



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.12.2017

PRONOUNCED ON : 19.12.2017

WEB COPY

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

W.P (MD) No. 3436 of 2014

Syed Vali Mian

... Petitioner

vs.

1. The Secretary to the Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2. The Director of Public Health and
Preventive Medicines,
259, Anna Salai,
Thenampettai,
Chennai - 600 006.

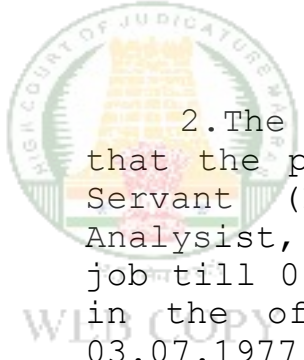
... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to regularize the petitioner's service in the Government service with effect from the date of his first joining the duty ie., on 16.09.1976 so that he would become entitled to claim the retirement benefits and other benefits with effect from the date of as might be re-determined with effect from that date.

For Petitioner	: Mr.M.S.Balasubramania Iyer
For Respondents	: Mr.S.Kumar, Additional Government Pleader.

ORDER

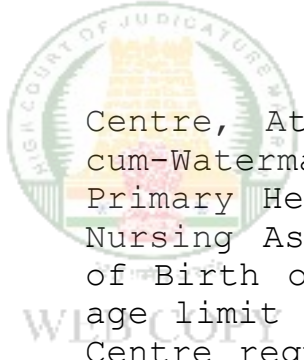
This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to regularize the petitioner's service in the Government service with effect from the date of his first joining the duty ie., on 16.09.1976 so that he would become entitled to claim the retirement benefits and other benefits with effect from the date of as might be re-determined with effect from that date.



2. The learned counsel appearing for the petitioner submitted that the petitioner joined the duty as the Last Grade Government Servant (LGGS) on 16.09.1976 in the office of the Public Analyst, Food Analysis Laboratory, Madurai and continued in the job till 06.05.1977. Then he joined the duty as a sweeper cum LGGS in the office of the Primary Public Health Centre, Athur on 03.07.1977 and continued till 31.10.1978. Thereafter, he joined the duty as a cook-cum-waterman in the said office and was promoted as male nursing Assistant on 01.01.1979 and then, he was promoted as Junior Assistant on 23.04.2003 and retired from service on 31.03.2006. As per G.O.Ms.No.189, dated 12.02.1991, the petitioner was entitled for regularisation of his service from the date of his joining duty in the Government Services ie., on 16.09.1976 and he has also made a representation to that effect. By order made by the Health (Indian Medicine Homeopathy and Family Welfare) Department, referring to G.O.Ms.No.189, dated 12.02.1991, the petitioner's service was regularised only with effect from 01.01.1979 ie., the date on his joining duty as the male nurse, even though the order specifically referred to his joining duty even on 16.09.1976, but it was not regularised with effect from that date. Since it was not explained and no reasons were given as to why the effect of regularisation of his services should be fixed as from the date of that order ie., 12.02.1991. Challenging the order, the petitioner filed a Writ Petition in W.P(MD)No.26688 of 2009 on the file of this Court that his services should be regularised with effect from the date of his joining duty for the first time in the Government Service and he would be entitled to claim the retirement benefits and other benefits from that date onwards and this Court by order, dated 21.08.2012, permitted the petitioner to make a fresh representation to the first respondent for reconsidering his case. Hence, the petitioner issued notice to the respondents, dated 05.12.2012 to reconsider his case and to regularise his services with effect from the date of his joining duty ie., on 16.09.1976 and for re-determining the retirement benefits and other benefits with effect from that date. By letter No.34088/C2-2012-1, dated 06.02.2012, the Secretary to the Government, Health and Family Welfare Department, Chennai, informed that his request was rejected. He would further submit that earlier he had filed a Writ Petition in W.P.No.19690 of 2006 before this Court with a same prayer to consider his representation, dated 24.06.2006 and this Court directed the respondents to consider the representation of the petitioner. Hence, he has filed the present Writ Petition.

