters Dispensary
NPKRR Maaligai
Chennai - 600 002

5. Dr. B.R. Vasanthi
Medical Officer, TNEB
Generation Circle
Minparai Post
Kadamparai - Pollachi
Coimbatore District

6. Dr. A. Starlet Mary
Medical Officer, TNEB
Basin Bridge Dispensary
Gas Turbine Power Station
Chennai

7. Dr. S. Mahalakshmi
Medical Officer, TNEB
Tirunelveli Electricity Generation Circle
Tirunelveli

... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order bearing ref No.105570/532/G18/G141/2011 dated 02.12.2011 passed by the second respondent and quash the same and consequently to direct the 1st and 2nd respondent to place the petitioner over and above respondent Nos. 4 to 7 in the seniority list as well as in the panel for the post of Chief Medical Officer.

For Petitioner : Mr.V.Govardhanan

For Respondents : Mr.P.R.Dilip Kumar for RR1 to 3
Mr.S.N.Ravichandran for R4
Mr. B. Manoharan for R7
No Appearance for R5 & R6

ORDER

The petitioner calls in question the proceedings dated 02.12.2011 of the second respondent and after quashing the same seeks for a consequential direction to the respondents 1 and 2 to place her over and above respondent Nos. 4 to 7 in the seniority list as well as in the panel drawn for promotion to the post of Chief Medical Officer.

2. The petitioner joined as Medical Officer on contract basis on 17.07.1995 in the respondents Electricity Board. Subsequently, the service of the petitioner was regularised by an order dated 11.07.1997. However, she was not given posting order immediately but it was issued only on 19.08.1997 i.e., after 38 days from the date of passing the order of regularisation on 11.07.1997. The petitioner has given several representations to the official respondents to count the period of service rendered by her on contract basis. One such representation was made by the petitioner on 25.09.1997, but it was rejected by the second respondent on 13.11.1997 on the ground that at the time of regularising her service, it was clearly indicated that the period of service rendered by her on contract basis will not be counted for the purpose of counting her length of service.

3. It is the specific contention of the petitioner that the respondents 4 to 7 are her juniors as they have entered into service on 23.07.1997, 29.07.1997, 30.07.1997 and 01.08.1997 respectively, whereas her service was regularised by an order dated 11.07.1997. However, while preparing a seniority list on 20.11.1999 in the cadre of Medical Officers, the second respondent shown the respondents 4 to 7 at serial No. 12 to 15, whereas the petitioner's name was included in serial No.18 of the said list. Immediately, on 15.12.1999, the petitioner has given her objections for drawal of such seniority list. On 24.11.2004, the petitioner also made a detailed representation to the second respondent to revise the seniority list inter alia to count the period of service rendered on contract basis also along with the regular service rendered by her. This representation dated 24.11.2004 was rejected by the second respondent on 07.02.2005. Thereafter, on 02.12.2011, the second respondent called upon the third respondent to send the particulars of the Medical Officers for promotion to the post of Chief Medical Officers and it was also furnished by the third respondent. In this context, the petitioner has submitted a representation dated 19.12.2011 to revise the seniority. As there was no response, the petitioner has come forward with this writ petition challenging the seniority list dated 02.12.2011 by the second respondent.

4. The learned counsel appearing for the petitioner vehemently contended that the service of the petitioner was regularised by an order dated 11.07.1997. Admittedly, there was a delay in communicating the order to the petitioner which led to the delay in joining the regular post by the petitioner. However, for all purposes, the date of joining the regular service of the petitioner has to be construed as 11.07.1997 and if it is taken into account, the respondents 4 to 7 are juniors than the petitioner. Even though the petitioner has submitted an objection on 19.12.2011 for drawal of the seniority list in which the petitioner was placed below the respondents 4 to 7, it was not at all considered by the second respondent. In other words, according to the learned counsel for the petitioner, the date on which the service of the petitioner was regularised alone is material and not the date on which the petitioner joined duty after receiving the posting order.

5. The writ petition was opposed by the respondents. The learned counsel appearing for the respondents 1 to 3 would contend that the service of the petitioner was regularised by an order dated 11.07.1997 and it was immediately forwarded to the concerned authority for serving it on the petitioner. There was no delay in issuing the posting order and if it all it is attributable due to administrative reasons. In any event, the petitioner cannot assert any claim for seniority on the basis of the date of the order regularising her service and her seniority can be reckoned only from the date of joining the regular post.

6. The learned counsel for the fourth respondent, relying on the counter affidavit of the fourth respondent would contend that the fourth respondent was appointed as Medical Officer on 30.05.1997 through direct recruitment after her name was sponsored by the employment exchange. Subsequently, the fourth respondent was issued posting order on 14.07.1997 and on 23.07.1997 she joined the post of Medical Officer. On the contrary, the petitioner joined the regular service as Medical Officer only on 19.08.1997, much after the fourth respondent joined the service. Further, it is stated by the learned counsel for the fourth respondent that the fourth respondent was given Additional charge as Chief Medical Officer by a proceeding dated 01.04.2011 and she discharged such work as Additional Chief Medical Officer. Subsequently, by a proceeding dated 16.02.2012, the second respondent passed an order permitting the fourth respondent to hold the full additional charge of Chief Medical Officer. While she was holding the post of Additional Chief Medical Officer, the second respondent has appointed one Tmt. Dr. S. Karkuzhali by deputation as Chief Civil Surgeon from 17.05.2013. Challenging the same, the fourth respondent has filed WP No. 15361 of 2013 and obtained an order of interim stay on 10.06.2013. Thereafter, the second respondent cancelled the deputation deputing the above said Dr. Karkuzhali. At any rate, the petitioner cannot be construed as senior than the fourth respondent on the basis of an order passed for regularising her service. According to the learned counsel for the fourth respondent, the passing of an order regularising the service of the petitioner will not confer her seniority but her seniority is countable only from the date on which she joined the regular post. The learned counsel for the fourth respondent therefore prayed for dismissal of the writ petition.

