

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31228 of 2019

P.Moorthy

..Petitioner

Vs.

1.State of Tamilnadu,

Rep. By its Principal Secretary
to Govt. Higher Education Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Director,

Directorate of Collegiate Education,
Chennai-600 006.

3.The Principal,

Government College of Education,
Gandhi Nagar, Vellore-632 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate writ or order in the nature of a Direction, directing the 1st and 2nd respondents to regularize the petitioner's service with effect from 18.04.2002 to the post of 'Marker' and consequently settle the pensionary and retirement benefits due to the petitioner within the time frame fixed by this Court.

For Petitioner : Mr.S.Vijayaganesh

For Respondents : Mr.V.Kadirvelu,

Special Government Pleader
for Education.

O R D E R

1.This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, to direct 1st and 2nd respondents to regularize the petitioner's service with effect from 18.04.2002 to the post of 'Marker' and consequently settle the pensionary and retirement benefits due to the petitioner within the time frame fixed by this Court.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.
3. The case of the petitioner is that the petitioner was initially appointed as "Marker" by the third respondent college on a consolidated pay of Rs.40/-, which was later on raised to Rs.80/- per month with effect from 01.07.1982 and it has been increased from time to time up to Rs.275/- per month. It is further stated by the petitioner that the post of "Marker" which was under the contingent establishment was brought under Tamil Nadu Basic Service with effect from 04.12.1997, as per G.O.Ms.No.602, Higher Education (G2) Department dated 04.12.1997. In pursuance to the said Government Order, the Director of Collegiate Education called for particulars of eligible markers working in several Government Colleges and other institutions so as to get orders relaxing the rules in this regard. The petitioner, who was then working as "Marker" in the respondent College submitted the necessary particulars to the Principal of the said College along with the certificate pertaining to his educational qualification. According to the said certificate the petitioner had passed 8th standard. Based on the same, he was brought under the basic service. Subsequently a charge memorandum was issued to him by the respondent by his proceedings in Na.Ka.No.163/B/2002 dated 18.02.2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules alleging that the petitioner had produced bogus education qualification certificate as if he has passed 8th standard, though the fact remains that he had not passed 8th standard. It also came to light from the letter of the District Elementary Educational Officer, Tiruvannamali in O.Mu.No.3924 /A2/2002 dated 06.08.2002 that the said educational certificate produced by the petitioner was not genuine. An enquiry officer was appointed to go into the charge but the enquiry officer's report was not submitted. In the meantime, the Government had issued G.O.Ms.No.190 (P & AR) Department dated 09.06.1995. based on the said Government order, the petitioner was dismissed from service under Rule 10 (a) (v) of the General Rules by the respondent. The said order of dismissal came to be passed not with reference to the charge memo but independently based on the Government Order. Challenging the same, the petitioner filed O.A.No.2197 of 2004 before the Tamil Nadu Administrative Tribunal. On transfer to this Court, the same has been renumbered as W.P.No.18291/2007.
4. By order dated 18.06.2008, this Court disposed of the said writ petition, directing the respondents to reinstate the petitioner into service while making it clear that the petitioner was not entitled for backwards during the integret

period between the date of dismissal till the date of reinstatement. Pursuant to the order of this Court, it appears that the petitioner was reinstated as Marker in the 3rd respondent college vide order dated 13.01.2009, his service has not been regularized by the respondents 1 and 2, despite several representations made by the petitioner. In the mean time, the petitioner also retired from service on superannuation on 31.05.2013. thereafter, the petitioner has been making representations to the respondents to regularize his service with effect from 18.04.2002 and subsequently, settle the petitioner's retirement benefits due to payable to the petitioner. Since no action is forthcoming despite his representation, the petitioner has come forward with the present writ petition.

5.The learned counsel appearing for the petitioner would submit that pursuant to the direction of this Court in WP.No.18291/2007 dated 18.06.2008, the petitioner has been reinstated with effect from 13.01.2011 and though he is entitled for regularization of service in the post of Marker, despite the representations made by the petitioner, the respondents have not regularized the service of the petitioner and even after his retirement, the petitioner made representations to regularize his service and to settle the petitioner's retirement benefits and even then also the respondents have not considered. Hence the learned counsel would implore this Court to direct the 1st and 2nd respondents to regularize the petitioner's service with effect from 18.04.2002 to the post of 'Marker' and consequently settle the pensionary and retirement benefits due to the petitioner within the time frame fixed by this Court.

6.The learned Special Government Pleader appearing for the respondents conceded to the request as submitted by the learned counsel appearing for the petitioner. The learned counsel would submit that if this Court directs the respondents to consider the dispose of the representations made by the petitioner, the same would be complied with and the representation would be disposed of in accordance with law.

7.Considering the facts and circumstances of the case and the petitioner all along has been longing for a regularization of service and even after his retirement for settlement of pensionary and retirement benefits, the respondents are directed to consider the petitioner's representation dated 23.03.2017, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

8.The writ petition is accordingly disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary
to Govt. Higher Education Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Director,
Directorate of Collegiate Education,
Chennai-600 006.

3.The Principal,
Government College of Education,
Gandhi Nagar, Vellore-632 006.

+1 cc to M/s.Madhana Chandran.S, Advocate Sr.No. 91725

AKM/11.12.19/4P-5C /

W.P.No.31228 of 2019

सत्यमेव जयते
WEB COPY