

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16821 of 2018

S.Samynatrajan

... Petitioner

-vs-

- 1.The Union of India
rep.by its Under Secretary,
Government of Puducherry,
Health and Family Welfare Department,
Puducherry.
 - 2.The Director,
Directorate of Health and Family Welfare Service,
Puducherry.
 - 3.The Officer on Special Duty,
Directorate of Health and Family Welfare Service,
Puducherry.
 - 4.The Medical Superintendent,
Government General Hospital,
Puducherry.
 - 5.The Registrar,
Central Administrative Tribunal,
Madras Bench.
- ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records in O.A.No.310/00534/2018 dated 24.04.2018 on the file of the fifth respondent and quash the same as illegal, incompetent and wholly without jurisdiction and further direct the respondents to regularise the service of the petitioner to the post of Lift Operator from 2006 and declare his eligibility for selection grade with effect from 2014 together with all service benefits and for consequential orders.

For Petitioner :: Mr.V.Raghavachari
For Respondents:: Mr.R.Syed Mustafa,
Spl.GP (Pondy) for R1 to R4

ORDER
(Made by M.DHANDAPANI, J.)

The case of the petitioner would run thus:

(i) The petitioner was initially appointed as Sanitary Assistant in the ESI Hospital, Pondicherry on 05.10.1988 on temporary basis and he was confirmed with effect from 05.10.1990 by order dated 26.06.1993 and placed at Sl.No.572 in the seniority list of Sanitary Assistant. Thereafter, with effect from 13.03.1997, he was posted as Ward Attendant on regular basis at the General Hospital, Mahe, where he reported for duty on 11.08.1999. When a vacancy to the post of Lift Operator came up, the petitioner gave his willingness to consider him, by representation dated 12.09.2005. The said request was not considered. It is the contention of the petitioner that his earlier two similar requests giving willingness to the post of Lift Operator when such vacancy arose, had not been considered. Having some doubt about the manner of filling up of the post, the petitioner verified the seniority list and found out that his juniors have been posted as Lift Operators. Hence, he made a representation on 06.12.2006 to the respondents to consider and pass suitable orders in respect of promotion to the post of Lift Operator. While so, a vacancy for Lift Operator arose in the Indira Gandhi Government Hospital and P.G.Higher Studies Centre in June 2007 and the petitioner shown his willingness to be considered for the same.

(ii) Apprehending that the respondent-Department would not consider his request as was done earlier, the petitioner approached the Central Administrative Tribunal, Madras Bench in O.A.No.896 of 2009 praying for revision of seniority list and to promote him to the post of Lift Operator in the existing vacancy with retrospective effect from the date on which his immediate junior was promoted as Lift Operator. The Tribunal, considering the facts and circumstances of the case, directed the respondents to consider the petitioner's request for promotion to the post of Lift Operator in the next D.P.C. It was also ordered that his seniority has to be counted from the date of his regular appointment to the post of Sanitary Assistant and appoint him to the post of Lift Operator, if he is otherwise eligible; that if he is so selected for appointment to the said post, he should be given promotion notionally with effect from the date on which his immediate junior Sanitary Assistant was promoted. It was further observed that the petitioner would be entitled for salary only from the date of his actual promotion, but the date of notional promotion should be taken into account for pensionary and other service benefits. The said order was passed on 16.06.2011.

(iii) Thereafter, the petitioner was granted promotion as Lift Operator with effect from 08.04.2013 by order dated 21.04.2017, but according to the petitioner, the order granting promotion as Lift Operator is silent with reference to the promotion being given notionally with effect from the date on which his immediate junior was promoted, which amounts to violation of the order dated 16.06.2011 passed by the Tribunal.

(iv) Hence, he filed another application before the Tribunal in O.A.No.310/00534/2018 praying to set aside the order passed by the third respondent dated 21.04.2017 as illegal, incompetent and wholly without jurisdiction. The petitioner also prayed for regularisation of his service as Lift Operator from 2006 and declare his eligibility for selection grade with effect from 2014 together with all service benefits. The Tribunal, by order dated 24.04.2018, rejected the prayer of the petitioner observing that his appointment as Lift Operator itself took about two years from the date of the earlier order passed by the Tribunal, though it was directed to be considered in the next DPC. In such circumstances, it was not known as to what steps have been taken by the petitioner to press his claim in terms of the order passed by the Tribunal. It was also observed that if the order of the Tribunal was not complied with, the petitioner had the option to file contempt petition or a petition seeking execution thereof, but he had not taken any steps in respect of the same, and kept silent for nearly seven years, and came to the Tribunal expressing the same grievance.

