

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.3675 of 2012

P.Saravanan

... Petitioner

Vs

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner,
Adi Dravidar and Tribal Welfare Department,,
Chepauk,
Chennai-600 005.

3.The District Adi Dravidar and Tribal Welfare
Officer, Namakkal,
Namakkal District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pass appropriate orders to regularise the service of the petitioner from the date of his initial appointment, declare his probation and further direct the respondents to give annual increment and revised scale of pay as per the VI Pay Commission recommendation within a time limited that may be stipulated by this Court.

For Petitioner : Mr.S.Mani

For Respondents : Mr.D.Venkatachalam,
Addl. Govt. Pleader

O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, directing the respondents to pass appropriate orders to regularise the service of the petitioner from the date of his initial appointment, declare his probation and further direct the respondents to give annual increment and revised scale of pay as per the VI Pay Commission recommendation within a time limited that

may be stipulated by this Court. "

2.The petitioner was originally appointed as Cook on 27.06.1997 in the Adi Dravidar and Welfare Department, Namakkal. Subsequently, he was appointed as 'Lab Assistant' on 23.12.1997 by the third respondent as he was fully qualified for such appointment. On completion of two years of service in the post of Lab Assistant, his service came to be regularised on 21.04.1999 with effect from 28.12.1997.

3. According to the petitioner, pursuant to the regularization of his service as Lab Assistant, he had not been in receipt of annual increment and all the monetary benefits applicable to the said post. It appears that an objection was raised by the Audit Department stating that his promotion to the post of Lab Assistant from the cadre of Cook was irregular and not in accordance with the Rule and he was recommended for cancellation of promotion as Lab Assistant.

4. In response of the audit objection, it appears that the third respondent had forwarded a proposal on 20.12.2006 stating that the post of Lab Assistant remained vacant during the relevant time and based on the existing Government Order at that time, the petitioner was appointed as Lab Assistant and the third respondent requested for necessary approval for such appointment. According to the petitioner, no further steps were taken by the authorities concerned for clearing the objection raised by the audit authorities and no further orders were passed for regularization of the appointment of the petitioner as Lab Assistant.

5.While the matter stood thus, it appears that in view of the audit objections, the authorities concerned stopped granting annual increment and revision of scale of pay from time to time as applicable to the post of Lab Assistant, particularly after recommendation of VI Pay Commission. The petitioner learned that the audit objection was raised on the ground that G.O.Ms.No.87, Adi Dravidar and Tribunal Welfare Department dated 26.7.2006, which provides for appointment of various categories of persons like Record Clerk, Office Assistant etc., to the post of Lab Assistant before considering the cadre of Cook for such promotion. Though the said G.O. was passed on 26.07.2006, the same was deemed to have come into force is with effect from 19.06.1986. Therefore, the objection of the audit authorities is that the petitioner was promoted out of term by overlooking the seniority of other category of persons and such appointment therefore was not approved and in such circumstances, the authorities rightly have not granted admissible monetary benefits applicable to the post of Lab Assistant.

Government Pleader entered appearance on behalf of the respondents and filed a counter statement.

7. In the counter affidavit the relief prayed for by the petitioner is sought to be resisted on the basis of the following averments as found in para 1 of the counter affidavit, which is reproduced below:

"It is submitted that Thiru.P.Saravanan who is now working as Lab Assistant in Val Vil Ori Government Schedule Tribe Residential Higher Secondary School, run under the control of the Namakkal District Adi Diravidar and tribunal Welfare Department, was appointed as a cook in the year 1997 (27.06.1997) when he passed his 10th class. The petitioner was promoted as Lab Assistant on 23.12.1997. (Copy enclosed). While examining the service Register of the said Saravanan, it is found that he was promoted as Lab Assistant as per G.O.No.155, ADW, dated 08.09.1997. After having been appointed as Cook on 27.06.1997, double promotion was given to him even before regularization in his post as Cook. He was regularized in his post of Lab Assistant on 21.04.1999. In this regard, the Adhoc Rules for the Lab Assistant was published in G.O.Ms.No.87, ADW-7, dated 26.07.2006. As per the Adhoc Rules, the Promotion should be provided in ascendant manner as Cook, Watchman, Office Assistant, and Record Clerk. But this procedure was not followed to the petitioner. Without preparing any Seniority list and relinquish list, the petitioner was given dual promotion illegally. Government procedure was not followed for his promotion. Hence, the Petitioner is a fit person to degrade to his old post as Cook."

