

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.29074 & 27157 of 2012

&

MP.Nos.1 & 1 of 2012

S.Poornachandran ...Petitioner in both WPs.
vs.

1. The Director of Family Welfare,
DMS Annexe,
Chennai-600 006.
2. The Deputy Director,
Medical, Rural Health Services & Family Welfare,
Pudukottai-622 001. ...Respondents both WPs.
3. State of Tamil Nadu,
Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai-600 009. ...3rd respondent in W.P.No.27157 of 2012

Writ Petition 29074/2012 filed under Article 226 of the Constitution of India (i) for issuance of a writ of Certiorari to call for the records relating to the impugned orders passed by the first respondent in Na.Ka.No.4768/FW/N2/2012 dated 11.10.2012 and consequent reliving order passed by the second respondent in Na.Ka.No.471/2012/A1 dated 16.10.2012 and quash the same (W.P.No.29074 of 2012).

(ii) for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in proceedings in Mu.Mu.No.471/2012/A1 dated 20.09.2012 and quash the same insofar as it relates to the petitioner and direct the respondents to confirm the services of the petitioner as Statistical Assistant in the Health and Family Welfare Department with retrospective effect i.e., from 17.10.2007(W.P.No.27157 of 2012).

For Petitioner(in both WPs.) : Mr.Vasudevan
For RR1 & 2(in both WPs.) : Mr.T.M.Pappiah
Special Government Pleader

COMMON ORDER

Writ Petition in W.P.No.29074 of 2012 has been filed seeking for issuance of a Certiorari to call for the records relating to the impugned orders passed by the first respondent in Na.Ka.No.4768/FW/N2/2012 dated 11.10.2012 and consequent relieving order passed by the second respondent in Na.Ka.No.471/2012/A1 dated 16.10.2012 and quash the same.

2.Writ Petition in W.P.No.27157 of 2012 has been filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in proceedings in Mu.Mu.No.471/2012/A1 dated 20.09.2012 and quash the same insofar as it relates to the petitioner and direct the respondents to confirm the services of the petitioner as Statistical Assistant in the Health and Family Welfare Department with retrospective effect i.e., from 17.10.2007.

3.The petitioner was appointed as Block Health Statistician and joined as such on 20.08.1987 at Nellai District. He was posted at various centres and finally promoted and joined duty as Statistical Assistant on 17.10.2007. The promotion of Statistical Assistant(SA) was given to him with a condition that he should pass the departmental test within a period of two years and in case, he did not pass the test from joining as Statistical Assistant, he would be reverted to the feeder category. In this connection, a Government Order was also issued in G.O.(Ms)No.1120, Personnel & Administrative Reforms Department dated 30.10.1984, wherein, it was clarified that the employees who could not pass the departmental test for promotion, should not be below 53 years of age and should have at least attended the test 5 times and such attempts should have been registered in the service register of the employee. According to the petitioner, though he had made 5 attempts to pass the department test between 2009-2011 but, he could not pass the test. However, he was nearing 53 years of age, and therefore, he submitted a representation dated 07.05.2012 to the first respondent requesting for exemption from passing the test.

4.While the matter stood thus, the second respondent had passed an order dated 20.09.2012 stating that he had been directed by the first respondent by proceedings dated 26.07.2012 for recovery of the increments given to the petitioner between 01.10.2009 to 31.08.2010 for the reason that he had not passed the required accounts test. A sum of Rs.70,423/- was sought to be recovered in 21 monthly installments being the payments which were paid to the petitioner when he was working as Statistical Assistant. The said recovery order is also put to challenge in W.P.No.27157 of 2012. This Court, while admitting W.P.No.27157

of 2012, has granted an order of interim stay of recovery. In the meanwhile, the first respondent has issued another order dated 11.10.2012, reverting the petitioner to the post of Block Health Statistician and transferred him to Pudukkottai District. This reversion order was issued which is impugned in W.P.No.29074 of 2012 on the ground that the petitioner had not completed 53 years of age. According to the petitioner, he had completed 52 years, 7 months and three days and therefore, he is entitled to be placed on par with the persons who have completed 53 years of age.