3. Even though the learned Additional Government Pleader takes notice for the respondents, no counter has been filed on behalf of the respondents.

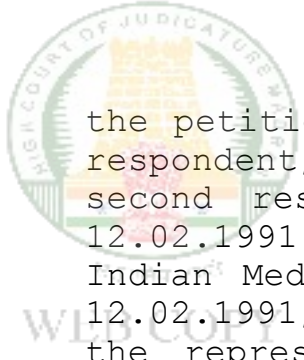
4. It is seen that the petitioner was appointed as a Last Grade Government Servant at Food Analysis Laboratory, Madurai, with effect from 16.09.1976, sponsored by the Employment Exchange and ousted from service on 16.05.1977 for want of vacancy. Again, he was appointed as a sweeper in the Government Primary Health



Centre, Attur, Madurai. Subsequently, he was appointed as cook-cum-Waterman with effect from 04.01.1978, in the Government Primary Health Centre, Viruveedu. Again, he was promoted as male Nursing Assistant Grade-II with effect from 01.01.1979. The Date of Birth of the petitioner was 12.03.1948 and he had crossed the age limit prescribed for the post. The Director of Primary Health Centre requested the Government to relax the relevant rules so as to regularise the services of the individual with effect from 01.01.1980 subsequent to the date of completion of Nursing Assistant Training. The Government had issued G.O.Ms.No.189, Health Indian Medicine Homeopathy and Family Welfare Department, dated 12.02.1991, wherein, relaxed the rules relating to the method of recruitment and age in favour of the petitioner herein so as to regularise his services in the post of Male Nursing Assistant Grade-II with effect from the date of the issue of order.

5.The petitioner has given representation to the respondents, dated Nil, requesting them to regularise his service from 03.07.1977 and also to pay arrears of 14 years. On 18.02.1999, the Government issued G.O.Ms.No.100, Tamil Culture Department, to some other person and the petitioner again sent representations on 04.09.2002 and 24.06.2006 seeking for regular service from the date of his appointment ie., 16.09.1976. Since there was no response from the respondents, he has filed a Writ Petition in W.P (MD)No.19690 of 2006, directing the respondents to regularise the service of the petitioner from the date of appointment ie., 16.09.1976. This Court, by order dated 28.06.2006, has directed that "without going into the merits of the case, suffice it to direct the respondents to consider an pass orders on the representation dated 24.06.2006 on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order" and disposed of the Writ Petition. Again the petitioner has sent a representation, dated 19.10.2009, by citing the order in W.P.No.19690 of 2006, dated 28.06.2006 to the respondent.

6.The Director of Public Health and Preventive Medicine has sent a letter, dated 12.11.2009, stating that "Government in G.O.Ms.No.189, Health Indian Medicine Health and Family Welfare Department, dated 19.02.1991, had regularised the services of A.Syed Valimian/the petitioner herein in the post of Male Nursing Assistant with effect from the date of issuance of the Government Order. Hence, the services of the individual could not be regularised from the date of his initial appointment ie., with effect from 16.09.1976. In the light of the above order, the request of the individual could not be feasible of compliance" and a copy of the same was marked to the petitioner and the same was also challenged by the petitioner by filing a Writ Petition in W.P(MD)No.26688 of 2009. When the said writ petition was taken up for consideration on 21.08.2012, the learned counsel appearing for the petitioner therein submitted that though the prayer in the present writ petition is for a larger relief, it would suffice, if

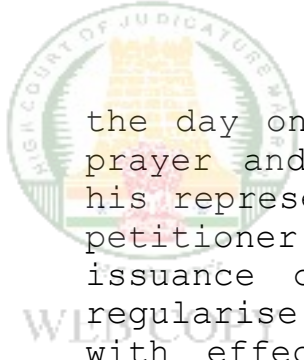


the petitioner is permitted to make a representation to the first respondent, with regard to his regularisation in service, in the second respondent Department, from 01.01.1980 instead of from 12.02.1991 as per the Government Order in G.O.Ms.No.189, Health, Indian Medicine, Homeopathy and Family Welfare Department, dated 12.02.1991, and if the first respondent is directed to consider the representation to be submitted by the petitioner and pass appropriate orders thereon, within a specified period and this Court has also considered the limited prayer sought for by the learned counsel for the petitioner and permitted the petitioner to make a representation to the first respondent and directed the first respondent to dispose of the same, on merits and in accordance with law, within a period of four weeks.

