

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.30838 of 2005
and
WP.MP.No.33792 of 2005

S.V.Ravichandran

...Petitioner

Vs

1.The Government of Tamil Nadu,
Represented by its
Secretary to the Government,
Revenue Department,
Fort St. George,
Chennai-9.

2.The Tahsildar,
Salem,
Salem District.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or directions in the nature of writ, calling for the records relating to the impugned order of the First Respondent in G.O.Ms.No.92, Revenue (Per 9-2) Department, dated 18.02.2003 and the consequential order of the Second Respondent in Na.Ka.No.235/2005/A1 dated 20.01.2005 and quash the same in so far as the grant of monetary benefit only from the dute of issue of the impugned order and direct the respondents to grant monetary benefit arising on account of the regularization of service from the date of regularisation of service in the post of Junior Assistant, that is 14.02.1991.

For Petitioner : Mr.P.Rajendran

For Respondents: Mr.S.Suresh Kumar, GA

O R D E R

The petitioner's service as Junior Assistant came to be regularised with effect from his date of joining i.e., from 14.02.1999. The Government in G.O.Ms.No.92 dated 18.02.2003 has relaxed certain rules in Rule 3(g) and Rule 26 of the Tamil Nadu Ministerial Service Rules and ordered that the services of the individuals should be regularised from the date of joining in the post of Junior Assistant with monetary benefits from the date of issue of the Government Order i.e., 18.02.2003. However, since the petitioner was already receiving the monetary benefits on regular basis based on G.O.Ms.No.602 dated 16.11.1999, wherein 71 individuals were regularised and monetary benefits were ordered to be paid to them from the date of joining of the post as Junior Assistants, a recovery order came to be passed on 20.01.2005 directing recovery for a sum of Rs.1000/- from the monthly salary of the petitioner. Being aggrieved against the Government Order in G.O.Ms.No.92 dated 18.02.2003 and the consequent recovery order dated 20.01.2005, the present Writ Petition has been filed.

2. The learned counsel for the petitioner submitted that the G.O.Ms.No.92 dated 18.02.2003 denying the monetary benefits from the date of joining is discriminatory, since 71 identically placed Junior Assistants were given monetary benefits from the date of joining their post as Junior Assistants through G.O.Ms.No.602 dated 16.11.1999 and therefore, the present Government Order restricting the monetary benefits from the date of Government Order, is discriminatory. The learned counsel would further submit that the consequential impugned order dated 20.01.2005 ordering for recovery of salary is also illegal, in view of the discriminatory Government Order in G.O.Ms.No.92 dated 18.02.2003.

3. The learned Government Advocate by reiterating the averments made in the counter affidavit submitted that the petitioner is not entitled for monetary benefits from the date of joining, since the G.O.Ms.No.92 clearly restricts the monetary benefits from the date of Government Order i.e., 18.02.2003 and there was no infirmity in the Government Order.

4. I have given careful consideration to the submissions made by the respective counsels.

5. The main ground raised by the learned counsel for the petitioner is that G.O.Ms.92 dated 18.02.2003 denying the petitioner of his monetary benefits from the date of his joining, is discriminatory, in view of the earlier Government Order of the respondents dated 16.11.1999 in G.O.Ms.No.602, wherein 71 identically placed Junior Assistants have been given the monetary benefits from the date of joining at the time of

their regularisation. Though the petitioner herein had raised these specific grounds in his affidavit, there is absolutely no explanation in the counter affidavit with regard to this discrimination.

6. On a perusal of both the G.O.Ms.Nos.92 and 602, it is seen that the petitioner herein is identically placed as that of the 71 other persons who came to be regularised on 16.11.1999 and had monetary benefits from the date of joining. As such, there is no justification either in the impugned Government Order or in the counter affidavit with regard to the denial of the benefits to the petitioner. On this short ground, the impugned G.O.Ms.No.92 dated 18.02.2003 is liable to be quashed, insofar as the denial of the monetary benefits of the petitioner from the date of joining the post of Junior Assistant is concerned. Consequently, the recovery order dated 20.01.2005 is also liable to be struck down, in view of the earlier observations of this Court that the G.O.Ms.No.92 itself is barred, insofar as it relates to the denial of monetary benefits.

7. Furthermore, the Hon'ble Apex Court in its decision reported in 2015 (4) SCC 334 in the case of State of Punjab and others vs Rafiq Masih (White Washter) and others, had held that the recovery from the employees belonging to Group 'C' is impermissible in law. It is not in dispute that the petitioner herein belongs to Group 'C' category at the time when the impugned order came to be passed. In the light of the decision of the Hon'ble Apex Court cited supra, the recovery order is also liable to be struck down.

8. For all the foregoing reasons, the Writ Petition stands allowed. Consequently, the impugned order of the First Respondent in G.O.Ms.No.92, Revenue (Per 9-2) Department, dated 18.02.2003 and the consequential order of the Second Respondent in Na.Ka.No.235/2005/A1 dated 20.01.2005, are quashed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jrs/hvk

To

1.The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai-9.

2.The Tahsildar,
Salem, Salem District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.23345
+1cc to the Government Pleader, S.R.No.25156

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and
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NRL (CO)

RRS (23/04/2019)



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