The learned Additional Government Pleader would submit as per the above said G.O.Ms.No.87, dated 26.07.2006, the promotion should be provided first to Record Clerk, Office Assistant, Watchman and then only Cook. In the instant case, overlooking the said persons, the petitioner was granted promotion as Lab Assistant while he was working as Cook. The said G.O. was put into effect from 19.06.1986 and therefore, the said G.O. Was made applicable to the promotion to the petitioner also.

<https://hcservices.ecourts.gov.in/hcservices>, the learned counsel for the petitioner would

submit that the same G.O., clause - 5, is reproduced below:

3.Appointment - A Appointment to the post shall be made follows:

- i) by direct recruitment or
- ii) by recruitment by transfer from the categories of Record Clerk in the Tamil Nadu General Subordinate Services Office Assistant Cook and Watchman in the Tamil Nadu Basic Service in the Adi Dravidar and Tribunal Welfare Department."

9. Saving: Nothing contained in those rules shall adversely affect any person holding the post the date of issue of these rules.

9. In view of the above, the promotion granted to the petitioner cannot be said at nought by applying the said G.O. and the promotion was given as early as on 1997 as Lab Assistant. In any event, the learned counsel would submit that there was no misrepresentation on the part of the petitioner and only in the interest of the Department, the promotion was offered and as regards the eligibility of the petitioner, it has not been disputed by the department. Therefore, the original order of regularization of service of the petitioner dated 21.04.1999 has to be given effect to in all respects. According to the petitioner counsel, the said order has not been cancelled as on date and the petitioner continues to be treated as Lab Assistant and has also been paid salary for the said post all these years. However, only the other monetary benefits viz. Annual increments, etc. have not been granted and also no revision of scale of pay, particularly after the VI Pay Commission, was given.

10. This Court has considered the rival submissions of the counsel counsel for the parties and perused the materials and pleadings placed on record.

11. There is a considerable force in the contentions raised on behalf of the petitioner that as early as in 1999, the petitioner came to be promoted as Lab Assistant on the basis of existing orders. In fact, subsequently his appointment was regularized by proceedings of the third respondent dated 21.04.1999 regularizing the service of the petitioner with effect from 28.12.1997. After the regularization of the petitioner, it would certainly not open to the department to deny whatever financial monetary benefits as admissible to the post of Lab Assistant from time to time.

12. The so called objections raised by the authorities on the basis of the subsequent G.O.Ms.N.86 dated 26.07.2006, cannot also be made applicable to the case of the petitioner particularly in view of the saving clause as contained in

para 9 of the said G.O., which is extracted supra. In any

event, once promotion has been regularized and such promotion was not found to be illegal, even as per the counter statement on behalf of the respondents, the action of the respondents denying the monetary benefit to the petitioner, is without any justification and cannot be countenanced in law.

13.As rightly contended by the learned counsel for the petitioner that the eligibility for the petitioner is not in dispute and that being the case, this Court does not see any justification on the part of the authority concerned to deny the monetary benefits to the petitioner on the basis of the audit objection and which objection according to them is, misconceived.

14.For the above said reasons, this Court is of the considered view that the prayer sought for in the writ petition, as such, is allowed. There shall be a direction to the respondents to give effect the order of regularization passed by the third respondent and grant all monetary benefits as applicable to the post of Lab Assistant from time to time including annual increments etc., The petitioner shall be entitled to the arrears of monetary benefits as admissible. The direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

15.With the above direction, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner,
Adi Dravidar and Tribal Welfare Department,,
Chepauk,
Chennai-600 005.

3.The District Adi Dravidar and Tribal Welfare
Officer, Namakkal, Namakkal District.

+1cc to Mr.S.Mani, Advocate, S.R.No.16689

+1cc to the Government Pleader, S.R.No.16291

W.P.No.3675 of 2012

(CO)
GSP (22/03/2018)



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