5.Upon notice, Mr.T.M.Pappiah, the learned Special Government Pleader entered appearance on behalf of the first and second respondents and filed counter affidavit. The learned Special Government Pleader would submit that no exemption could be granted to the petitioner, in view of the fact that he is short of 53 years of age and therefore, G.O.(Ms)No.1120, Personnel & Administrative Reforms Department dated 30.10.1984 cannot be applied in this case.

6.Mr.Vasudevan, the learned counsel for the petitioner would strenuously oppose the contention made by the learned Special Government Pleader appearing for the respondents that the petitioner should be afforded an opportunity on par with the other employees who are promoted at 53 years of age. He had completed more than 52 years of age and therefore, the age is to be rounded off to 53 years and the benefit of exemption under G.O.(Ms)No.1120, Personnel & Administrative Reforms Department dated 30.10.1984 has to be extended to the petitioner. The learned counsel would also submit that, in any event, the petitioner, after filing of the writ petition, is completed 53 years of age and therefore, he would be entitled to the benefit of exemption under the said Government Order. According to the learned counsel, the petitioner had submitted applications on 29.03.2016 & 12.07.2017 for considering his case for exemption, but till date, the said applications have not been considered and disposed of. In such circumstances, the learned counsel has alleged that this Court may direct the first respondent to consider the representation made by the petitioner on 29.03.2016, by which date, he had merely completed 53 years of age. Therefore, he would be entitled to be protected by G.O.(Ms)No.1120, Personnel & Administrative Reforms Department, dated 30.10.1984.

7. As regards the other writ petition in W.P.No.27157 of 2012 is concerned, Mr.Vasudevan, learned counsel for the petitioner would submit that in any event, the so-called recovery of excess payment cannot be made and any action on the part of the authorities concerned in lieu of the factual position that the petitioner was offered the post of statistical Assistant and the increments and the allowances

earned by him, was admissible to the said post and therefore, such payment cannot be construed as the excess payment.

8.The learned counsel has relied upon the decision of this Court dated 28.11.2013 in W.P.No.36507 of 2006, in which, this Court has held in similar circumstances that such recovery is invalid.

9.Considering the submissions made by the learned Counsels for the parties, this Court finds that the arguments putforth by the learned counsel for the petitioner that the recovery in the circumstances of the case cannot be countenanced both on law and on facts and therefore, this Court has no hesitation in allowing the writ petition in W.P.No.27157 of 2012.

10.In such circumstances, the recovery order passed by the authorities dated 20.09.2012 is quashed and if any recovery has been made pursuant to the impugned order dated 20.09.2012, the same is to be refunded to the writ petitioner forthwith. As regards the writ petition in W.P.No29074 of 2012 is concerned, since the petitioner has completed 53 years of age, he had submitted applications on 29.03.2016 & 12.07.2017, the first respondent is directed to dispose of the said representations of the petitioner on merits and in accordance with law, after taking note of the completion of 53 years of age by the petitioner on the date when he submitted applications with reference to G.O.(Ms)No.1120, Personnel & Administrative Reforms Department dated 30.10.1984 and grant the benefit of exemption based on the said Government Order, within a period of two months from the date of receipt of a copy of this order.

11.With the above direction, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

dn

To:

1. The Director of Family Welfare,
DMS Annexe,
Chennai-600 006.

2.The Deputy Director,
Medical, Rural Health Services & Family Welfare,
Pudukottai-622 001.

3. Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai-600 009.

+1 CC to The Govt. Pleader sr 61074.

+1 CC to Ms. Vasudevan Priya, Advocate sr 60247.

W.P.No.29074 & 27157 of 2012

SS(CO)
sp(19/09/2017)



WEB COPY