7.The petitioner has once again has given a representation to the respondents on 05.12.2013 and the first respondent in its letter, dated 12.02.2013, has stated that "as per Personnel and Administrative Reforms (Per.s) Department U.O.Note No.61800/Per.s/93-1, dated 10.09.1993 in case where relaxation is made to regularise the irregular appointments, the benefit of regularisation should be given from the date of issue of order only. In your case relaxation of Rule 2 relating to method of appointment and Rule 4 relating to age have been made and accordingly orders were issued vide G.O.Ms.No.189, dated 12.02.1991 to appoint the petitioner regularly as Nursing Assistant Grade-II with effect from the date of issue of order".

8.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

9.It is seen from the records that the petitioner was appointed as a Last Grade Government Servant at Food Analysis Laboratory, Madurai on 16.09.1976 and ousted from service on 16.05.1977. Again, he was appointed as a sweeper in the Government Primary Health Centre, Attur, Madurai and subsequently, he was appointed as cook-cum-Waterman with effect from 04.01.1978, in the Government Primary Health Centre, Viruveedu. Again, he was promoted as Male Nursing Assistant Grade-II with effect from 01.01.1979 and only based on his representation, the relevant rules regarding the method of appointment and age were relaxed, even though he crossed the age limit and his services were regularised as Male Nursing Assistant Grade-II with effect from the date of issue of the order ie., 12.02.1991 and his request was considered and he was appointed as regular Male Nursing Assistant Grade-II, from that date. Though the Writ Petition in W.P(MD) No.19690 of 2006 filed by the petitioner was disposed of by this Court on 28.06.2006, to consider his representation, the same was rejected on 12.11.2009 and the rejection order was again challenged by way of Writ Petition in W.P(MD)No.26688 of 2009 and the same was also disposed of by this Court to consider the representation of the petitioner and the first respondent/Health and Family Welfare Department by letter No.34086/C2/2012-1, dated 06.03.2013, had rejected the request of the petitioner. The rejection order has not been challenged by the petitioner. From



the day one, he has been approaching the respondents with a same prayer and filing Writ Petitions one after another, to consider his representation and his representations were also rejected. The petitioner has filed the present Writ Petition seeking for issuance of a Writ of Mandamus, directing the respondents to regularise the petitioner's services in the Government Service with effect from the date of his first joining duty ie., on 16.09.1976 and this Court is not inclined to entertain the Writ Petition, since an order has been passed on merits, while passing G.O.Ms.No.189, wherein the petitioner's age and other relaxation have been given to him while he was regularised after his completion of Nursing Assistant Training as a Nursing Assistant Grade-II with effect from the date of issuance of Government Order.

10.The petitioner has not challenged the said G.O.Ms.No.189, Health Indian Medicine Homeopathy and Family Welfare Department, dated 12.02.1991 and this Court is not inclined to entertain this Writ Petition as devoid of merits, since for the same cause of action, he has filed three Writ Petitions and the same does not require any indulgence by this Court as there is no merit in the pleadings. Hence, the prayer of the petitioner cannot be entertained and the Writ Petition is liable to be dismissed.

11.Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.

2. The Director of Public Health and
Preventive Medicines,
259, Anna Salai,
Thenampettai, Chennai - 600 006.

+ 1 cc TO Mr.M.S.Balasubramania Iyer, Advocate in SR No. 93524
+ 1 cc TO The Special Government Pleader in SR No. 93814

Ps

AE/SV MMS/SAR1/08.01.2018/5P/5C