2. Challenging the said order, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner has submitted that despite the order dated 16.06.2011 passed by the Tribunal in O.A.No.896 of 2009 directing that the petitioner has to be considered for the post of Lift Operator notionally with effect from 15.11.2006, the date on which his immediate junior Sanitary Assistant was promoted, the petitioner was not considered. Further, the fixation of service of the petitioner is erroneous. Stating so, he prayed to set aside the impugned order passed by the Tribunal and to direct the authorities, as prayed for in O.A.No.310/00534/2018.

4. The learned Special Government Pleader appearing for the respondents 1 to 4 has submitted that the Tribunal has rightly passed the impugned order dismissing the claim of the petitioner observing that the grievance of the petitioner had already been settled in O.A. No.896 of 2009 and that it is barred by the principles of res judicata. Hence, the same does not require any interference in the hands of this Court, according to the learned Special Government Pleader.

5. Heard the learned counsel on either side and perused the materials available on record.

6. In respect of the prayer made by the petitioner in O.A.No.896 of 2009, praying for revision of seniority list and to promote him to the post of Lift Operator in the existing vacancy with retrospective effect from the date on which his immediate junior was promoted as Lift Operator, the Tribunal, by order dated 16.06.2011, directed the respondents to consider the petitioner's request for promotion to the post of Lift Operator in the next D.P.C. It was also ordered that his seniority has to be counted from the date of his regular appointment to the post of Sanitary Assistant and appoint him to the post of Lift Operator, if he is otherwise eligible; that if he is so selected for appointment to the said post, he should be given promotion notionally with effect from the date on which his immediate junior Sanitary Assistant was promoted. It was observed that he would be entitled for salary from the date of his actual promotion, but the date of notional promotion should be taken into account for pensionary and other service benefits. Consequent to the same, the petitioner had been granted promotion as Lift Operator with effect from 08.04.2013. According to the petitioner, the order granting promotion as Lift Operator is silent with reference to the promotion being given notionally with effect from the date on which his immediate junior was promoted, which amounts to violation of the order dated 16.06.2011 passed by the Tribunal. In these circumstances, he filed another application before the Tribunal in O.A.No.310/00534/2018 praying to set aside the order passed by the third respondent dated 21.04.2017 as illegal. The petitioner also prayed for regularisation of his service as Lift Operator from 2006 and declare his eligibility for selection grade with effect from 2014 together with all service benefits.

7. As rightly held by the Tribunal in its order dated 24.04.2018, the appointment of the petitioner as Lift Operator itself took about two years from the date of the order passed by the Tribunal, though it was directed to be considered in the next DPC. In such circumstances, no steps have been taken by the petitioner to press his claim in terms of the order passed by the Tribunal. He ought to have filed a contempt petition or a petition seeking execution of the order passed by the Tribunal, which he failed to do so. Further, the petitioner filed the original application in O.A.No.310/00534/2018 only after seven years of the earlier order passed by the Tribunal, when it is the case that his grievance had already been settled in O.A.No.896 of 2009. We are not inclined to interfere with the impugned order passed by the Tribunal.

8.The writ petition is dismissed. No costs.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

KM
To

- 1.The Under Secretary to Government,
Government of Puducherry,
Health and Family Welfare Department,
Puducherry.
- 2.The Director,
Directorate of Health and Family Welfare Service,
Puducherry.
- 3.The Office on Special Duty,
Directorate of Health and Family Welfare Service,
Puducherry.
- 4.The Medical Superintendent,
Government General Hospital,
Puducherry.
- 5.The Registrar,
Central Administrative Tribunal,
Madras Bench.

+1 CC to Public Prosecutor (Pondicherry) sr 49291.

+1 CC to Mr.V. Raghavachari, Advocate sr 49165.

सत्यमेव जयते

W.P.No.16821 of 2018

GMR (CO)
SP(11/08/2018)

WEB COPY