

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.3193 of 2008

National Failaria Control Program Mazdoor,
Head Mazdoor in Tamil Nadu,
Rep, by the President
G.Vinayagam,
No.1/4, Rayyanappa Street,
Nandiyalam,
(via) Rathinagiri,
Vellore District.

.... Petitioner

Vs.

1. The Director of Health Service,
Office of the Director of Health Service,
Chennai - 600 018.
2. Deputy Director of Health Service,
Office of the Directorate of Health Service.
Vellore.
3. The State of Tamilnadu,
Rep.by the Commissioner and Secretary
to Government,
Department of Health and Family Welfare.

...

Respondents

[R3 impleaded as per order dated 01.07.2010
in M.P.No.1 of 2010 in W.P.No.3193 of 2008]

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order bearing No.9697/எயி/2006-2004 dated 25.05.2007 of the proposed Respondent and order bearing Na.Ka.No.177960/யு2/இரு 1/99 dated 03.07.2007 of the 1st respondent and quash the same, and consequently, direct the respondents to regularize the service of the petitioner's members from a retrospective date on par with the workers of Malaria Eradication Program as per the Government Order Ms.No.496 (Health and Family Welfare Department) dated 09.10.1997.

[Prayer amended as per order dated 01.07.2010
in M.P.No.2 of 2010 in W.P.No.3193 of 2008]

For Petitioner :Mr.G.Saravanan

For Respondents :Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

ORDER

This Writ Petition was initially filed to issue a Writ of Certiorarified Mandamus, calling for the records bearing No.177960/g{j2/,U1/99 dated 03.07.2007 of the 1st respondent and to quash the same, and consequently, to direct the respondents to regularize the services of the petitioner members from a retrospective date on par with the workers of Malaria Eradication Program, as per the Government Order No.496 dated 09.10.1997. Later, as per the order dated 01.07.2010, the State of Tamilnadu, represented by the Commissioner and Secretary to Government, Department of Health and Family Welfare, was impleaded as 3rd respondent, and hence, the prayer was further amended as follows.

"To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order bearing Na.Ka. No.177960/g{j2/,U1/99 dated 03.07.2007 of the 1st respondent and the order bearing No.9697/AB1/2006-4 dated 25.05.2007 of the 3rd respondent and quash the same, and consequently, direct the respondents to regularize the service of the petitioner's members from a retrospective date on par with the workers of Malaria Eradication Program as per the Government Order Ms.No.496 (Health and Family Welfare Department) dated 09.10.1997"

2. The petitioner members are Mazdoor and Staff workers, working for the past 20 years and they have been engaged by the Department to collect samples of blood from the Failaria affected people and also to help in the research program of eradication of failaria diseases. They were initially engaged on contingent basis and subsequently, regularized after putting 6 to 10 years of service.

3. The petitioner would contend that almost all the members who were working as Mazdoor were on the verge of attaining the age of retirement and after retirement, they would not be

entitled to receive full pension for the reason that their services were regularized only from the subsequent date and not from the date of appointment or entry into the service. Further, the petitioner would contend that the members who were working in another similar program in eradicating malaria disease, were issued G.O.M.S.No.1455 dated 29.07.1987 and their services were regularized with effect from 01.07.1966 instead of 29.07.1987 and the same yardsticks were not applied to the Failaria workers though they come under the same division.

4. The petitioner would further contend that aggrieved by the non consideration on par with the malaria workers, the petitioner's association who are all Failaria workers submitted various representations, to which, the 1st respondent, by the impugned order dated 03.07.2007, rejected the request of the petitioner's association on the ground that the members who were regularized by various Government Orders could not be considered after 15 to 20 years without taking into account the Government orders issued to the workers, working in Malaria Eradication Programme, who were regularized from 01.07.1996 and give benefits or arrears from 29.07.1987. Hence, this Writ Petition.

5. Initially, this Writ Petition was filed only to challenge the order dated 03.07.2007 and subsequently, amended by challenging both the orders dated 03.07.2007 of the 1st respondent and 25.05.2007 of the 3rd respondent.

6. The respondents filed a counter affidavit by contending that the Failaria Mazdoors were originally appointed on contingency basis and subsequently, brought under the regular establishment during the years 1975, 1976, 1978 and 1986. The Government had issued orders for retrospective regularization of services to 258 Mazdoors and 15 Lab boys under Malaria Programme, and based on which, representations were sent by the petitioner members belatedly after 15 to 20 years. Based on the representations, proposals have been sent to the Government for considering the request for retrospective regularization of services of Failaria Mazdoor from the date of their appointment under contingencies, but, the Government, by its letter dated 25.05.2007, rejected the same by stating that the request cannot be considered and it cannot be reopened after a lapse of 15 to 20 years.

7. The respondents would further contend that the petitioner members have been regularized on various dates during the years 1975, 1976, 1978 and 1986, and no objections were raised by the petitioner at the relevant point of time with regard to the date

of regularization. After a period of 20 years, on the verge of superannuation, the petitioner members cannot seek regularization of their services on par with the workers of Malaria Eradication Program, hence, sought for dismissal of this Writ Petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

9. On a careful consideration of the prayer and the contents furnished by the petitioner in the affidavit of the Writ Petition, the petitioner had stated that almost all the members, who were working as Mazdoors, were in the verge of attaining the age of superannuation when the Writ Petition was filed in the year 2008. But, the petitioner has not chosen to furnish the details of the members except annexing an incomplete copy in the typed set of papers, from which, it could be only seen that a total number of 57 members who had been regularized on various dates commencing from 01.07.1966 till 03.05.1987. However, the petitioner has filed this Writ Petition in the year 2008 on behalf of its members and most of them have been retired.

10. Further, the Writ Petition was filed only by the petitioner association and not by its members. It is clear that an association cannot maintain a Writ Petition under Article 226 of the Constitution of India, that too, in the service matters, affecting individual right of each and every workers. When individual right is affected, especially in the service matters where they claim regularization on the ground that they have been deprived of regularization from the date of original appointment, the Writ Petition ought to have been filed individually, and each and every worker ought to have made a petition and not by the association itself. The association cannot claim collective representation when individual right is affected in service matters. Therefore, the Writ Petition filed by the association, as such, is not maintainable, as the Writ Petition relates to the individual right to get regularized from the date of appointment, which cannot be exposed or expressed by the association.

11. Apart from this, the Writ Petitioner being an association, who claims that the members of the association are affected, has not even furnished a bit of details in their affidavit filed in support of the Writ Petition with regard to the number of association members or even their personal details, and the affidavit is bereft of any information with

regard to the details of the members. However, the association can only be directed to make those members to approach the respondents, so that, the respondents can decide the issue if it is similar to the programme in eradicating malaria disease, where Government issued G.O.M.S.NO.1455 dated 29.07.1987 and regularized the service of the workers of Malaria Eradication Program with effect from 01.07.1966 instead of 29.07.1987 and the same yardstick was not applied to the Failaria workers, though they also come under the same division.

12. Under these circumstances, this Court is not inclined to interfere with the orders passed by the respondents and accordingly, the Writ Petition is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

raja
To

1. The Director of Health Service,
Office of the Director of Health Service,
Chennai - 600 018.
2. The Deputy Director of Health Service,
Office of the Directorate of Health Service.
Vellore.
3. The Commissioner and Secretary to Government,
The State of Tamilnadu,
Department of Health and Family Welfare.

+1 CC to The Govt. Pleader sr 89927.

W.P.No.3193 of 2008

MR(CO)
SP(04/03/2019)

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