7. I heard the learned counsel on either side and perused the material records placed. The grievance of the petitioner is two-fold. At the first blush, the petitioner claims that the period during which she rendered service on contract basis also has to be counted along with her regular service and if it is counted, her seniority has to be fixed much above the respondents 4 to 7. This submission of the petitioner cannot be countenanced. In fact, such a claim was made by the petitioner on 25.09.1997 and it was rejected by the second respondent by a proceeding dated 13.11.1997, which reads as follows:-

"With reference to the representation 1st cited, Dr. P. Sakunthala, Medical Officer is informed that her services were regularised subject to the condition that the period of contract service will not be taken into consideration. Having accepted to the condition stipulated in the appointment order and joined on regular basis, her request cannot be considered as the conditions will remain unaltered as per B.P. (FB) No.20 (Admin) dated 11.07.1997. Hence, her request is rejected."

8. Admittedly, the petitioner has not challenged the order of rejection dated 13.11.1997 passed by the respondent.. Thereafter, on 24.11.2004, a similar representation was made by the petitioner and it was once again rejected on 07.02.2005 by the second respondent which is extracted below:-

"Tmt. P. Sakunthala, Medical Officer, General Circle, Kundah is informed that her request for regularisation of the services rendered on contract basis is not feasible of compliance."

9. The petitioner has also not subjected the order dated 24.11.2004 of the second respondent, thereby, the period of service rendered by the petitioner on contract basis was excluded from being counted along with her regular service.

10. In the present writ petition, the petitioner has challenged the seniority list drawn by the second respondent for promotion to the post of Medical Officer on 02.02.2011. Immediately after drawal of such seniority, the petitioner has submitted an objection on 19.12.2011. As mentioned above, earlier, the petitioner sent a representation and it was rejected by an order dated 07.02.2005. Therefore, it is futile on the part of the petitioner to claim for inclusion of the period of service rendered by her on contract basis along with her regular service.

11. The next limb of the grievance of the petitioner is that her service was regularised by an order dated 11.07.1997, but she was given posting order only on 19.08.1997 and therefore, for all purpose, her seniority in the cadre of Medical Officer has to be reckoned as 11.07.1997, being the date of passing the order. It is further stated that the delay in sending the posting order is not attributable on her part and therefore, if her date of entry into regular service is taken into account as 11.07.1997, her seniority has to be placed in the seniority list over and above the respondents 4 to 7.

12. It is well settled proposition of law that a right to assert seniority will arise only from the date of joining service. The date of passing the order regularising the service of the petitioner cannot be construed as the date of entry into regular service. It would amount to christening name to an unborn child without even knowing the gender of such child to be born. Furthermore, the petitioner was working on contract basis and the respondents 4 to 7 were recruited directly to the post of Medical Officer through employment exchange. At the time of appointment of the respondents 4 to 7, the petitioner, being an employee on contract basis, is fully aware of their appointment. However, for the reasons best known the petitioner did not challenge their order of appointment. The petitioner having failed to challenge the order of appointment of the respondents 4 to 7 is estopped from questioning the drawal of the seniority in which the name of

the petitioner was placed below the respondents 4 to 7. However, when the second respondent called for the particulars of the Medical Officers for consideration of promotion on 02.12.2011, the petitioner has submitted a representation dated 19.12.2011 to the official respondents and contending that such representation has not been considered, he has come forward with this writ petition.

13. The learned counsel for the petitioner vehemently contended that the posting order has been sent to the petitioner belatedly and such delay cannot be put against the petitioner. This submission of the counsel for the petitioner cannot be countenanced. It is seen from the records that the order dated 11.07.1997, regularising the service of the petitioner was passed by the second respondent. At the time of passing such order, the petitioner was working on contract basis at Kundah, The Nilgiris District. Therefore, it was forwarded to the petitioner through the Superintending Engineer, Kundah, The Nilgiris District, who in turn served the posting order on the petitioner by a proceedings dated 19.08.1997. As rightly pointed out by the learned counsel for the respondents 1 to 3, such delay in communicating the order dated 11.07.1997 to the petitioner, if at all, can be attributed due to administrative reasons. In any event, the delay in serving the posting order has nothing to do with the claim of the petitioner to assert seniority from the date of passing the order of regularisation on 11.07.1997. Therefore, I do not find any reason to grant the relief sought for in this writ petition. Accordingly, the writ petition fails and it is dismissed. No costs. Consequently, connected MP Nos. 1 and 2 of 2012 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Chairman
Tamil Nadu Electricity Generation and
Distribution Corporation
Electricity Avenue
No.144, Anna Salai
Chennai - 600 002

2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation and
Distribution Corporation
Electricity Avenue
No.144, Anna Salai
Chennai - 600 002

3. The Superintending Engineer
Tamil Nadu Electricity Generation and
Distribution Corporation
Kundah Generation Circle
Nilgiris District - 643 219

+1cc to M/s.Row and Reddy, Advocate, S.R.No.30429
+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.30384
+1cc to Mr.P.R.Dilip Kumar, Advocate, S.R.No.30049

W.P No. 2928 of 2012

BVR(CO)
CA(22/06/2016)



WEB COPY