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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.[MD].No.1093 of 2016

and

C.M.P.(MD).No.6604 of 2016

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

2.The Director of Medical and Rural Services,
No.359, Anna Salai,
Chennai - 600 006.

... Appellants/Respondents 1 & 4

Vs.

1.Harry Nihal Nayagam ... 1st Respondent/Petitioner

2.The Accountant General (Accounts &
Entitlements), Office of the Accountant
General, No.361, Anna Salai,
Chennai - 600 018.

3.The Assistant Accounts Officer,
(Accounts and Entitlements),
Office of the Accountant
General, No.361, Anna Salai,
Chennai - 600 018.

... 2nd & 3rd Respondents/
Respondents 2 & 3

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, against the order passed by the learned Single Judge, dated 26.07.2011 in W.P.(MD)No.10033 of 2010.

For Appellants : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

For R1 : Mrs.J.Anandhavalli

For R2 and R3 : Mr.P.Gunasekaran

* * *

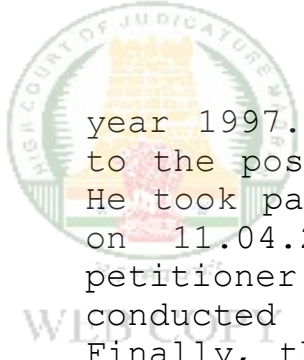
JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This Writ Appeal is directed against the order, dated 26.07.2011 made in W.P.(MD)No.10033 of 2010, filed by the first respondent herein.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The first respondent herein, acquired B.D.S., degree in the



year 1997. He applied to TNPSC, for being selected and appointed to the post of Assistant Surgeon (Dental) for the year 1997-1998. He took part in the selection process. The results were published on 11.04.2000. However, the result in respect of the writ petitioner was withheld, on account of the verification exercise conducted in respect of the writ petitioner's community status. Finally, the results that were originally withheld, were announced only on 19.02.2003. Vide communication dated 19.02.2003, the writ petitioner was informed that he was selected provisionally for appointment to the post of Assistant Surgeon (Dental) in the Tamil Nadu Medical Services 1997-1998. He was directed to await further communication from the Government, with regard to the production of certificate of Physical Fitness and for formal order of appointment. Such an order of appointment came to be issued vide G.O.3(D).No.19, dated 04.11.2003.

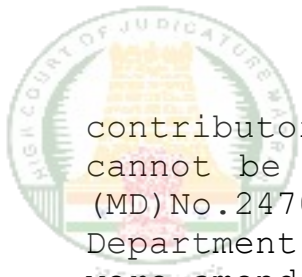
3. The writ petitioner joined service on 12.11.2003 and later he was regularised. Since the writ petitioner actually joined duty only on 12.11.2003, he was placed under the Contributory Pension Scheme. Only those who had joined Government service prior to 01.04.2003 would be under the old pension scheme. Those who joined later would be under Contributory Pension Scheme only. The writ petitioner, therefore submitted a representation for being placed under the old pension scheme. The said request was rejected by the Accountant General, Anna Salai, Chennai, vide order dated 08.12.2008. The same was challenged by the writ petitioner by filing W.P(MD)No.10033 of 2010 and the same came to be allowed by order dated 26.07.2011.

4. Aggrieved by the same the Government has filed the present writ appeal.

5. Heard the learned Additional Government Pleader and also the learned Counsel for the writ petitioner as well as the learned Counsel for the official respondents.

6. The learned Additional Government Pleader appearing for the appellants as well as the Standing Counsel for the official respondents pointed out that the issue is no longer *res integra*. The Division Bench of this Court in W.A.(MD)No.217 of 2011, by order dated 19.06.2014, had held that selection is one thing, appointment is another. It is the actual appointment which alone will decide the entitlement of the appointee. 01.04.2003 is the cut off date. Thereafter, the Division Bench observed that the fall of guillotine is unavoidable. The Division Bench specifically observed that if for any reason, the appointment got delayed, still there is no way of escaping from the legal consequence.

<https://hcservices.ecourts.gov.in/hcservices>
7. The Division Bench of this Court by order dated 10.07.2014, in W.P.(MD)No.856 of 2014 has held that if on the date of joining, the earlier pension scheme was not in force and the subsequent the



contributory pension scheme has come into effect, the appointee cannot be placed under the old pension scheme. This Court in W.P (MD)No.2470 of 2013, had upheld G.O.No.259, Finance (Pension) Department, dated 06.08.2003, whereby the Tamil Nadu Pension Rules were amended.

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8. Since the writ petitioner was formally appointed and joined the post of Assistant Surgeon (Dental) only after 01.04.2003, there is no way his claim could be accepted. Following the aforesaid earlier Division Bench decisions of this Court, this Court has to necessarily set aside the order dated 26.07.2011 made in W.P(MD)No.10033 of 2010 and allow this Writ Appeal.

9. This Writ Appeal is accordingly allowed and the order in W.P(MD)No.10033 of 2010 dated 26.07.2011 is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Department of Health and Family Welfare,
Fort.St.George,
Chennai - 600 009.
- 2.The Director of Medical and Rural Services,
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Chennai - 600 006.
- 3.The Accountant General (Accounts &
Entitlements), Office of the Accountant
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General, No.361, Anna Salai,
Chennai - 600 018.

+1cc to Mr.P.GUNASEKARAN, Advocate, SR.72845

+1cc to M/S.Special Government Pleader, SR.73208

W.A. [MD].No.1093 of 2016

17 August 2017