



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) .No.5220 of 2015

and

M.P. (MD) No.2 of 2015

K.Sivasami

.. Petitioner

Vs.

1.The Secretary to
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2.The Director of Public Health and Preventive Medicine,
Chennai - 600 006.

3.The Commissioner of Food Safety and Drug Administration,
Chennai - 600 006.

4.The Designated Officer,
Food Safety and Drug Administration,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the second respondent in his R.No.12648/E4/S1/2013, dated 24.03.2015 in reverting the petitioner promoted as Junior Assistant to the post of Lab Technician Grade - III and quash the same as illegal, contrary to law, and pass an order confirming the promotion as the junior assistant as per the proceedings of the second respondent in R.No.46858/E4/S4/2011 dated 05.03.2012.

For Petitioner : Mr.D.Selvaraj

For Respondents : Mr.R.Murugan
Additional Government Pleader



O R D E R

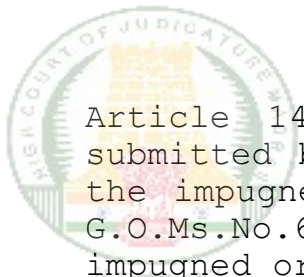
This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order of the second respondent in his reference No.12648/E4/S1/2013, dated 24.03.2015 in reverting the petitioner, who was earlier promoted as Junior Assistant, to the post of Lab Technician Grade - III and consequently to direct the second respondent to pass fresh order confirming the earlier order of the second respondent dated 05.03.2012 promoting the petitioner as Junior Assistant.

2.The petitioner joined as a Lab Assistant Grade - III at Vembar Primary Health Centre, Kovilpatti Health Unit. Subsequently, he was posted at Burkitmanagar Primary Health Centre, Tirunelveli Health Unit, as Lab Assistant Grade III. The petitioner also was directed to attend the Training Programme for six months for the post of Junior Assistant in order to fill up the existing vacancy in the department for the post of Junior Assistant. The petitioner underwent training and became eligible to the post of Junior Assistant.

3.After completion of the training period, the petitioner was called for counselling and promoted as Junior Assistant on 19.03.2012. The petitioner joined as Junior Assistant at Deputy Director of Health Services, Tirunelveli. Later, he was also transferred to Food Safety and Drug Administration unit at Tirunelveli as Junior Assistant. It is stated that the petitioner was serving in the department in the post of Junior Assistant from 2012.

4.The second respondent issued a show cause notice on 11.02.2015 for reverting the petitioner to the post of Lab Technician Grade III. Despite the petitioner submitting his explanation, dated 25.02.2015, the second respondent passed the impugned order dated 24.03.2015 reverting the petitioner from the post of Junior Assistant to the post of Lab Technician Grade III and posted him at Mukkudal a place in Tirunelveli District. Challenging the order of reversion, the petitioner has filed the above Writ Petition.

5.The learned Counsel appearing for the petitioner submitted that once the petitioner was promoted to the post of Junior Assistant, the reversion to the post the petitioner held earlier is illegal. According to the petitioner, the reversion is illegal and invalid and therefore, the impugned order is liable to be quashed. Since the petitioner was not imposed with any punishment and there is no deficiency in the performance of his service in the post of Junior Assistant to which he was promoted in 2012, the subsequent order of reversion is impermissible. Since the order is passed without assigning any reason, the learned Counsel appearing for the petitioner also submitted that the impugned order is in violation of

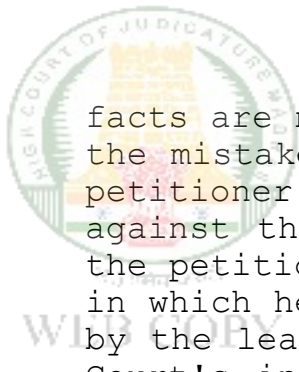


Article 14 and 16 of the Constitution of India. It is also submitted by the learned Counsel appearing for the petitioner that the impugned order is on a wrong understanding or misconception of G.O.Ms.No.63, Finance (PC) Department, dated 26.02.2011. The impugned order reads as follows:

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"He joined duty as Junior Assistant on 19.03.2012 F.N. As per Rule 3(g)(i) of Tamil Nadu Ministerial Services, persons in services other than Tamil Nadu Ministerial Services carrying lower scale of pay than that of Junior Assistant/Junior Assistant-cum-Typist/Typists alone shall be considered for appointment by Transfer as Junior Assistant."

6.From the order impugned in this Writ Petition and records, the following facts are admitted. The petitioner was originally working as Lab Technician Grade-III and was promoted and posted as Junior Assistant by recruitment by Transfer (Transfer of service) and posted in the office of the Deputy Director of Health Services, Tirunelveli. The petitioner joined duty as Junior Assistant only on 19.03.2012. It is stated by the second respondent in the impugned order that as per Rule 3(g) (i) of the Tamil Nadu Ministerial Services, persons in Services other than Tamilnadu Ministerial Services carrying lower scale of pay than that of Junior Assistant/Junior Assistant-cum-Typist/Typist alone shall be considered for appointment by recruitment by transfer as Junior Assistant. The petitioner while working as Lab Technician Grade-III, from 2005 was receiving a pay scale of 3050-75-3950-80-4590 in the pre-revised scale of pay which was lesser than that of the scale of pay applicable to the Junior Assistant post (3200-85-4900). The petitioner underwent training programme so as to make him eligible to the post of Junior Assistant. On successful completion of training, he was promoted and posted as Junior Assistant with effect from 19.03.2012. At the time of promotion, the petitioner was holding the post of Lab Technician Grade-III in the pay scale of Rs.5,200-20,200 with Grade Pay of Rs.1900/-. Subsequently, vide G.O.Ms.No.63, Finance (PC) Department, dated 26.02.2011, the Grade Pay for the post of Lab Technician Grade-III was raised from Rs.1900/- to Rs.2,400/-. By this the petitioner was drawing salary which is identical to the post of Junior Assistant and hence, the post in which the petitioner was working prior to the transfer did not carry lesser pay scale than the pay scale applicable to the post of Junior Assistant. It is only in the said context, the impugned order dated 24.03.2015 came to be passed by stating that the petitioner's appointment to the post of Junior Assistant by transfer is not in terms of the Rule 3(g)(i) of the Tamil Nadu Ministerial Service Rules. Hence, by stating that the petitioner was wrongly promoted to the post of Junior Assistant in 2012, he was reverted to the post of Lab Technician Grade-III. This Court is unable to find any error or want of jurisdiction. The promotion that was given to the petitioner by transfer in 2012 was not as per Rule. When the



facts are not in dispute, the respondent has jurisdiction to correct the mistake after issuing show cause notice to the petitioner. The petitioner was given sufficient opportunity and there is no estoppel against the statute and hence, by promoting the petitioner earlier the petitioner cannot take advantage of the mistake to hold the post in which he was promoted earlier. No other legal submission is made by the learned Counsel appearing for the petitioner to warrant this Court's interference. Hence, this Writ Petition is dismissed with liberty to approach the respondents for relaxations of rules. However, the petitioner may seek relaxation of rule based on precedent or equity. If a representation is given, the respondents may consider in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

SRM

To

- 1.The Secretary to
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai.
- 2.The Director of Public Health and Preventive Medicine,
Chennai - 600 006.
- 3.The Commissioner of Food Safety and Drug Administration,
Chennai - 600 006.
- 4.The Designated Officer,
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Tirunelveli District.

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**ORDER MADE IN
W.P. (MD) .No.5220 of 2015
18.09.2019**

CS (22.11.2019) 4P 6C