

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06-09-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.22730 of 2014

And

W.M.P.No.22330 of 2016

Dr.K.Soundararajan

.. Petitioner

Vs.

The State of Tamil Nadu,
Represented by the Principal Secretary to
Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-9.

.. Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to his order made in letter No.53066/B2/2010-5 dated 7.5.2013 and quash the same, consequently to direct the respondent to count the past services rendered by the petitioner for the period from 2.6.2000 to 13.7.2006 under local body for the purpose of pay protection and all consequential service benefits, such as arrears of pay and allowances, etc.

For Petitioner : Mr.R.Malaichamy

For Respondent : Mr.D.Raghu,
Government Advocate.

O R D E R

The order of rejection passed by the respondent in proceedings dated 7.5.2013 for grant of pay protection to the writ petitioner in respect of the services rendered by him prior to his appointment as Assistant Surgeon through Tamil Nadu Public Service Commission, is under challenge in this writ petition.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner was initially serving as a Medical Officer in the Panchayat Union Dispensary, Vendakottai. However, the writ petitioner appeared for selection to the post of Assistant Surgeon through Tamil Nadu Public Service Commission and selected and thereafter appointed as Assistant Surgeon.

3. The grievance of the writ petitioner is that the pay protection must be given taking into account the services rendered by him as Medical Officer in Panchayat Union Dispensary at Vendakottai.

4. The learned Government Advocate, appearing on behalf of the respondent, states that the writ petitioner undoubtedly has served as Medical Officer in Panchayat Union Dispensary. However, his appointment as Assistant Surgeon was by way of direct recruitment through Tamil Nadu Public Service Commission and therefore, his earlier services can be counted only for the purpose of grant of pensionary benefits and in respect of pay protection, the said services cannot be taken into account as his appointment as Assistant Surgeon is by way of direct recruitment to different services.

5. It is an admitted fact that the past services rendered by the writ petitioner as Medical Officer notified has already been taken into account for the purpose of grant of pensionary benefits and in this regard, the Government issued G.O.(D).No.889, Health and Family Welfare Department, dated 3.9.2010.

6. Thus the services rendered by the writ petitioner earlier were counted as qualifying services for the purpose of grant of pension. Pay protection cannot be granted in view of the fact that the writ petitioner was appointed as Assistant Surgeon by way of direct recruitment through Tamil Nadu Public Service Commission. Thus, the writ petitioner is bound by the scale of pay as notified in the Tamil Nadu Public Service Commission and as per the Rules attached to the post of Assistant Surgeon.

7. This being the factum of the case, the benefit as per the Rules, has already been extended to the writ petitioner and in respect of pay protection, the order impugned dated 7.5.2013 is in accordance with law and there is no infirmity as such.

8. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn

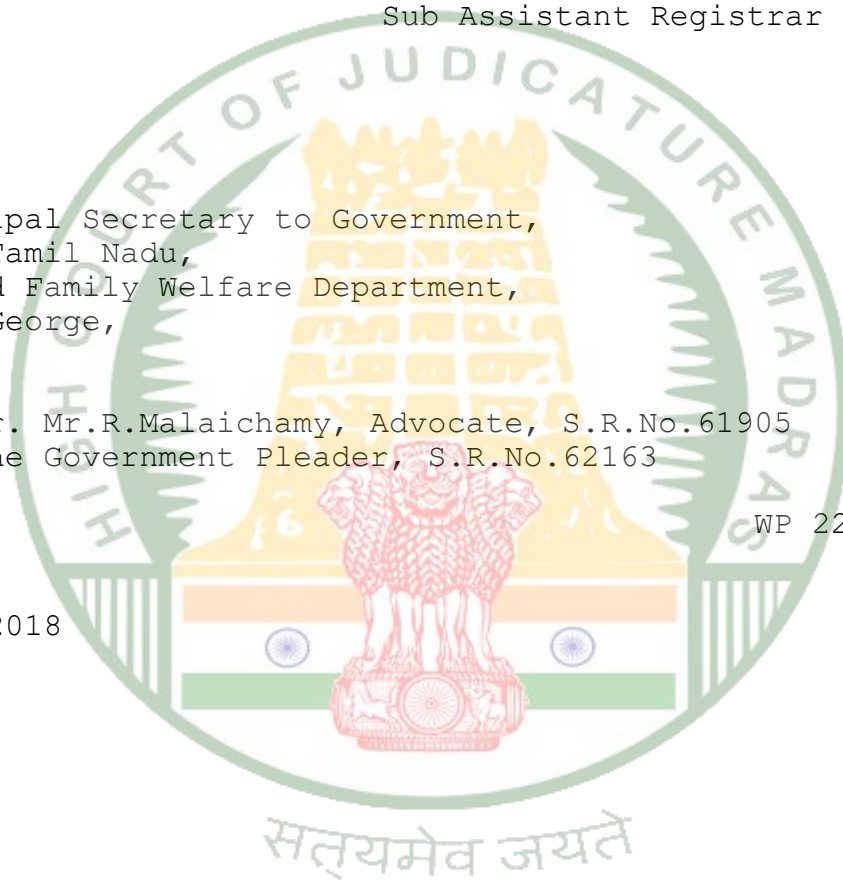
To

The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-9.

+1cc to Mr. Mr.R.Malaichamy, Advocate, S.R.No.61905
+1cc to the Government Pleader, S.R.No.62163

WP 22730 of 2014

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