



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2018

CORAM :

**THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE R.THARANI**

W.A (MD) No.226 of 2018

Syed Vali Mian

... Appellant/Petitioner

Versus

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

2.The Director of Public Health and
Preventive Medicines,
259, Anna Salai,
Thenampettai,
Chennai - 600 006.

... Respondents/Respondents

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 19.12.2017 made in W.P.(MD) No.3436 of 2014 on the file of this Court.

Prayer in WP(MD). 3436/ 2014 :-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to regularize the petitioner's service in the Government service with effect from the date of his first joining the duty i.e., on 16.09.1976 so that he would become entitled to claim the retirement benefits and other benefits with effect from the date of as might be re-determined with effect from that date.



For Appellants : Mr.M.S.Balasubramania Iyer

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J)

Heard Mr.M.S.Balasubramania Iyer, learned counsel appearing for the appellant.

2.This appeal is directed against the order made in W.P.(MD) No.3436 of 2014 dated 19.12.2017.

3.The prayer sought for in the writ petition was to issue a direction to the respondent to regularise the appellant's service with effect from the date of his first appointment i.e. on 16.09.1976 so as to become entitled to claim benefits. The writ Court taking into consideration the earlier writ petitions filed by the petitioner viz., W.P.(MD) Nos.19690 of 2006 and 26688 of 2009 dismissed the writ petition holding that the petitioner having not questioned the regularisation of his service with effect from 1991, cannot now seek for benefits from an anterior date i.e. from the year 1980 onwards. In our considered view, the Writ Court was perfectly justified in rejecting the prayer sought for in the writ petition, since the Government while issuing G.O.Ms.No.189 dated 12.02.1991 though found that the petitioner's appointment is not a regular appointment, taking note of the fact that he was working in the Department as a Male Nursing Assistant relaxed the relevant rules and appointed him as a regular Male Nursing Assistant Grade II with effect from the date of Government order i.e. 12.02.1991.

4.The learned counsel for the appellant would argue that in the said Government Order itself, it has been stated that the appellant has been working since 01.01.1980. Therefore, atleast the benefit should be extended from the said date. In our considered view, the date mentioned as 01.01.1980 is in the recommendation given by the Director of Primary Health Centres, who has recommended that the appellant's case can be considered and the Government can relax the relevant rules. However, the Government had not accepted the recommendation in its entirety, but only partially accepted by regularising the service of the appellant from the date of the Government order i.e. 12.02.1991. Thus, after attaining the age of superannuation, the present attempt of the petitioner commenced in the year 2006 and in the earlier two writ petitions also, the petitioner did not question that portion of the Government Order in G.O.Ms.No.189, which denied the benefit to the petitioner from 1980 but granted from the year 1991. Hence, we find that there is no error in the order passed by the writ Court.



5. For the above reason, this writ appeal is dismissed. No costs.

WEB COPY

Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

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

2. The Director of Public Health and
Preventive Medicines,
259, Anna Salai,
Thenampettai,
Chennai - 600 006.

+One cc to Mr. M. S. Balasubramania Iyer, Advocate, SR.No.50377

Arul

RL/4C/3P/KK/SAR2/6/3/2018

Judgment made in
W.A (MD) No.226 of 2018

22.02.2018